

# 2010 Joint Armaments Conference, Exhibition & Firing Demonstration

## 2010 Update to ITAR Export Controls



- Electronic TAA Submissions
- Proposed changes to 22 CFR 125.4(b)(9): Export of technical data
- Proposed changes to CFR 126.4: shipping for USG
- Proposed changes to 22 CFR 129: Broker registration
- ITAR registration for small businesses
- Review of the Basics



# Electronic Submission of Agreements

- Use of the D-Trade 2 system for submitting, reviewing, and approving agreement proposals.
- Use of the DSP-5 tool as the primary instrument to submit required documentation
- Only new agreements and re-baselined agreements may be submitted via the D-Trade 2 system.
- Applicants are not authorized to submit an proposed amendment to a previously approved paper agreement via electronic means.
- Electronic submission ONLY after September 2, 2010

[http://www.pmdrtc.state.gov/licensing/documents/WebNotice\\_ElectronicAgreements.pdf](http://www.pmdrtc.state.gov/licensing/documents/WebNotice_ElectronicAgreements.pdf)



# Proposed changes to 22 CFR 125.4

## Export of technical data abroad

### 22 CFR 125.4: Exemptions of General Applicability

#### Proposed changes to 22 CFR 154.4 (b)(9):

(9) Technical data, including classified information, and regardless of media or format, sent or taken by a U.S. person who is an employee of a U.S. corporation or a U.S. Government agency to a U.S. person employed by that corporation overseas outside the United States or to a U.S. Government agency outside the United States. This exemption is subject to the limitations of §125.1(b) and may be used only if:

- (i) The technical data is to be used ~~overseas~~ outside the United States” solely by U.S. persons;
- (ii) If the U.S. person ~~overseas~~ outside the United States is an employee of the U.S. Government or is directly employed by the U.S. corporation and not by a foreign subsidiary; and
- (iii) The classified information is sent ~~overseas~~ outside the United States” in accordance with the requirements of the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed).



# Proposed changes to 22 CFR 125.4

## Export of technical data abroad

### 22 CFR 125.4: Exemptions of General Applicability

Result of proposed changes to 22 CFR 154.4 (b)(9):

Explicit approval to hand carry technical data, regardless of media or format outside the United States when:

- The possessor is a U.S. citizen,
- employed by a U.S. Corporation or U.S. Government, and
- the data is delivered to a U.S. person employed by a U.S. Corporation or U.S. Government.

Final rule has NOT been published – continue to follow current 125.4 guidance



Proposed changes to 22 CFR 126.4  
Shipments by or for United States Government agencies.

Current restrictions within 22 CFR 126.4:

- Must have Government Bill of Lading
- ALL aspects of transport (export, carriage, and delivery abroad) must be conducted by US Government Agency.



## Proposed changes to 22 CFR 126.4

Shipments by or for United States Government agencies.

Result of proposed changes to 22 CFR 126.4 (a) and (b):

- Easier to ship
- Exemption applies to any USG transaction
- No longer reliant upon U.S. Government for transport.



# Proposed changes to 22 CFR 129 REGISTRATION AND LICENSING OF BROKERS

*Broker:* any person who acts as an agent for others in negotiating or arranging contracts, purchases, sales or transfers of defense articles or defense services in return for a fee, commission, or other consideration.

*Brokering activities:* ...includes the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service, irrespective of its origin.





# Proposed changes to 22 CFR 129 REGISTRATION AND LICENSING OF BROKERS

Under the proposed new definition, a broker is a person that:

(1) acts as an intermediary

(2) to facilitate the manufacture, export, re-export, import, transfer or retransfer of a defense article or defense service.



# Proposed changes to 22 CFR 129 REGISTRATION AND LICENSING OF BROKERS

## Proposed Changes:

- Exclusion of USG employees, working in an official capacity
- Foreign persons conducting brokering activity
- Bona-fide, full time employees
- Agent representing DDTC registered company's defense articles or services ONLY
- Eliminate prior approval requirement under 22 CFR 126.8



# ***BASICS OF EXPORT CONTROLS***



# The Case of Professor John Roth

- Retired professor convicted of arms export violations in September 2008 and sentenced to four years imprisonment in July 2009
- ***“Today’s guilty verdict should serve as a warning to anyone who knowingly discloses restricted U.S. military data to foreign nationals.”***

-Acting AAG for National Security, DOJ press release Sept. 3, 2008

- ***“Roth was guilty, at most, of being ignorant of the law, believing it only applied to the finished product ... and not research.”***

- Knoxville News Sentinel, July 2, 2009, referring to defense attorney’s argument



# Basics For ITAR Compliance

- Registration: Any U.S. party engaging in manufacture and/or export of defense articles, or furnishing defense services must register with DDTC. **Export activity is NOT required.**
- Licensing: Exporting a defense article, technical data, or defense service requires a license from DDTC.
- Agreements: Foreign manufacture or warehousing of defense articles, or the performance of defense services



# What Is An Export?

- Sending or taking any **item** governed by the U.S. Munitions List out of the United States to a foreign destination **in any manner**
- Item includes unclassified as well as classified:
  - Commodity
  - Software
  - Technology
  - Technical information
  - Blueprints
  - Design plans



# What Is An Export (cont.)?

- Permanent or temporary
- Gift
- To wholly-owned U.S. subsidiary in foreign country
- Disclosing (oral or visual) or transferring a defense article or technical data to a foreign person
- Technical assistance (*e.g.* manufacturing know-how, technical training, etc.)
- Performance of a defense service on behalf of or for the benefit of a foreign person



# What Is An Export (Cont.)?

- Doesn't have to be made in the U.S.
  - Exported, transmitted or transshipped through U.S.
  - Returned from the U.S. to the country of origin
- Can occur in the U.S. (Deemed Export Rule)
  - Release of technology or source code to foreign national in the U.S. (includes embassies)
  - Constitutes an export to the home country of the foreign national





# How Exports Occur

- Mail
- Hand carry on travel
- Facsimile
- Email
- Upload to, or download from an internet site
- Telephone conversation
- Oral presentation
- Meetings with foreign national
- Plant tours
- Joint development projects
- Joint marketing projects
- Webinars



# Resources

- Commerce Department: <http://www.bis.doc.gov/>
- State Department: <http://www.pmdotc.state.gov/>
- Treasury Department OFAC:  
<http://www.ustreas.gov/offices/enforcement/ofac/>
- U.S. Gov't Export Portal: <http://www.export.gov>





ITAR is like a 12 step program: First comes anger, followed by denial, bargaining, depression, acceptance, and eventually DDTC registration.

- Senior DDTC Official, April 26, 2010



# Jason M. Wong, Attorney at Law



Hurricane Butterfly Research  
Import, Export and Manufacturing

Jason@HurricaneButterflyResearch.com  
253-414-6066



Firearms Law Group  
Legal Services to the Firearms Industry

jmwong@FirearmsLawGroup.com  
253-272-4700

