

KIRTON | McCONKIE

# ITAR / EAR COMPLIANCE WEBINAR

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# INTERNATIONAL TRADE REGULATIONS

## Key Topics:

- Product?
- Destination?
- End use?
- End user?

## Export Controls:

- International Traffic in Arms Regulations (ITAR)
- Export Administration Regulations (EAR)

# INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (*ITAR*)

## Exports:

- Defense Articles
- Defense Services
- Technical Data



## Manufacturing:

- Defense Articles



# ITAR:

## *United States Munitions List (USML)*

I. Firearms, Close Assault Weapons & Combat Shotguns	XIII. Materials & Misc. Articles
II. Guns & Armament	XIV. Toxicological Agents, Incl. Chemical Agents, Biological Agents and Associated Equipment
III. Ammunition/Ordnance	XV. Spacecraft & Related Articles
IV. Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs & Mines	XVI. Nuclear Weapons Related Articles
V. Explosives & Energetic Materials, Propellants, Incendiary Agents & Their Constituents	XVII. Classified Articles . . . Not Otherwise Enumerated
VI. Surface Vessels of War & Special Naval Equipment	XVIII. Directed Energy Weapons
VII. Ground Vehicles	XIX. Gas Turbine Engines
VIII. Aircraft & Related Articles	XX. Submersible Vessels & Related Articles
IX. Military Training Equipment & Training	XXI. Articles/Services Not Otherwise Enumerated
X. Personal Protective Equipment	
XI. Military Electronics	
XII. Fire Control, Range Finder, Optical & Guidance and Control Equipment	

# ITAR:

## *USML Example*

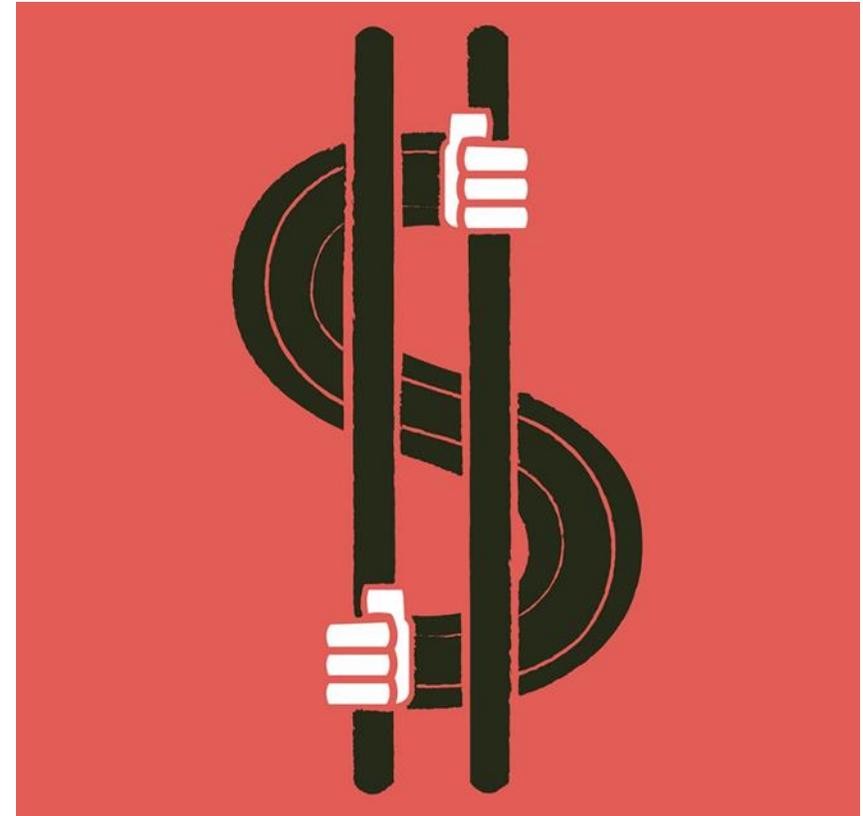
### **F-35 Fighter Jet:**

- Category VII: “parts, components, accessories, and attachments specially designed for the following U.S.-origin aircraft: The B-1B, B-2, B-21, F-15SE, F/A 18 E/F, EA-18G, F-22, F-35, and future variants thereof, or the F-117 or U.S. Government technology demonstrators”



# THE 5 MOST COMMON WAYS COMPANIES VIOLATE ITAR

1. Failing to Register
2. Lack of Technical Data Licenses
3. Incorrect Documentation
4. Not Vetting Other Parties
5. Uncontrolled Technical Data



# 1. FAILING TO REGISTER

- Manufacturers must register regardless of export plans
- Exporters must register and obtain export licenses
- U.S Department of State, Directorate of Defense Trade Controls (DDTC)
- Any manufacturing of the items on the USML is illegal without proper registration
- DDTC requires advance approval for any exports



# 2. LACK OF TECHNICAL DATA LICENSES

## Covered Items:

- Technical Data
- Defense Services
- Discussions with Foreign Vendors

## Examples:

- Sending technical drawings to a foreign vendor to obtain a quote without getting a license to do so beforehand
- Preliminary disclosures under an NDA

## Requirements:

- Advance Approval
- Special License



# REGISTRATION AND LICENSURE FORMS

- **DS-2032:** Registration of Defense Articles and Related Technical Data – This form is used to register with the Directorate of Defense Trade Controls (DDTC) for the export or temporary import of defense articles or related technical data.
- **DS-4076:** Request for Commodity Jurisdiction (CJ) – This form is used to request the DDTC to determine whether a particular item or technology is subject to the ITAR or the Export Administration Regulations (EAR).
- **DSP-5:** License for Permanent Export of Defense Articles and Related Technical Data – This form is used to apply for a license to export a defense article or related technical data permanently.
- **DSP-61:** License for Temporary Import of Defense Articles – This form is used to apply for a license to import a defense article temporarily.
- **DSP-73:** License for Temporary Export of Unclassified Defense Articles – This form is used to apply for a license to export an unclassified defense article temporarily.
- **DSP-83:** Classified License for the Export of Defense Articles and Services – This form is used to apply for a license to export a defense article or service that is classified.

# 3. INCORRECT DOCUMENTATION

## Covered Items:

- DDTC License Applications
- Electronic Export Information (EEI) Filings
- Destination Declarations
- Delivery Verifications
- Registration Forms
- Purchase Orders
- Non-transfer and Use Certificates
- Etc.

## Mistakes:

- Anything and Everything
- 1 Error = 2 Violations (ITAR and Customs)
- Very Strict: Accidents, Typos, Omissions
- No Paper Trail



# 4. NOT VETTING OTHER PARTIES



## Exporter Responsibility:

- Due diligence on every counterparty
- Present deal is not violating ITAR
- Counterparty is not otherwise violating ITAR
- Counterparty's information is accurate
- Counterparty uses items properly

## Risks:

- ITAR registration and export licenses do NOT block liability
- Counterparty violates ITAR after export is complete

# 5. UNCONTROLLED TECHNICAL DATA

## Rule:

- No transfer to any foreign persons

## Definitions:

- Very broad
- Technical Data: Includes information used in the design, manufacture, testing, repair, or quality assurance of defense articles and services
- Foreign Person: Includes people in the U.S.



# EXPORT ADMINISTRATION REGULATIONS

(“EAR”)

## Exports:

- Actual Shipment
- Electronic Transmission
- Temporary Exports
- No Sale Necessary
- Deemed Export

## Re-exports:

- U.S. Origin
- U.S. Origin Content (25%, 10%, or 0%)
- Exports List

## Transfers



# EAR:

## *Scope*

### **Items “subject to the EAR”:**

- Commodities, software, and technology
- “Dual use” items: commercial and military applications
- Trade-related activities with sensitive end-users or end-uses

### **Items not “subject to the EAR”:**

- Printed Materials
- Publicly-available software or technology

# EAR: Commerce Control List (“CCL”)

## *Export Control Classification Number*

Category	Group	Entry
0- Nuclear Materials, Facilities & Equipment	A- Equipment	0- National Security & Dual Use
1- Materials, Chemicals, “Microorganisms” & Toxins	B- Test, Inspection & Production Equipment	1- Missile Technology
2- Materials Processing	C- Materials	2- Nuclear Non-Proliferation
3- Electronics	D- Software	3- Chemical & Biological Weapons
4- Computers	E- Technology	5- National Security & Foreign Policy
5- Telecommunications & Information Security		6- Munitions
6- Lasers & Sensors		9- Anti-terrorism, Crime Control, Regional Stability, Short Supply, United Nations Sanctions
7- Navigation & Avionics		
8- Marine		
9- Propulsion Systems, Space Vehicles & Related Equipment		

# EAR:

## *Prohibitions and Licenses*

### **Prohibitions**

- Export of controlled items to listed countries
- Export to embargoed destinations (Cuba, Iraq, North Korea, Ukrainian regions, Iran, Russia and Belarus, Syria)
- Export to prohibited end-uses or end users (e.g., Russia)
- Denied Persons List, Unverified List, Entity List, Military End User List

### **Licenses from BIS (e.g., Cuba)**

### **License Exceptions**

- Temporary exports of tools of trade
- Gifts
- Baggage



# EAR:

## *CCL Example*

### **Battery for “Rugged Ground Application” that complies with military standards:**

- ECCN 0A606.y.4: “Batteries” for “Ground Vehicles and Related Commodities”
- Restriction: Anti-Terrorism



# QUESTIONS?

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