



ITAR EXEMPTIONS

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WHAT IS AN EXEMPTION?

- **Authorization / Approval** to export without a license or agreement provided that a set of defined criteria is met prior to export
- Can apply to
 - Hardware
 - Technical data
 - Unclassified and/or classified
 - Defense services

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GENERAL CRITERIA FOR USE

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

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WHY USE EXEMPTIONS?

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



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RESPONSIBILITIES

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

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ONE AT A TIME PLEASE!!

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

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SMALL WARNING

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



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WHERE TO FIND EXEMPTIONS

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

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

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READING EXEMPTIONS

- Requirements may be spread in several subcategories.

For Example:

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

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CHOOSING THE RIGHT EXEMPTION

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



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HARDWARE EXEMPTIONS

ITAR § 123



TEMPORARY IMPORT EXEMPTIONS

ITAR §123.4(a)

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

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EXPORT EXEMPTIONS ITAR §123.16

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

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

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EXPORT EXEMPTIONS ITAR §123.16(b)

- **§123.16(b)(2): Spare Parts/Components < \$500 per trans**

- Must support a defense article previously authorized for export to the approved end-user
- Not to a distributor; Can't be used to enhance capability
- No Split Orders; No more than 24 shipments / year to end user; Cite exemption reference on shipping documents

- **§123.16(b)(5): Public Exhibitions or Trade Shows**

- Temporary export of non-SME hardware
- Same IDENTICAL item must have been licensed for public exhibitions and the license must still be valid
- Provide electronic certification to CBP that all criteria is met
 - Cannot use this exemption for demonstrations to individual customers

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PERSONAL PROTECTIVE EQUIPMENT ITAR §123.17(f)-(i)

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

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

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DEFENSE SERVICE EXEMPTIONS ITAR § 124



ITAR §124.2(a) AND (c)

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

***See 120.38 for Maintenance Level Definitions**

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TECHNICAL DATA EXEMPTIONS ITAR § 125



ITAR §125.4(b)(2) AND (4)

- **22 CFR 125.4(b)(2) – Tech Data in Furtherance of an Agreement**

- An Agreement is NOT the authorization for export. It merely defines scope / limitations. Exported occurs via **EXEMPTION**

- Within the scope of executed AG and all provisos met
- Covers both classified or unclassified – see Agreement

* Proposed
Rule -
intending to
remove

- **22 CFR 125.4(b)(4) - “Copies” of Tech Data**

- Data was previously authorized and to same recipient
- Any revisions must be editorial and can't add to the content of technology previously authorized
- Can cover classified or unclassified

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FOR USE BY U.S. PERSON ABROAD ITAR §125.4(b)(9)

- Technical Data, solely for Use by U.S. Persons

- **Regardless of media or format**

- **Sent or taken*:**

- By a U.S. person* who is an employee of U.S. corporation (NOT foreign subsidiary); or
- **USG agency to a U.S. Person employed by that U.S. corporation; or**
- **To USG agency outside of the United States**

- Can include classified (follow NISPOM)
- Subject to 125.1(b) – no co-pro, re-export, transfer, etc.

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

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USG AND COUNTRY- SPECIFIC EXEMPTIONS ITAR § 126



BY / FOR USG ITAR §126.4(a) AND (c)

- Shipments by or for USG Agencies
 - Covers Temporary Export / Temporary Import of Hardware and Technical Data and Defense Services
 - **DOES NOT cover permanent export of hardware!**
 - Requirements:
 - By or For any Agency of the USG
 - (c) **URGENCY REQUIREMENTS!**
 - Written certification to CBP
 - EEI and cert to DDTC for hardware exports

Can now be used for exports to 22 CFR 126.1 countries
in support of USG (but...see 126.4(b))
126.4(a) the subject of a Proposed Rule

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CANADIAN EXEMPTION ITAR §126.5 (b)

Except as provided in Supplement No. 1 to Part 126

Perm & Temp Export of Unclassified Data, Hardware & Services

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

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

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SUPPLEMENT NO. 1 TO ITAR §126.5

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

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

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FMS EXEMPTION ITAR §126.6(c)

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

126.6(c) subject of Proposed Rule

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

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

DDTC Website:

<http://www.pmdtcc.state.gov/treaties/index.html>

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EXEMPTION LETTERS FROM THE SERVICES

- Supports several exemptions
- Must be in Compliance with DOD Guidelines on Exemption Use
- Only agency authorized to issue letters for the Services:
 - Army: DASA/DE&C
 - Air Force: SAF/IA
 - Navy: NIPO
- Must abide by the scope and all limitations in the letter

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PRACTICAL USE AND BEST PRACTICES FOR ITAR EXEMPTIONS

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



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FINISH STRONG

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



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METHODS FOR DOCUMENTING

- Tracking Spreadsheets
- Internal Forms
- Electronic Routing Systems

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



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QUESTIONS & ANSWERS