



## **SIA – 2018 WINTER BASICS AGREEMENTS CONCEPTS AND PROCESSES**

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### **BRIEFING TOPICS**



- **Agreements Overview**
- **Agreement Preparation**
  - Transmittal Letter
  - Agreement
  - DSP-5 Vehicle
- **Agreement Approval Process**
- **Agreement Maintenance and Compliance**
- **Amendments**
- **Licenses In Furtherance Of**
- **Export Control Reform – Impact on Agreements**



## AGREEMENTS OVERVIEW DSP LICENSES VS. AGREEMENTS



- Technical Assistance Agreement (TAA) – “An agreement for the performance of **defense service(s)** or the disclosure of technical data...” (22 CFR 120.22)
  
- Manufacturing License Agreement (MLA) – “An agreement whereby a U.S. person grants a foreign person an authorization to **manufacture** defense articles abroad and which involves...” (technical data, defense articles, and/or **defense services**) (22 CFR 120.21)
  
- Warehouse and Distribution Agreement (WDA) – “An agreement (e.g. a contract) **to establish a warehouse or distribution point abroad** for defense articles exported from the United States for subsequent distribution to entities in an approved sales territory.” (22 CFR 120.23)

Agreements are characterized by **multiple transactions** of hardware and/or technical data between **two or more parties** involving the performance of defense services.



## AGREEMENTS OVERVIEW DSP LICENSES VS. AGREEMENTS



### Defense Service (22 CFR 120.9):

- The furnishing of assistance (including training) to foreign persons in the...
 

- Design	- Manufacture	- Testing
- Development	- Production	- Repair
- Engineering	- Assembly	- Maintenance
- Modification	- Operation	- Demilitarization
- Destruction	- Processing	- Use

 ...of defense articles
  
- The furnishing to foreign persons of any technical data (22 CFR 120.10). controlled under this subchapter
  
- Military training of foreign units and forces, regular and irregular.



## ASSESSING YOUR NEED

Activities frequently requiring an Agreement:

- Supporting Direct Commercial Sales to Foreign Parties
- Providing Overseas Maintenance or Training
- Technical Studies, Testing, Evaluations/Analyses, Demonstrations or Consultations with Foreign Parties
- Release of Manufacturing Data or Rights
- Evaluation or use of foreign technology
- US Government contract support overseas
- Co-design or Co-Development
- Modification or Optimization
- Provide other guidance or engineering support for a defense-related system or process



## AGREEMENTS OVERVIEW THE MAJOR PLAYERS



- **Applicant** – Company or Individual applying for the Agreement (Note - Must be Registered with State Department)
- **U.S. Signatories** – Other U.S. companies participating in the program and providing technical data and defense services to the Foreign Parties (i.e. - U.S. Technical Consultants, U.S. Suppliers, U.S. Subsidiaries, etc.)
- **Foreign Licensees** – Foreign Companies involved in the transaction listed as signatories to the Agreement (i.e. - Foreign Customer, Foreign Suppliers, Foreign Technical Consultants, Foreign Subsidiaries, etc.)
- **Sublicensees** – A company that requires access to technical data, but will have no contact with the U.S. Signatories (i.e. – U.S. or Foreign suppliers to the Foreign Licensees)
- **End User** – the entity that will take final possession of the commodity, regardless of the foreign purchaser. (May or may not be a signatory to the Agreement)



## AGREEMENT PREPARATION: WHO PARTICIPATES

If our Engineers need to engage in technical exchanges with non-US Engineers, we need a TAA or MLA. So...

- Which Functions normally need to obtain a TAA or MLA:
  - Program Managers/Engineers
  - New Business/Sales/Marketing/Business Development
  - Product Development/Supply Chain
- Which Functions (besides the ones above) may be helpful in providing info for the TAA:
  - Contracts
  - Finance
  - Legal Department
  - Human Resources (Foreign Employment)
  - Facilities and Security



## AGREEMENT PREPARATION



- Ensure request is complete and accurate – *cannot be processed in a timely manner if information is missing or incorrect*
- Get the “right” information from the program managers and foreign parties
- “Guidelines for Preparing Agreements”:  
<http://pmdtcc.state.gov/licensing/agreement.html>
- Contains DDTC Policy & Procedures for Implementing the Arms Export Control Act (AECA) and ITAR for Agreements
- Notifications of changes will be posted on the webpage
- When preparing the agreement, **use link above and conduct a thorough review**

**AECA and ITAR take precedence over the “Guidelines”**



## HELPFUL HINTS

### WHAT TO DO:

- Use the DDTC's "Guidelines for Preparing Agreements"
  - This is the format DDTC is looking for....so use it
  - This will help save time in the review process
- Use the templates provided in the Guidelines to make sure that you don't forget required information

### WHAT NOT TO DO:

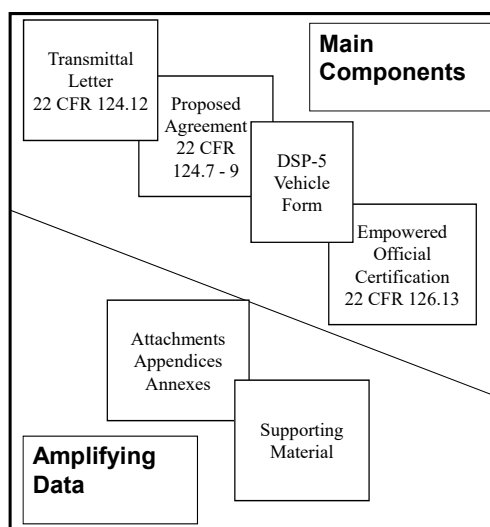
- Avoid putting Contractual language in Agreements
- Avoid making your Agreement a Marketing Pitch
- Do not reference foreign laws / regulations in the Agreement



## TAA/MLA APPLICATION PACKAGE



- **Four main components:**
  - Transmittal Letter
  - Proposed Agreement
  - DSP-5 Vehicle Form
  - Empowered Official Certification
- **Amplifying Data**
  - Attachments, Annexes
    - Tech Data, HW Descriptions
    - SOWs
    - Etc.
  - Supporting Material
    - Executive Summary (Congressional)
    - Part 130 Statement
    - Etc.





## AGREEMENT PREPARATION: WHAT INFORMATION DO I NEED?

Develop a Questionnaire to get the information you need to develop the Agreement and the Transmittal Letter:

- Who are all the Parties (locations / addresses) that will be involved?  
Customer, Consultants, Subcontractors, Agents, Reps
- What is the role of each party?
- Why is an Agreement necessary / What is the Scope?
- What are you exporting? Ask for **detailed** descriptions of the hardware, technical data and defense services.
- What Countries will be involved? Don't forget Dual/Third Country Nationals
- Do the foreign companies need to provide your data to any other company who you won't be directly interfacing with – Sublicensing?
- Be certain to include questions to obtain the required information in the transmittal letter.



## TAA/MLA KISS PRINCIPLE



- Who. is selling
- What, to
- Where
- When
- Why
- How, (who else is involved) and for
- How much



## TAA/MLA APPLICATION PACKAGE



- **Four main components:**
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    - Proposed Agreement
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      - Etc.
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      - Part 130 Statement
      - Etc.

**Transmittal  
Letter**  
  
**(22 CFR 124.12)**

**See Section 5.1 of Guidelines**



## TAA/MLA APPLICATION PACKAGE



### Components of the Transmittal Letter:

- Introduction
- Background
- Required Information
  - (a)(1) – (a)(9) Required Information per 22 CFR124.12(a)
- Required Statements (Verbatim)
  - (b)(1) – (b)(4) Required Information per 22 CFR124.12(b)
- Other Requested Data to Facilitate the Review of the Application



## HELPFUL HINTS

- Introduction
  - Keep it short, simple and to the point
- Background

Use this section to provide details about the:

  - Program
  - Parties and their roles / responsibilities
  - Describe any precedent or similar export authorizations
  - Overview of what you will be exporting – hardware, technical data and services



## TRANSMITTAL LETTER 22 CFR 124.12 SAMPLE LETTER IN “GUIDELINES” TAB 2



(a)(1) DDTC Registration Code is: M-5555.

(a)(2) The foreign licensee(s) involved is/are:

Name  
Mailing/Street Address  
(include country)  
(and all locations in Country X)

The US Signatory(ies) involved is/are:

Name  
Mailing/Street Address  
*(don't forget to include yourself as the applicant)*  
(and all locations in the United States)

The scope of the agreement involves the (U.S. Company(ies)) providing technical data, defense services and hardware to...

The ultimate end-use and end-user is (company/country/MOD).

This agreement will expire... (last day of month based on first letter of Registered company's name) See Section 3.1 of the Guidelines



## TRANSMITTAL LETTER 22 CFR 124.12



- (a)(3) This agreement does / does not relate to a U.S. Government contract under which the equipment or technical data was generated, improved, or developed and supplied to the U.S. Government, and whether the equipment or technical data was derived from any bid or other proposal the U.S. Government. **(If it does, provide contract information to include USG Point of Contact Information.)**
- (a)(4) This agreement involves U.S. technical data, defense services and/or defense articles (hardware) at the **(specify classification)** level. This agreement also involves foreign classified at the (country) / (appropriate title) level. **(Unclassified, Confidential, Secret, Top Secret).** \*Note that all submissions have a classification, even if that classification is Unclassified. Also, if your submission contains foreign classified (only), please ensure that is articulated here.



## TRANSMITTAL LETTER 22 CFR 124.12



- (a)(5) This agreement does / does not involve any patent application which discloses any of the subject matter of the equipment or technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office.

- (a)(6) This agreement has a total value as indicated below:

<b>Technical Data and Defense Services</b>	<b>\$1,000,000</b>
Hardware	
Permanent Export by DSP-5	\$21,000,000
Temporary Export by DSP-73	\$3,000,000
Temporary Import by DSP-61	\$3,000,000
<b>Total Hardware</b>	<b>\$27,000,000</b>
<b>Total Agreement Value</b>	<b>\$28,000,000</b>



**TRANSMITTAL LETTER**  
**22 CFR 124.12**  
**EXAMPLE (A)(6) TABLE FOR MLAS**



<b>Technical Data and Defense Services</b>	<b>\$1,000,000</b>
<b>Hardware</b>	
Permanent Export by DSP-5 (Tooling/Support Equipment)	\$1,000,000
Permanent Export by DSP-5 (Kits/Components)	\$20,000,000
Temporary Export by DSP-73	\$3,000,000
Temporary Import by DSP-61	\$3,000,000
<b>Total Hardware</b>	<b>\$27,000,000</b>
<b>Total Hardware for Congressional Notification</b>	<b>\$1,000,000</b>
<b>Hardware Manufactured Abroad (MLA)</b>	<b>\$22,000,000</b>
<b>Total Agreement Value</b>	<b>\$50,000,000</b>
<b>Total Agreement Value for Congressional Notification</b>	<b>\$24,000,000</b>



**HELPFUL HINTS**

- (a)(6) Value of the Agreement :
- Use the table from the Guidelines and remember to check your math
  - How to Determine the Value
    - Check the value of your contract and work with your finance department
    - There may be line items in the contract with values for Document Deliverables or Services
    - Recurring costs for hardware
    - Nonrecurring costs for services or technical data
    - If you don't have a contract, how much time will your engineers be spending on the work scope, what is their hourly rate



## TRANSMITTAL LETTER 22 CFR 124.12



- (a) (7) This agreement (does/does not) involve FMS credits or loan guarantees.
- (a) (8) If U.S. classified information is involved, describe and identify the address and phone number of the US Government office that classified the information.
- (a) (9) If classified information is involved, identify the Defense Security Service office responsible for the facilities, along with facility security clearance codes of U.S. parties.



## HELPFUL HINTS

Required Information 22 CFR 124.12 (a) – Where to get the info

- (a)(1) Your Boss or Legal Department
- (a)(2) Marketing, Contracts, Subcontracts, Program Managers
- (a)(3) Contracts
- (a)(4) Contracts, Program Managers, Security
- (a)(5) Legal or Contracts
- (a)(6) Contracts, Finance, Program Manager
- (a)(7) Contracts, Finance
- (a)(8) Contracts, Security, Program Managers
- (a)(9) Security



## TRANSMITTAL LETTER 22 CFR 124.12



- 22 CFR 124.12(b)(1)-(4) Clauses - **Must be stated *verbatim***
  - 22 CFR 124.12(b)(4) is occasionally modified by the applicant to reflect the application's status of sublicensing to foreign parties, but this statement must remain verbatim from the ITAR.
- Other Requested Data:
  - Will sublicensing be granted?
  - Which USML Categories (including subcategory(ies)) are involved, and are any designated Significant Military Equipment (SME)?
  - Is Congressional Notification (or Re-Notification) required?
  - Is a Nontransfer and Use Certificate (DSP-83) required?
  - Etc.



## TAA/MLA APPLICATION PACKAGE



- **Four main components:**
  - Transmittal Letter
  - **Proposed Agreement**
  - DSP-5 Vehicle Form
  - Empowered Official Certification
- Amplifying Data
  - Attachments, Annexes
    - Tech Data, HW Descriptions
    - SOWs
    - Etc.
  - Supporting Material
    - Executive Summary (Congressional)
    - Part 130 Statement
    - Etc.

**Draft Agreement**

**(22 CFR 124.7 –  
22 CFR 124.9)**

**See Section 5.2 of Guidelines**



## PROPOSED AGREEMENT

### ELEMENTS OF A GOOD AGREEMENT

#### SAMPLE IN "GUIDELINES" TAB 3



- **Preamble** - Identifies all parties by name, address and country
- **"WHEREAS" clauses** - Describe the roles and responsibilities of each party
- **Definitions** - Listed, as needed, to better describe the commodity and allow for the use of acronyms or consolidated language throughout the remainder of the agreement
- **"NOW THEREFORE" clauses** – Per the Agreement Guidelines
- **Article I** – Provides Required Information per 22 CFR 124.7(a) (1) – (4)
- **Article II** – Required Statements per 22 CFR 124.8(a)
- **Article III** – Required Statements per 22 CFR 124.9 (a) and (b)
  - Article III is only Required for Manufacturing License Agreements (MLAs)
- **"IN WITNESS WHEREOF"**– Closing paragraph
- **Signature Blocks** – One for each Signatory to the Agreement



## HELPFUL HINTS

- **Preamble**
  - List all the Parties and their addresses
  - For entities with multiple addresses in the same country include the statement "(and all locations located in *Country x*)"
  - Double check against the Transmittal Letter to make sure that you have captured everyone and the addresses are the same
- **"WHEREAS" clauses**
  - Think about using one WHEREAS clause for each party to describe their roles and responsibilities. Make sure that you clearly paint the picture – who is doing what?



## HELPFUL HINTS

### “Now Therefore” numbered statements:

- Item 1

Provide a clear and concise summary of the program

- Items 2 and 3

Use the provided language from the Agreement Guidelines



## PROPOSED AGREEMENT 22 CFR 124.7(a)(1)



### 22 CFR 124.7(a)(1) – (Recommend labeling “Article I”)

- Describe all hardware for permanent or temporary export, or temporary import by separate license (or by exemption)
  - If hardware exports are not included, described or discussed in the body of the agreement, then state no hardware exports will be authorized
  - SME must be identified by nomenclature (e.g. “LN-200 INS Unit”)
- Describe all hardware to be manufactured under the agreement



## HELPFUL HINTS

### 22 CFR 124.7(a)(1):

Clearly identify all hardware that may be exported or temporarily imported in furtherance of the Agreement. Be certain to include:

Permanent Exports: Hardware being sold to the Foreign End-User; Parts and components being sent overseas for integration into hardware

Temporary Exports: Loan or temporary use of tools, fixtures, test equipment, engineering modules; Hardware that may be returned to the foreign parties for repair or rework

Temporary Imports: Hardware you may be borrowing from the foreign parties – tools, fixtures, test equipment, engineering development units



## PROPOSED AGREEMENT

### 22 CFR 124.7(a)(2) & 124.7(a)(3)



### 22 CFR 124.7(a)(2) and 124.7(a)(3)

- Clear description of technical data and defense services to be provided and to whom
  - Reference attached SOW, if applicable
  - Specify rights granted
- Article I(3) (22 CFR 124.7(a)(3)): Duration (Expiration Date) of the agreement
  - Maximum of 10 years (Must include a specific date)
  - Follow expiration matrix in Section 3.1 of the Agreement Guidelines



## HELPFUL HINTS

### 22 CFR 124.7(a)(2):

Clearly describe the technical data and defense services that you will be providing under the Agreement:

- Much of the information can be found in your Contract and/or Statement of Work

Technical data – Contract Deliverable Documents (CDRLs)

Defense Services – Scope of the contract, What meetings, training, operations, testing, etc. are you required to do under the Statement of Work

- Include Exhibits to your Agreement to include more details
  - Exhibit A – Technical Data
  - Exhibit B – Defense Services
  - Exhibit C – Hardware



## PROPOSED AGREEMENT 22 CFR 124.7(a)(4)



### 22 CFR 124.7(a)(4)

- The applicant must specifically identify the countries or areas in which manufacturing, production, processing, sale or other form of transfer is to be licensed. More specifically, the applicant must address:

#### **A: Territories / End-Users / Countries of all Foreign Licensees and Sublicensees**

- Recommend using DDTC pre-formatted language which incorporates all three items above.
  - Proposed Sales Territories (MLA's)
  - Proposed Marketing Territories



## PROPOSED AGREEMENT 22 CFR 124.7(a)(4) (CONT)



### 22 CFR 124.7(a)(4) – (cont)

**B: Sublicensing:** Involves the **reexport or** retransfer of defense articles and/or technical data by the foreign licensee to a third party that is not a signatory to the agreement, but whose participation based on the scope of the agreement is essential

- Requests for foreign sublicensing must include the following:
  - Name, Country, and Full Address of the sublicensee(s)
  - Role of the sublicensee(s)
  - Defense articles to be transferred to the sublicensee(s)
  - Include Non-Disclosure Agreement (NDA) requirement within the text of the agreement, and requirement for applicant to maintain the NDA for 5-years past expiration of the agreement
- U.S. sublicensing – It is not required to specifically identify U.S. Sublicensee(s), but the agreement must clearly state: **“This agreement authorizes sublicensing to U.S. Persons. Exports, reexports, retransfers or temporary imports by the U.S. sublicensee must be conducted as part of a separate authorization initiated by the U.S. Person.”**



## PROPOSED AGREEMENT 22 CFR 124.7(a)(4) (CONT)



### 22 CFR 124.7(a)(4) – (cont)

#### **C: Dual/Third Country Nationals (DN/TCN)**

- DN – An individual who holds nationality from the country of their employer who is a foreign licensee (or sublicensee) to the agreement, and also holds nationality from one or more additional countries
- TCN – An individual who holds nationality from a country other than the country of their employer who is a foreign licensee (or sublicensee) to the agreement

Per 22 CFR 120.19(b), the transfer of technical data to a DN/TCN is deemed to be a reexport to all countries to which the foreign person has held or holds citizenship or holds permanent residency.



## PROPOSED AGREEMENT 22 CFR 124.7(a)(4) (CONT)



### 22 CFR 124.7(a)(4) – (cont)

#### **C: Dual/Third Country Nationals (DN/TCN)**

- Transfer of technical data, defense articles or services to a foreign person, inside or outside the U.S., is adjudicated similarly as an export or reexport to that foreign country.

#### **However:**

Approval of a Dual/Third Country National employee only authorizes transfer to that employee. **It does not authorize transfers to the country from which the employee derives.**

- This section must indicate whether or not authorization for DN/TCN employees is being requested pursuant to 22 CFR 124.8(a)(5)



## PROPOSED AGREEMENT 22 CFR 124.7(a)(4) (CONT)



### 22 CFR 124.7(a)(4) – (cont)

#### **C: Dual/Third Country Nationals (DN/TCN)**

- Two types of authorizations within the agreement:
  - 22 CFR 126.18 (foreign vetting)
    - 126.18(c) to authorize DN/TCN employees as vetted by the foreign licensees
    - 126.18(d) - NATO, EU, Australia, Japan, New Zealand and Switzerland
  - 22 CFR 124.8(a)(5) – DDTC vetting: identify specific countries requested (may include countries above)
- Includes employees (and contract employees) of foreign licensees and foreign sublicensees



## HELPFUL HINTS

### 22 CFR 124.7(a)(4)(c) – DN/TCNs:

It is the responsibility of the US Applicant to coordinate which DN/TCN options will be applicable for their given agreement and include the appropriate language in the agreement.

**CAUTION** - There are specific conditions and requirements associated with the various DN/TCN options.

- Compliance with 126.18 requirements
- Classified transactions

*See Sections 3.5 and 3.7 of the Agreement Guidelines for detailed information*



## PROPOSED AGREEMENT NATIONALITIES OF FOREIGN PERSONS EMPLOYED BY U.S. PARTY(IES)



### 22 CFR 124.7(a)(4) – (cont)

#### **D: Nationalities of Foreign Persons Employed by the Applicant (or other U.S. signatories)**

- All foreign person employees of U.S. parties must be licensed on a DSP-5 (or DSP-85) only. Foreign person employees are not listed as individual signatories to an agreement.
- If any of the U.S. signatories have foreign person employees, the following statement should be made in 22 CFR 124.7(a)(4):

“The U.S. applicant (or U.S. Signatories) currently employs Dual/Third Country Nationals of the following countries who will participate in this program: ***(list nationalities)***.”



## PROPOSED AGREEMENT CONTRACT LABOR CLAUSE



### 22 CFR 124.7(a)(4) – (cont)

#### **E: “Non-Regular” Contract Employee Clause**

If you are requesting use of “Non-Regular” Contract labor personnel, insert the following under 22 CFR 124.7(a)(4)(e):

“Contract employees to any party to the agreement hired through a staffing agency or other contract employee provider shall be treated as employees of the party, and that party is legally responsible for the employees’ actions with regard to transfer of ITAR controlled defense articles to include technical data, and defense services.

**Transfers to the parent company by any contract employees are not authorized.** The party is further responsible for certifying that each employee is individually aware of their responsibility with regard to the proper handling of ITAR controlled defense articles, technical data, and defense services.”



## PROPOSED AGREEMENT REQUIRED CLAUSES 22 CFR 124.8 – 22 CFR 124.9



#### 22 CFR 124.8 Required Clauses

- Both TAAs and MLAs
- Six clauses
- **Must be verbatim**

#### 22 CFR 124.9 Required Clauses

- Six additional clauses for MLAs 22 CFR 124.9(a)
- Two extra clauses for SME 22 CFR 124.9(b)
- **Must be verbatim with company/country names entered**

**Sample TAA/MLA in Guidelines  
Appendix A: Tab 3**



## PROPOSED AGREEMENT Elements of a Good Agreement



- Signature Page
  - Must include a signature block for each U.S. and foreign licensee to the agreement (sublicensees do not sign)
  - As this is a “proposed” agreement, DDTC expects the agreement to be submitted unsigned for review
  - Executed copies may contain a single signature block per page



## TAA/MLA APPLICATION PACKAGE



- **Four main components:**
  - Transmittal Letter
  - Proposed Agreement
  - DSP-5 Vehicle Form
  - Empowered Official Certification
- **Amplifying Data**
  - **Attachments, Annexes**
    - Tech Data, HW Descriptions
    - SOWs
    - Etc.
  - Supporting Material
    - Executive Summary (Congressional)
    - Part 130 Statement
    - Etc.

**Attachments**

**Annexes**



## PROPOSED AGREEMENT NON-DISCLOSURE AGREEMENT



### Sublicensee Non-Disclosure Agreements (NDAs)

- Acknowledges understanding of Parts 120-130 and that reexport or retransfer will not take place without DDTC approval
- 22 CFR 124.8 clauses (and 22 CFR 124.9 clauses for MLA)
- Non-Regular contract employee clause
- Required for all sublicensees

### DN/TCN NDAs

- Acknowledges understanding of ITAR control on technical data provided and that reexport or retransfer will not take place without DDTC approval
- Certifies that ITAR controlled information has not been and will not be provided to 126.1 countries or persons
- DN/TCN NDA required for DN/TCNs vetted per 22 CFR 126.18(c)(2) for DN/TCNs requested pursuant to 22 CFR 124.8(5)

**Sample NDA in Guidelines Appendix A: Tabs 11 & 12**



## TAA/MLA APPLICATION PACKAGE



- **Four main components:**

- Transmittal Letter
- Proposed Agreement
- DSP-5 Vehicle Form
- Empowered Official Certification

- **Amplifying Data**

- Attachments, Annexes
  - Tech Data, Hardware Descriptions
  - SOWs
  - Etc.

- **Supporting Material**

- Executive Summary, Signed Contract (Congressional)
- Part 130 Statement
- Etc.

**Supporting  
Material**



## CONGRESSIONAL NOTIFICATION REQUIREMENTS



- If Congressional Notification (or Re-Notification) is required, the applicant must include with submission
  - Executive Summary of the Proposed Agreement
  - Signed Contract between the Applicant and the Foreign Signatory (*may accept Letter of Intent for MLAs (only)*)
  - Description of Offsets associated with the program (Direct and Indirect), to include percentage(s)



## HELPFUL HINTS

- Make sure that you clearly describe what you will and won't be exporting
- Draw a "box" around what you want to do
- Make sure that you understand the program scope and the Agreement application
- Don't try to hide or bury important information in the Agreement
- Be Clear, Concise, Consistent and as Detailed as possible



## HELPFUL HINTS

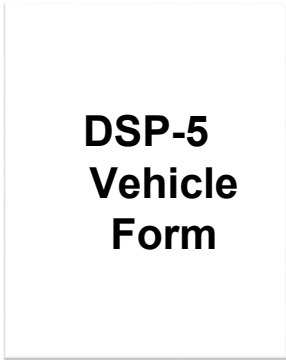
- Get involved and Be Proactive
- Work closely with your team to prepare the application
- Reviews  
Send the Agreement to all of the parties before submission to make sure there are no surprises
- Create a check list to make sure that you have all the required documents to include with your application



## TAA/MLA APPLICATION PACKAGE



- **Four main components:**
  - Transmittal Letter
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  - **DSP-5 Vehicle Form**
  - Empowered Official Certification
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    - SOWs
    - Etc.
  - Supporting Material
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    - Part 130 Statement
    - Etc.



**DSP-5  
Vehicle  
Form**

**See Appendix D of Guidelines**



## DSP-5 "VEHICLE"



- The DSP-5 was originally created as a vehicle for license exports, not the submission of agreements.
- The Guidelines for Preparing Agreements has an "Appendix D" to assist applicants with using the DSP-5 to submit an agreement.
  - Tab 1 – Submissions of a brand new TAA/MLA/WDA
  - Tab 2 – Submissions of Amendments/Re-baselines
  - Tab 3 – Proviso Reconsiderations (reclamas)
  - Tab 4 – Sample DSP-5
- The DSP-5 cannot be modified by the applicant (or DDTC personnel) once an application has been submitted and a DSP-5 number has been assigned to the submission.



## DSP-5 "VEHICLE"

File Edit View Favorites Tools Help

Submit Save Print

Electronic Form Version Number: 9.3

OMB APPROVAL NO. 1425-0003  
EXPIRATION DATE: 04-30-2018  
\*ESTIMATED BURDEN: 1 HOUR

\* PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average 1 hour per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, reviewing the collection of information, sending the collection of information, reviewing the collection of information, and performing the collection of information. Send comments on this estimate of the burden and recommendations for reducing it to: Department of State, Paperwork Project Manager, Washington, DC 20520-6012.

U.S. DEPARTMENT OF STATE  
DIRECTORATE OF DEFENSE TRADE CONTROL AND COMPLIANCE  
APPLICATION FOR PERMANENT EXPORT OF UNCLASSIFIED ARTICLES, RELATED TECHNICAL DATA, AND DEFENSE INFORMATION

Input your Transaction Number, (**must** be preceded by "AG-" to specify that this is an Agreement)\*  
\*Exceptions are "USOP-"

\*Transaction Number:

Please note that an Asterisk (\*) next to a field in the documents designates a required field.

No classified information can be included in this application. Classified information must be sent separately to PM/DDTC in accordance with Defense Security Service guidelines.



## DSP-5 “VEHICLE”

To select and open a document, highlight a form and select the “Open Document” button. The document that you selected will open.

**Required Documents**

**Included Documents**

**Optional Documents**

- 22 CFR § 126.13 Certification Letter
- 22 CFR § 127.11 Exception to Policy Letter
- Basic Ordering Agreement
- Contract
- DSP-53
- Firearms and Ammunitions Import Permit
- Firearms and Ammunitions Letter of Explanation
- Letter of Intent
- Other Amplifying Data
- Part 130 Report
- PM/DDTC Sec 126.8 Prior Approval
- Precedent (Identical/similar) Cases
- Product Brochures
- Purchase Order
- Supplementary Explanation of Transaction
- Technical Data to Support Hardware License
- Technical Drawings, Schematics, or Blue Prints

Upload documents as required:  
Transmittal Letter = “Supplementary Explanation of Transaction”  
Agreement = “Contract”  
Cert Letter = “Certification Letter”  
Positive Part 130 = “Part 130 Report”  
Last Approved Agreement/Amendment = “Precedent (identical/similar) Cases”



## DSP-5 “VEHICLE”

### Uploading Files:

- All uploaded documents should be “.pdf” files
- Files should be named to identify what it is (ex - Transmittal Letter.pdf)
- The Proposed Agreement file must include all related exhibits, appendices and annexes
- Only upload documents as required per the Guidelines. The system is limited to 35MB for attachments. Any additional documents should be uploaded through the State Department D-Trade Web Portal after the case has been submitted
  - Log into D-Trade
  - Find your assigned DSP-5 Number
  - Click on “Upload Additional Documentation”



## DSP-5 "VEHICLE"

PAGE 1

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DSP-5, Page 1 of 4

SEAL

Select & add countries of Foreign Licensees, End-User(s), Marketing & Distribution recipients (Must match countries listed in Block 14)

DATE ISSUED / /

LICENSE NO. LICENSE VALID FOR MONTHS FROM ABOVE DATE

AMERICA DEPARTMENT OF STATE  
EXPORT OF UNCLASSIFIED DEFENSE  
ICAL DATA, AND DEFENSE SERVICES

\*1. Date Prepared: 06/17/2013

\*2. DDTC Registration Code

\*3. Country of Ultimate Destination: Country <=>

\*4. Probable Port of Exit from U.S.:

NOTE: You may only select 1 country as the ultimate destination if the commodity(ies) being shipped include Hardware type.

5. Applicant

\*Applicant Type:  Government  Manufacturer  Exporter

Subsidiary

\*Name

\*Attention

\*Address

6. U.S. Government Personnel (not PM/D Commodity)

Name

Telephone #

Agency

Add

\*7. Applicant Contact for Additional Information

Must type in "Not Required"



## DSP-5 "VEHICLE"

5. Applicant

\*Applicant Type:  Government  Manufacturer  Exporter

Subsidiary

\*Name

\*Attention

\*Address

\*City

\*State \* ZIP Code

\*Telephone # Ext.

6. U.S. Government Personnel (not PM/DDTC) Familiar with Commodity

Name

Ext.

Add

Fill in your company's info per your registration

For New Agreements – Check "ONLY completely new shipment"  
For Amendments – Check "ONLY the unshipped balance under license numbers"

8. Description of Transaction:

\*a. This application represents:  ONLY a completely new shipment  ONLY the unshipped balance under license numbers

b. This Application has related license #

c. This Application is in reference to agreement #

d. If the commodity is being financed under  Foreign Military Sale  Foreign Military Financing  Grant Aid Program  Not Applicable

e. This application is related to a disclosure filed with Defense Trade Controls Compliance  No  Yes


Enter Compliance Disclosure Number: -

For b, c, d, e: Mark as applicable

9. Quantity

10. Commodity

11. USML Category



## DSP-5 “VEHICLE”

\*d. If the commodity is being financed under  Foreign Military Sale  Foreign Military Financing  Grant Aid Program  Not Applicable


\*e. This application is related to a disclosure filed with Defense Trade Controls Compliance  No  Yes

Enter Compliance Disclosure Number:

Item	*9. Quantity	*10. Commodity	*11. USML Category
1	1 <small>Unit Type Lots</small>	<p>Use info from the Transmittal Letter Subject Line – Identify TAA, MLA or WDA, list the Commodity(ies), SME Status, highest Classification, all USML Categories, and total Agreement value</p>	<p>Category <input type="text" value="Sub"/> <input type="text" value=""/></p> <p>Item is SME and DSP-83 is required <input type="checkbox"/></p> <p>Is a DSP-83 attached? <input type="text" value=""/></p> <p>If SME, and DSP-83 is not attached, state why</p>
			<p>For new Agreements or Re-baselines, use full value. For Amendments, use delta or \$1 if no value increase</p>
		<p>Always select Technical Data</p> <p>Defense Article Type <input type="text" value="Technical Data"/></p>	<p>*12. \$ Value</p> <p>Unit Price <input type="text" value=""/> Line Item Total <input type="text" value="1"/></p>
		<p>View <input checked="" type="checkbox"/></p>	<p>Click “Add” to identify document upload status</p>

Always: Quantity – “1”  
Unit Type- “Lots”

Use USML Category for Technical Data



## DSP-5 “VEHICLE”

File Action Help

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Additional Commodities Page # 1 of 1 DSP-5, Page 5 of 5

Item	*9. Quantity	*10. Commodity	*11. USML Category
2	1 <small>Unit Type Lots</small>	<p>You are required to state whether all documents have been uploaded with the initial submission or if you will be uploading additional documents after the submission. Must state: “All documents uploaded” or “Additional documents to be uploaded”</p>	<p>Category <input type="text" value="Sub"/> <input type="text" value=""/></p> <p>Item is SME and DSP-83 is required <input type="checkbox"/></p> <p>Is a DSP-83 attached? <input type="text" value=""/></p> <p>If SME, and DSP-83 is not attached, state why.</p>
			<p>Don't forget to complete Blocks 11 &amp; 12</p>
		<p>Def</p>	<p>*12. \$ Value</p> <p>Unit Price <input type="text" value="1"/> Line Item Total <input type="text" value="1"/></p>
3	1 <small>Unit Type</small>		<p>*11. USML Category</p> <p>Category <input type="text" value="Sub"/> <input type="text" value=""/></p> <p>Item is SME and DSP-83 is required <input type="checkbox"/></p> <p>Is a DSP-83 attached? <input type="text" value=""/></p> <p>If SME, and DSP-83 is not attached, state why.</p>

Quantity – “1”  
Unit Type-“Lots”



## DSP-5 "VEHICLE"

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DSP-5, Page 2 of 5

<b>14. Foreign End-User</b> * Name * Address * City * Country Add <input type="checkbox"/>	<b>15. Manufacturer of Commodity</b> <input checked="" type="checkbox"/> Same as Block 5 * Name * Address * City * Country Add <input type="checkbox"/>
<b>16. Foreign Consignee</b> <input type="checkbox"/> Same as Block 14 * Name * Address * City * Country Add <input type="checkbox"/>	<b>18. Foreign Intermediate Consignee</b> * Name * Address * City * Country * Role Add <input type="checkbox"/>

List all Foreign companies who are signatories to the Agreement (Foreign Licensees), End-User(s), and Marketing/Distribution Recipients. To include more, click on "Add". (Be certain to use "legal" company name.) For entities with multiple addresses in the same country, list primary address and include in the address line "all locations located in **Country x**". Note – a physical address is not needed for non-signatory foreign government end users.



## DSP-5 "VEHICLE"

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<b>16. Foreign Consignee</b> <input type="checkbox"/> Same as Block 14 * Name * Address * City * Country Add <input type="checkbox"/>	<b>17. Source of Commodity</b> <input checked="" type="checkbox"/> Same as Block 5 <input type="checkbox"/> Same as Block 15 * Name * Address * City * Country Add <input type="checkbox"/>
<b>18. Foreign Intermediate Consignee</b> <input type="checkbox"/> None * Name * Address * City * Country * Role Add <input type="checkbox"/>	<b>19. U.S. Seller</b> * Name * Address * City * Country Add <input type="checkbox"/>

List all Sublicensees – to include more, click "Add". If none, enter "No Sublicensees" in the Name block, with "N/A" in the address blocks. Must include the primary country from the TAA in the country box.

Do not check the "Same as Block 14" box!!

Be certain to include the full "legal" company name.



## DSP-5 “VEHICLE”

PAGE 2

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**18. Foreign Intermediate Consignee**  
 None  
 \* Name DN/TCN  
 \*Address DN/TCN  
 \*City DN/TCN  
 \*Country IS  
 \*Role DN/TCN  
 Add

**19. U.S. Seller**  
 Same as Block 5  Same as Block 15  Same as Block 17  
 \* Name  
 \*Address

**20. Specific Purpose**  
 Select at least one:  
 Off-Shore  Request  
 Brokering (22 CFR 129)  Other (F)

List countries of all Dual/Third Country Nationals pursuant to 124.8(5) here.  
 If **only** using 126.18 (c) and/or (d), check “None”.  
 Note: DN/TCN from 126.1 (d)(1) countries must be listed by name (See Section 3.5.2 (d) of the Guidelines)  
 If launch services apply – identify known or potential foreign launch services providers (See Section 19.0 of the Guidelines)



## DSP-5 “VEHICLE”

PAGE 2

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\* Name DN/TCN  
 \*Address DN/TCN  
 \*City DN/TCN  
 \*Country IS  
 \*Role DN/TCN  
 Add

**20. Specific Purpose**  
 Select at least one:  
 Off-Shore  Request for Prior Approval (22 CFR 126.8)  
 Brokering (22 CFR 129)  Other (Please Provide Details)

Block 20 should list a concise narrative describing the purpose of the submission (to include amendment modifications, any other significant issues.)

\* Name  
 \*Address  
 \*City  
 \*State \*ZIP Code  
 Add

**21. U.S. Consignor/Freight Forwarder**  
 Same as Block 5  
 \* Name  
 \*Address  
 \*City  
 \*State \*ZIP Code  
 Add

List all US Signatories here. Include (and all locations in the US) Be certain to use full legal company name. If only your company, Select “Same as Block 5”. If launch services apply – identify known or potential U.S. launch services providers (See Section 19.0 of the Guidelines)



## DSP-5 "VEHICLE"

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DSP-5, Page 3 of 5

**DSP-5**

**22. Applicant's statement**

I, \_\_\_\_\_, an empowered official (22 CFR 120.25) or an official of a foreign government entity in the U.S., hereby apply for a license to complete the transaction described above, warrant the truth of all statements made herein, and acknowledge, understand and will comply with the provisions of 22 CFR 120.130, and any conditions and limitations imposed.

I am authorized by the applicant to certify the following in compliance with 22 CFR 126.13:

(1) Neither the applicant, its chief executive officer, president, vice presidents, other senior officers (or their equivalents) nor any member of its board of directors is:

(a) the subject of an indictment for or has been convicted of violating any of the U.S. criminal statutes enumerated in 22 CFR 120.27 since the effective date of the Arms Export Control Act, Public Law 94-329, 90 Stat. 729 (June 30, 1976), or is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. Government;

(b) ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. Government;

(2) To the best of the applicant's knowledge, no party to the export as defined in 22 CFR 126.7(e) has been convicted of violating any of the U.S. criminal statutes enumerated in 22 CFR 120.27 since the effective date of the Arms Export Control Act, Public Law 94-329, 90 Stat. 729 (June 30, 1976), or is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. Government, and

**\*22 CFR 126.13 Certification**

a. I am authorized by the applicant to certify that the applicant and all the parties to the transaction can meet in full the conditions of 22 CFR 126.13 as listed above.

b. I am authorized by the applicant to certify to 22 CFR 126.13. The applicant or one of the parties of the transaction cannot meet one or more of the conditions of 22 CFR 126.13 as listed above. A request for an exception to policy, as described in 22 CFR 127.11 of the ITAR, is attached.

Will be filled in automatically after digitally signed



## TAA/MLA APPLICATION PACKAGE



- **Four main components:**
  - Transmittal Letter
  - Proposed Agreement
  - DSP-5 Vehicle Form
  - **Empowered Official Certification**
- Amplifying Data
  - Attachments, Annexes
    - Tech Data, Hardware Descriptions
    - SOWs
    - Etc.
  - Supporting Material
    - Executive Summary (Congressional)
    - Part 130 Statement
    - Etc.

**Empowered  
Official  
Certification  
Letter**

**(22 CFR 126.13)**

**See Section 4.0 of Guidelines**



## DSP-5 "VEHICLE"

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(b) Ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. Government.

(2) To the best of the applicant's knowledge, no party to the U.S. criminal statutes enumerated in 22 CFR 120.27 since (June 30, 1976), or is ineligible to contract with, or to receive an export license or other approval from any agency of the U.S. Government.

\*22 CFR 126.13 Certification

With "a" or "c" – no need for separate 22 CFR 126.13 Cert Letter. Checking "b", "d", "e" or "f" requires separate Cert Letter

- a. I am authorized by the applicant to certify that the applicant and all the parties to the transaction cannot meet one or more of the conditions of 22 CFR 126.13 as listed above.
- b. I am authorized by the applicant to certify to 22 CFR 126.13. The applicant or one of the parties of the transaction cannot meet one or more of the conditions of 22 CFR 126.13 as listed above. A request for an exception to policy, as described in 22 CFR 127.11 of the ITAR, is attached.
- c. I am authorized by the applicant to certify to 22 CFR 126.13. The applicant or one of the parties of the transaction cannot meet one or more of the conditions of 22 CFR 126.13 as listed above. However that party has met the conditions imposed by the Directorate of Defense Trade Controls in order to resume standard submission of applications, not requiring an exception to policy as described in 22 CFR 127.11 of the ITAR.
- d. I am not authorized by the applicant to certify the conditions of 22 CFR 126.13. The applicant and all of the parties to the transaction cannot meet all the conditions of 22 CFR 126.13 as listed above. Please see the attached letter from an official that is authorized by the applicant to certify to the conditions of 22 CFR 126.13.
- e. I am not authorized by the applicant to certify the conditions of 22 CFR 126.13. The applicant or one of the parties of the transaction cannot meet one or more of the conditions of 22 CFR 126.13 as listed above. A request for an exception to policy, as described in 22 CFR 127.11 of the ITAR, and a letter from an official that is authorized by the applicant to certify to the conditions of 22 CFR 126.13 are attached.
- f. I am not authorized by the applicant to certify to 22 CFR 126.13. The applicant or one of the parties of the transaction cannot meet one or more of the conditions of 22 CFR 126.13 as listed above. However that party has met the conditions imposed by the Directorate of Defense Trade Controls in order to resume standard submission of applications, not requiring an exception to policy as described in 22 CFR 127.11 of the ITAR. Please see the attached letter from an official that is authorized by the applicant to certify to the conditions of 22 CFR 126.13.



## DSP-5 "VEHICLE"

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the ITAR. Please see the attached letter from an official that is authorized by the applicant to certify to the conditions of 22 CFR 126.13.

\* Compliance with 22 CFR 130

Select the appropriate Part 130 statement

- This transaction does not meet the requirements of 22 CFR 130.2
- This transaction meets the requirements of 22 CFR 130.2. The applicant or its vendors **have not** paid, nor offered, nor agreed to pay, in respect of any sale for which a license or approval is requested, political contributions, fees or commissions in amounts as specified in 22 CFR 130.9(a).
- The applicant or its vendors **have** paid, or offered, or agreed to pay, in respect of any sale for which a license or approval is requested, political contributions, fees or commissions in amounts as specified in 22 CFR 130.9(a). Information required under 22 CFR 130.10 is attached.
- I am not authorized by the applicant to certify the conditions of 22 CFR 130.9(a). Please see the attached letter for such certification.

\*Signature

Signature

23. License to be to: (Enter name, address and phone number)  
[This block is inactive on electronic form.]

Must be digitally signed by Empowered Official

Same as Block 5  Hold for Pickup

Name

Address

City

State  ZIP Code

Telephone #



## DSP-5 “VEHICLE” SUBMISSION ERRORS



- The DSP-5 is the authority/mechanism for “reporting” certain items to USG, and if that information is wrong, the agreement cannot be processed or may result in un-desired results if Approved
  - Foreign Signatories are omitted from Block 14 (or legal business names are not correctly entered)
    - Result: RWA or removal of omitted party
  - Foreign Sublicensees are omitted from Block 16 (or legal business names are not correctly entered)
    - Result: RWA or removal of omitted party
  - Block 12 does not report Total Agreement Value (new agreement or re-baseline) **OR** proposed increase (amendment)
    - Result: RWA



## DSP-5 “VEHICLE” SUBMISSION ERRORS



- DSP-5 errors (cont)
  - Foreign End-User (if not already signatory to the agreement) not listed in Block 14
    - Result: RWA
  - Sales Territories not listed in Block 14
    - Result: RWA or “Prior to execution, the following Sales Territories must be removed from the agreement....”
  - Incorrect 22 CFR 130.2/130.9 reporting in Block 22
    - Result: RWA



## DSP-5 “VEHICLE” SUBMISSION ERRORS



- DSP-5 errors (cont)
  - Not preceding Transaction ID with “AG-” (e.g. “AG-AFAS-001”)
    - Delay in Processing Agreement due to initial assignment to a Licensing Officer
  - Agreements with 22 CFR 124.8(5) DN/TCNs: Not listing Nationalities of Dual/Third Country Nationals in Block 18
    - Result: “Prior to execution, the following nationalities must be removed from Article xx due to those nationalities not being listed in Block 18 of the DSP-5”



## AGREEMENT APPLICATION ADJUDICATION



- STEP 1- U.S. person (applicant) submits an agreement request to DDTC (via DSP-5)
- STEP 2 - Once received by DoS, the request is routed to the appropriate agreements team within DDTC
- STEP 3 – An Agreements Officer reviews and staffs, as appropriate



## AGREEMENT APPLICATION ADJUDICATION



### Primary Staffing Agencies:

- DoD (DTSA) – Technical review, National Security issues
- Regional Bureau Desks
  - Western Hemisphere, European and Eurasian, South and Central Asian, African, East Asian and Pacific, and Near Eastern Affairs
- DRL – Reviews for human rights
- RSAT – Regional stability issues
- Other Agencies:
  - MTEC – Missile Technology
  - NASA – NASA-related programs
  - ISN/CB – Chemical/biological
  - OES – Foreign non-commercial satellite
  - ISN/CATR – Space remote sensing



## CONGRESSIONAL NOTIFICATION



Tier Review conducted with Hill Staffers

### Tier I

20 days (NATO+5” = NATO, Japan, Australia, New Zealand, Republic of Korea and Israel)

### Tier II

30 days (Non NATO member countries)

### Tier III

40 days (Special Consideration; middle eastern counties, QME)

Congress Presented Formal Notification

Clock Starts: 15 days for NATO+5 or 30 days for the rest of the world



## CONGRESSIONAL NOTIFICATION (22 CFR 123.15 / 22 CFR 124.11)



Agreement Type	NATO + 5*	All Other
Export/Sale of Major Defense Equipment (MDE) – 36 (c)	\$25M	\$14M
Export/Sale of defense articles, defense services, and technical data – 36(c)	\$100M	\$50M
Manufacture of SME Abroad – 36(d)	Any Value	Any Value
Wait Time After Notification	15 Days	30 Days

\* “NATO +5” = NATO, Japan, Australia, New Zealand, Republic of Korea and Israel



## CONGRESSIONAL NOTIFICATION RE-NOTIFICATION



- Re-notifications of previously notified Congressional Notifications are required if any “substantial” alterations to a previously notified sale occur. Reasons include:
  - Upgraded capabilities
  - Significant expansion of scope
  - Increase in value by 10% or more of a prior 36(c) notification
  - Increase in authorized Sales Territory
  - Increase in value of a prior 36(d) notification, when such value increase exceeds 36(c) thresholds



## AGREEMENTS OVERVIEW APPLICATION ADJUDICATION



### STEP 4 – DDTC Receives staffing agencies' positions

- Agencies recommend one of the following:
  - Approve
  - Approve with Proviso
  - Return Without Action (RWA) – does not meet requirements, but deemed correctable
  - Denial – cannot be corrected. Inconsistent with national security or foreign policy
- Individual comments are termed “provisos”
  - Requires action from applicant prior to agreement execution
- DDTC incorporates staffing agency provisos with DDTC provisos into finalized response DSP-5 to applicant



## AGREEMENT PROVISOs



- Provisos Accompany EVERY Approval
  - Restrictions, Limitations, etc.
  - “Prior to execution, the applicant must...”
- TAA’s – Minimum 2 Provisos
- MLA’s – Minimum 4 Provisos
- Amendments – All previously numbered proviso’s will be included on amendment approvals. Previously issued proviso’s will be modified/deleted as necessary (e.g. compliance with a directive or modified through a proviso reconsideration request) but the numbering system will remain the same throughout.



## AGREEMENT MAINTENANCE



- Upload Signed Agreement (Within 30 days) (22 CFR 124.4)
- DSP-83s (Uploaded with Signed Agreement when applicable & Comply with Proviso Instructions) (22 CFR 124.10)
- Status of Unsigned Agreements (Annually) (22 CFR 124.4)
- Decision to Not Conclude (Within 60 days) (22 CFR 124.5)
- Termination/Expiration (At least 30 days prior) (22 CFR 124.6)
- Sales Reports for MLAs (Annually) (22 CFR 124.9(a)(5))
- Sales Reports for WDAs (Annually) (22 CFR 124.14(c)(6))
- AGs with items transitioning to CCL (Valid for Three Years) (ECR)

Items missing from the electronic DSP-5 files will delay amendments and exports "in furtherance of"



## HELPFUL HINTS

- Review the approval with your team and make sure they understand what they can and cannot do
- Can you work within the scope of the provisos?
  - Do you need to do a Proviso Reconsideration?
- Look at the DSP-5 Vehicle Approval for any required changes prior to execution
  - Do the provisos require you to remove scope?
  - Do the provisos ask you to change or include language prior to signature?
- Make the necessary changes and send out for signature



## HELPFUL HINTS

- Develop an internal control plan for your team to use that discusses:
  - Your pre-export internal technical data review process
  - Record Keeping Requirements
    - Maintain records in an orderly and auditable fashion
    - Conduct periodic audits to ensure activity is still consistent with the Agreement scope and provisos
  - Training Requirements
  - Scope of the Agreement & Parties
- Be certain to train all employees on the Agreement and control plan prior to exporting
- Have them certify that they understand the scope and limitations



## HELPFUL HINTS

- Common infractions that occur after an agreement is in place
  - Work starts – no more follow-up by anyone
  - Agreement expires, but work continues
  - Violation of provisos
  - Apply for new agreement, but fail to mention that the previous one expired



## HELPFUL HINTS

- Don't forget to upload your executed agreement to State within 30 days and inform them of any modifications
  - Did you remove any parties
  - Did you remove scope due to the provisos
  - Did you include language as required by the provisos



## HELPFUL HINTS

- Make sure that you met all the conditions of the Agreement approval before you begin exporting
  - Executed by all Parties
  - Dual and Third Country National NDAs
  - Sublicensing NDAs
  - Special DTSA provisos (TTCP approval, Monitoring requirements)
  - Notification to DDTC of initial export
  - Keep and maintain records



## HELPFUL HINTS

### Maintaining an Agreement:

- Periodically review with program personnel and foreign parties to identify any changes:
  - Parties
  - Hardware shipments
  - Values
  - Scope of work (technology / activities), “scope creep”
- Immediately initiate an Amendment request if changes
- Do not initiate changes until the amendment is approved and executed – Same as the Agreement



## AMENDMENTS



- Once an agreement is approved by DTCL, any changes to the agreement must be made via an amendment
- **Why Amend?**
  - Expand scope to include:
    - Addition of new hardware
    - Expansion of Statement of Work
    - Transfer of additional technical data
    - Expansion of sales or marketing territory (*new countries*)
    - Add foreign licensees/sub-licensees (*new countries*)
    - New dual/third country national language or new countries
    - Addition of new programs
    - Proviso Reconsideration

See Section 6.0 of  
Guidelines

Major Amendments Usually Require Additional Staffing



## AMENDMENTS



- **Why Amend?**

- Extend term of agreement from (*current date*) to (*proposed date*)
- Add U.S. or foreign parties (*prior approved country*), including sublicensees
- Change name of U.S. or foreign signatory
- Increase value of agreement
- Increase (moderate) approved hardware for export

**These Types of Major Amendments Generally Require NO Additional Staffing**



## AMENDMENTS



### Minor Amendment

- “Minor” = Changes NOT requiring prior DDTC approval
  - Alter Delivery and Performance Schedules
  - Minor Administrative Changes
    - Address Changes (within the same country)
    - Typographical Correction (Not Affecting Scope)
    - Remove a party or sublicensee
    - For the same legal entity, add or remove additional locations/addresses in the same country
    - Incorporate ECR changes



## MAJOR AMENDMENTS SUBMISSION



- Transmittal Letter
  - Address all 22 CFR124.12(a) information
    - Note item as **CHANGE** or **NO CHANGE**
  - Include all 22 CFR 124.12(b) verbatim clauses
  - For MLAs, include summary table of Annual Sales to-date
- Amendment (must be “conformed”)

See Appendix A  
of Guidelines

Requires same basic elements as a new agreement application



## MAJOR AMENDMENTS 22 CFR 124.12(A)(6)



	Currently Approved	Proposed Amendment	New Total
<b>Technical Data and Defense Services</b>	<b>\$1,000,000</b>	<b>\$200,000</b>	<b>\$1,200,000</b>
<b>Hardware</b>			
Permanent Export by DSP-5	\$21,000,000	\$500,000	\$21,500,000
Temporary Export by DSP-73	\$3,000,000	\$0	\$3,000,000
Temporary Import by DSP-61	\$3,000,000	\$0	\$3,000,000
<b>Total Hardware</b>	<b>\$27,000,000</b>	<b>\$500,000</b>	<b>\$27,500,000</b>
<b>Total Agreement Value</b>	<b>\$28,000,000</b>	<b>\$700,000</b>	<b>\$28,700,000</b>



## AMENDMENT NEEDED: NOW WHAT?

- Use the DDTC template for both the Transmittal Letter and Amendment
- In the Subject line of your cover letter write: “Proposed Amendment”
- In the Objective of Amendment Section of the letter , state what has changed from the original agreement and put it in bullet format
- Use **CHANGE** or **NO CHANGE**
- **Bold changes** to make it clear
- In the Amendment itself, spell out the Agreement history in the “Whereas” clauses
- Include all of the changes you are requesting under the “Now Therefore” section in numbered format



## LICENSES IN FURTHERANCE OF



### Defense article “*in furtherance of*” an agreement:

- Exported by the agreement holder or another U.S. signatory
- Must be included (described/identified) in the agreement scope
- Will be counted against the value of hardware exports authorized under the agreement—must be present in the Transmittal Letter

### Defense article “*in support of*” an agreement:

- Exported by another U.S. company indirectly relating to the agreement—does not count against hardware value, since applicant is not the exporter
- Frames the purpose/end-use of articles being exported, so the license adjudicators better understand the overall effort

See Section 15.0 of Guidelines



## LICENSES IN FURTHERANCE OF



- Hardware must be identified in the Agreement under 22 CFR 124.7(1)
- License value must not exceed the hardware values in 22 CFR 124.12(a)(6) of the Transmittal Letter
- Proviso #2 in the USG Approval Letter will indicate whether hardware exports by separate license are authorized



## LICENSES IN FURTHERANCE OF



Requirements for licenses ***“in furtherance of”*** an agreement:

- The agreement/amendment authorizing the hardware **MUST** be approved prior to hardware license request; otherwise RWA'd
- License request **MUST** be submitted by agreement holder or another U.S. signatory
- End-user identified on request **MUST** be a foreign licensee or end-user
- First foreign consignee (not intermediate consignee) to receive hardware **MUST** be a foreign licensee or end-user
- Purpose block of request **MUST** include the words “In Furtherance of TA/MA/DA XXXX-XX” on the first line



## LICENSES IN FURTHERANCE OF



Requirements for Licenses “*in furtherance of*” an agreement (cont’d):

- Request must be submitted with proper support documentation
  - Purchase Order, Letter of Intent, Contract, or Request for Goods from the foreign party to the applicant—MUST I.D. the relevant agreement
  - DSP-83 for Significant Military Equipment (SME)
  - Letter of Explanation from the holder of the agreement, signed by the empowered official

Must contain certain criteria (e.g., agreement execution history, hardware proviso/identification, valuation, certifications)

**Note:** In cases where hardware is adequately described in the agreement text and where hardware value remains to support the proposed export, the request will normally not require any additional staffing



## EXPORT CONTROL REFORM: GENERAL AGREEMENT GUIDANCE



- Licensing of EAR items via §120.5(b) (paragraph (x))
- When paragraph (x) may be used in an agreement: “in or with”
  - Paragraph (x) hardware may only be used in agreements that also include USML hardware
- Agreement values do not include (x) values
- For legacy agreements, minor amendment is required to implement ECR in most circumstances

See Section 20.0 of Guidelines



## ECR: VALIDITY OF AGREEMENTS



- Existing agreements containing no transitioning items: no change
- Existing “mixed” agreements: generally valid for three (3) years\*
- Existing agreements containing only transitioning items: valid for no more than three (3) years\*

*\*From last category’s transition date!*

**Expiration dates for legacy authorizations  
may not be accurate**



## ECR: VALIDITY OF IFO LICENSES



- Existing DSP-5 IFO licenses containing no transitioning items, or mixed licenses: valid until expired
- Existing DSP-5 IFO licenses containing solely transitioning items: valid until expired
- Existing DSP-61 and DSP-73 IFO licenses: valid until expired

*Note: these rules apply equally to non-IFO licenses*

**Expiration dates for legacy authorizations  
may not be accurate**



## ECR: TRANSMITTAL LETTERS



- Agreement value: USML only
  - (a)(6) table does not include paragraph (x)
  - Amendments may involve a reduction in value
- Must identify updated USML subcategories
- Identify relevant hardware category for tech data and defense services
- If paragraph (x) is used, ECCNs are not required, but may speed up processing times



## ECR: AGREEMENTS AND AMENDMENTS



- If 124.7(a)(1) includes (x) hardware, must delineate between USML and CCL hardware
- 124.7(a)(2) may include (x) technical data
- New agreements and major amendments must comply with revised USML and CCL
- For legacy agreements, minor amendments and proviso reconsiderations may be submitted without making ECR changes (during three-year window)



## ECR: IFO LICENSES



- New IFO licenses must comply with revised USML/CCL
- IFO licenses may be approved even if the relevant agreement hasn't been amended
  - Letter of explanation must clarify discrepancy
  - Must be within the three-year transition window
- Must comply with §123.1(b)
- IFO license values must include (x) values (for AES and Customs purposes)
- However, only the USML hardware will be decremented against the agreement



## CLOSING THOUGHTS



- Agreements must have an associated hardware category.
- DSP-5 errors cannot be fixed, double check
  - *Only* put tech data category in DSP-5 Block 11.
  - *All* end users and sublicensees must be in the DSP-5
  - *Only* the increase in value for amendments in block 12
- List sublicensees and DN/TCNs in alphabetical order in the agreement.
- Check the math in Transmittal Letter a(6) table.
- If the "What" you are selling isn't ITAR, explain how it integrates specifically with equipment that is, or the specific defense service.
- Don't get caught up in trying to use 'legalese'.
- If you have questions, ask.



# QUESTIONS



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