

# **Defense Trade Advisory Group (DTAG)**



**Public Plenary  
September 8, 2017**



# Agenda

1:00 – 1:30pm - Welcome and Introductory Remarks

- DTAG Chair, Bill Wade
- State Dept. DAS, Defense Trade Control, Brian Nilsson

1:30 – 2:00 PM - Working Group 1 – One Form Electronic Filing

2:00 – 2:30 PM - Working Group 2 – Defense Services

2:30 – 2:45 PM - Break

2:45 – 3:15 PM - Working Group 3 – Manufacturing Definition

3:15 – 3:45 PM - Working Group 4 – Foreign Citizenship

3:45 – 4:15 PM - Working Group 5 – Agreement Expiration

4:15 – 4:45 PM - Wrap Up/Closing Remarks

# DTAG Charter (2016)



- Objectives and Scope of Activities
  - “The purpose of the DTAG is to provide a formal channel for regular consultation and coordination with U.S. private sector defense exporters and defense trade specialists on issues involving U.S. laws, policies, and regulations for exports of defense articles, services, and related technical data. The DTAG serves the Department in a solely advisory capacity.”
- Description of Duties
  - “The DTAG will advise the Department on its support for and regulation of defense trade to help ensure that the foreign policy and national security interests of the United States continue to be protected and advanced while helping to reduce unnecessary impediments to legitimate exports in order to support the defense requirements of U.S. friends and allies.”



# Housekeeping

- Cell Phones, Electronic Devices
  - Mute, Stun, Vibrate...
  - Enable the Cloaking Device
- No recording devices
- No photos
- Restrooms
  - Out the door to the left
- Q&A
  - Hold your questions until the end of each presentation

# **Defense Trade Advisory Group**



**DAS Brian Nilsson**

Plenary Session

March 30, 2017

# Defense Trade Advisory Group



## **ONE-FORM ELECTRONIC FILING (Working Group 1)**

Plenary Session

September 8, 2017



# Agenda

---

- Working Group Members
- Task Description
- Background on Task Requirements
- Proposed Approach



# Working Group Members

- **Michael Caton**  
M-3 Technology
- **Monica Chavez**  
Eaton US Holdings
- **Ashley Farhat**  
HRL Laboratories, LLC (Co-Chair)
- **Spence Leslie**  
Pentair Technical Solutions
- **Alexis Mitchell**  
Lockheed Martin Corporation
- **Fran Mulla**  
Moog Inc.
- **Kim Pritula**  
National Shooting Sports Foundation (Co-Chair)





# Task Description

1. Would industry benefit from a ***single interagency form*** where the data elements needed by DDTC, BIS, and OFAC are collected using a single system user interface or single machine-to-machine data interface? If so, how does a cost-benefit analysis support this recommendation?
2. Would ***expanding the current license based batch filing*** (to include registration filings and updates, notifications, CJ, etc.) positively impact industry, and if so, how does industry want DDTC to prioritize this expansion and does a cost-benefit analysis support this recommendation?
3. Would ***modifying user access/authentication process*** from current Identrust Certifications to other modern access/authentication procedures positively impact industry, and if so, what are your specific modification recommendations and does a cost-benefit analysis support this recommendation?

# One-Form Electronic Filing: One Form



- Per discussions with DDTC it has recently picked up its effort on its One Form in the new DECCS system
  - DDTC is interested in the cost impact to industry to implement One-Form
  - Does it impact industry to implement One-Form and then implement again with Interagency One-Form?
  - What do the changes mean to industry users?

# One-Form Electronic Filing: Batch Filing



- DDTC wants to know if there is a real interest in batch filing
  - Software provider has presented ideas on batch filings on handling CJs and other notifications
  - Some industry members have expressed interest in this capability

# One-Form Electronic Filing: Authentication



- DDTTC is interested in feedback on authentication methods
  - DDTTC is open to considering modern approaches
  - Does industry want to continue to use Digital Certs?
  - Industry has conflicting views on the level of data security that should be implemented



# Working Group Approach

- Gather relevant information from Working Group/DTAG Members
  - Companies (all sizes)
  - Law firms
  - Non-profits, trade groups & universities
- Deploy questionnaire
- Provide analysis and recommendation(s) in December Plenary



# One-Form Questionnaire Concept

- Survey Structure
  - 4 Sections
    - Section 1 is to collect demographic data
    - Sections 2 – 4 relate to the three tasks
  - Currently 38 questions total
  - Questions in various formats
    - “Yes” or “No”
    - Multiple choice selections
    - Free form fields
    - Estimated cost inquiries
- Survey is under review by DDTC

# One-Form Questionnaire Concept



- Questionnaire developed without insight into the differences between the DDTC One-Form and the Interagency One Form
  - Responses could be impacted without having this knowledge
  - Could be difficult to quantify implementation without knowing all the potential changes

# One-Form Questionnaire Concept



- Survey to be deployed as follows:
  - To DTAG members
    - Request to route survey to Licensing and IT staff within each member's organization
    - With 50+ members from various organizations, DTAG represents an excellent cross section of the defense industry
  - Survey is not soliciting information from the public





# Anticipated Results

- Primary research via questionnaire should provide:
  - Cost estimates and perceived benefits to respond to tasking questions with measureable information
  - Demographics to allow analysis by industry segment, company size, and internal/external resources to implement changes
  - Direct feedback from industry members to guide DDTC's IT projects going forward



---

Thank you

# **Defense Trade Advisory Group**



## **Defense Service Task (Working Group 2)**

Plenary Session

September 8, 2017



# Agenda

---

- Working Group Members
- Tasking
- Dilemma
- Guiding Principles
- Work Plan
- Preliminary Considerations



# Working Group Members

- Matt Aljanich - Modern Technology Solutions
- Bryon Angvall\* - Boeing
- Bryce Bittner - Textron
- Greg Bourn - Johns Hopkins University APL
- Dava Casoni - USC
- Rebecca Conover - Intel
- Jarred Fishman - Booz Allen Hamilton
- Jeremy Huffman - Huffman Riley
- Peter Lichtenbaum\* - Covington & Burling
- Christine McGinn - InterGlobal Trade Consulting
- Mary Menz - Harris Corporation
- Dan Pickard - Wiley Rein
- Dale Rill - Honeywell
- Gretta Rowald
- Bill Schneider - International Planning Services
- Heather Sears - Johnson Control
- Olga Torres – Torres Law

\* Working Group Co-Chairs



# Tasking

- “DDTC requests DTAG identify key areas of concern with the proposed definition in 80 Fed. Reg. 31525 (Jun. 3, 2015). Please include any aspects of the proposed definition that would constitute positive change, and make recommendations as appropriate.”



# Guiding Principles

- Develop approach that takes into account both USG and industry interests
- Address the most important deficiencies
- Focus on feasibility and simplicity, not perfection



# Work Plan

- Identify most important considerations
  - Present at September 8, 2017 DTAG Plenary
- Consider stakeholder needs and clause history/intent
- Identify potential high-level solutions
- Engage with DDTC/interagency
- Refine solutions
- Develop regulatory text and PPT summary
  - Present at Dec. 2017 DTAG Plenary





# Preliminary Considerations

1. Should defense services include activities that do not rely upon the use of “technical data?”
  - What is “knowledge of” in proposed definition?
  - Distinguish between U.S. origin and foreign origin technical data
2. Should defense services cover work on CCL items installed on USML end-items or USML items installed on CCL end-items?
  - Distinguish between installation vs. integration?
  - Distinguish based on use of ITAR controlled technical data?



# Preliminary Considerations

3. Employment of U.S. individuals by non-U.S. persons in work relating to defense articles
  - Only when providing U.S. controlled technical data?
  - Not clearly defined in proposed definition
4. Scope of “military training”
  - Only when providing U.S. controlled technical data?
5. Non-military training issues
  - Use of defense articles and the creation of technical data
6. Maintenance levels
  - Distinguish between organizational (basic), intermediate and depot-level maintenance.



# Preliminary Considerations

7. Scope of control over non-U.S. made items that may be “produced or manufactured” from defense services under 124.8(5)
  - ITAR taint
8. How to structure defense services within scope of the regulations
  - Modify the definition
  - Add an exemption for defense services
  - Provide clear path to licensing under DSP-5 where and when appropriate



# Preliminary Considerations

---

9. Do we distinguish between Section 126.1 countries and other countries regarding the scope of defense services controls?



# **Defense Trade Advisory Group**

## **Registration Requirements for Manufacturers**

**(Working Group 3)**

**Interim Report**

**September 2017**

# Working Group Members

- **Nate Bolin**, Skadden, Arps, Slate, Meagher & Flom, LLP.
- **Steve Casazza**, General Atomics
- **Ben Child**, Vista Outdoors
- **Rob Lawson**, GE Aviation
- **Ari Novis**, Pratt & Whitney (Co-chair)
- **Lisa Prager**, Holland & Knight
- **Brandt Pasco**, Pasco & Associates, PLLC (Co-chair)
- **Jeff Sammon**, Raytheon, Space & Airborne Systems
- **Sandy Tucker**, Textron Systems, Unmanned Systems

# State Department Tasking

- Develop a definition of “manufacturing” for use in the ITAR.
  - Considering the possibility of revisions of Cats I-III and removal of most commercial firearms and related activities from the ITAR, DDTC requests DTAG to review and provide feedback to accurately and effectively define “manufacturing” (and distinguish from other related activities like assembly, integration, installment, various services) for remaining defense articles and services.

# Clarification of State Department Tasking

- Based on discussions with DDTC
- Determine who needs to register as manufacturer:
  - AECA § 2778 (b)(1)(A)(i) / ITAR § 122.1(a): ‘Any person who engages in the business of manufacturing, exporting, or importing any defense articles or defense services.’
- Identify activities not requiring Registration
  - ‘Simple’ assembly
  - ....



# Clarification of State Department Tasking

- Key Assumptions:
  - A Defense Article ( § 120.6) is any item designated (i.e., enumerated or described) in § 121.1 – the USML
  - Manufacturing does not include the production of unclassified technical data ( § 122.1(b)(2)), which includes “software” ( § 120.1(a)(4))
  - Therefore, ‘manufacture’ is limited to defense article commodities
  - Definition intentionally does not capture ‘manufacture’ of classified technical data

**Task: Identify those entities that Congress wants State to review when it comes to producing Defense Article Commodities**

# Purpose of Registration

- To give DoS visibility into areas of risk.
  - The purpose of registration “is primarily a means to provide the U.S. Government with necessary information on who is involved in certain manufacturing and exporting activities.” ( § 122.1(c))
  - Every ‘manufacturer’ is a potential exporter, whether they know it or not-
    - Deemed exports / Supply chain / Espionage target
  - DOS/DOD Awareness –
    - Technology Security /Emerging Technologies /Dual-Use Applications, etc.
- Negative Impacts of Registration:
  - Requirement doesn’t scale – significant financial burden on small entities
  - Inundate State with low-risk entities

# OTHER CONSIDERATIONS

Registration is still required of non-manufacturers:

- Exporters
  - Importers
  - Brokers
- Allows the definition of ‘manufacture’ to be narrower, as a ‘significant’ manufacturer that doesn’t also import, export, or engage in brokering activities is rare.

Definition is just for entities engaged in ‘manufacture’

# Approach

- ‘Catch and Release’
  - Broad Catch, with Selective Releases
- Possible Releases:
  - Those that do not ‘substantially transform’
    - Analogous but not identical to Customs definition
    - § 120.6 specifies that a defense article “...includes forgings, ...clearly identifiable ...as defense articles.”
  - Less than \$X in defense article sales per year
    - i.e., ‘small business’ without the baggage of the SB definition
  - Specific assembly activities
  - Specific ‘minor’ components
    - Low military utility - concern is the technical data

# Substantial Transformation

- Used to determine Country of Origin
- Well-litigated (see 19 U.S. Code section 1304)
  - The item undergoes a fundamental change as a result of processing or manufacturing in form, appearance, nature, or character, which adds to its value an amount or percentage that is significant in comparison to the value which the item (or its components or materials) had prior to the processing or manufacture
  - Concept: Adapt definition to differentiate between ‘minor’ production activities not requiring registration and ‘substantial’ production activities worthy of registration
- The resulting item must be a Defense Article
  - The components and/or materials may or may not be defense articles

# Concept Language

- a) Except as described in Paragraph (b), a ‘manufacturer’ is a person whose actions through making, building, fabricating, machining, or assembling raw materials, parts, components, or systems result in a defense article
  
- b) A person does not need to register as a manufacturer if:
  - 1) They fall under an existing exemption in 122.1(b);
  - 2) Do not ‘substantially transform\*’ Defense Articles or non-Defense Articles into Defense Articles;
  - 3) Have less than \$X in sales of Defense Articles per year;
  - 4) Subject activities are exclusive to one-off prototyping or integration (see § 122.1(b)(4)); or
  - 5) Only perform the following activities:
    - i. ....

Note: Relief through a paragraph (b) release does not remove the requirement to register as an exporter or importer ( § 122.1(a)) or broker ( § 129))

\*Will require local definition

# Test Cases

## ‘Manufacturer’ for Registration Purposes:

- Add military value
- ‘Significant’ producers
- Creates a new and different article
- Utilize Manufacturing Know-how

## Exclude

- ‘Simple’ assembly
- Common product manufacturers that just happen to have USML items
  - PCB manufacturer/assembler
  - Custom tooling supply house (e.g., jigs, fixtures)
- ‘Mom & Pop’ shops (burdened)
- Hobbyist (not in the business)
- Common processes on Defense Articles without use of ITAR Technical Data
- Other purposes not “in the business” of manufacturing defense articles

# Additional Items to Explore

- Maintenance and Repair
  - Clarify that manufacture creates a ‘new’ (i.e., ‘born’) item
    - Disassembly, cleaning, then reassembly is *not* ‘manufacture’
  - Does Depot Level Repair always invoke ‘manufacturing’?
    - Possible clarification/release for O- and I-level



# Additional Items to Explore

- Intent – inadvertent manufacture of Defense Articles
  - Release & documentation requirements similar to § 120.41(b)(4)/(5)
- Serial Production vs. ‘one-off’
  - What if you make just one? (other than § 122.1(b)(4) release)
- ‘Manufacture’ of classified data
- Eliminate annual registration renewals
  - If no material changes since previous registration



# Defense Trade Advisory Group

**Definition of Manufacturing**

**Questions?**

# **Defense Trade Advisory Group**



## **Exports, Re-exports and Foreign Citizenship/Permanent Residence (Working Group 4)**

Plenary Session

September 8, 2017



# Agenda

- Working Group Members
- Initial Tasking
- Modified Tasking
- Problem Statement
- Preliminary Issues
- Examples
- Next Steps



# Working Group Members

- **Candace Goforth (Co-chair)**  
Goforth Trade Advisors LLC
- **Jeff Merrell (Co-chair)**  
Rolls-Royce North America
- **Fred Alvarado**  
Nammo Incorporated
- **Jim Bartlett**  
Full Circle Compliance
- **Larry Fink**  
Leidos, Inc.
- **Giovanna Cinelli**  
Morgan, Lewis & Bockius, LLP
- **Laura Kraus**  
Kraus Laura, LLC
- **Mike Miller**  
University of Central Florida
- **Johanna Reeves**  
F.A.I.R. Trade Group



# Initial Tasking

DDTC requests DTAG examine the challenges of compliance with the current rules on releases of technical data to foreign dual-nationals and identify alternative options which sufficiently facilitate risk assessment and risk mitigation.



# Additional Tasking

Cannot address “challenges of compliance with the current rules on releases of technical data to foreign dual-nationals” without addressing numerous related issues

- The ITAR differs in treatment of citizenship, nationality, permanent residence, etc.
- The ITAR and the EAR differ in treatment of citizenship, nationality, permanent residence, etc.
- The ITAR and the EAR differ in treatment of “release”
- The ITAR and the EAR differ depending on country of application



# Problem Statement

A “foreign person” requires special permission before ITAR technical information may be “released”

- A foreign person is variously defined in terms of citizenship, all citizenships ever held, nationality, permanent residency
- A foreign person may be a dual-national or a third-country national, subject to the same varying definitions
- A U.S. citizen may be a foreign person for export purposes, subject to the same varying definitions, and may also be a dual-national (or third-country national?)
- US export regulations apply within the United States, subject to the same varying definitions
- State Department “foreign person” rules are inconsistent with Commerce Department rules
- Regulations differ depending on whether the “release” is an export, deemed export, re-export, transfer, etc.
- It is illegal in many countries to ask questions regarding place of birth and national origin





# Preliminary Issues

1. Applying undefined terms “citizenship”, “nationality” and “permanent residence”
2. Difference between “dual national” and “third country national”
3. Handling of individuals from § 126.1 prohibited countries
4. Privacy and anti-discrimination laws; to include data protection laws.
5. Disparity between U.S. Person requirement to obtain a DSP-5 for foreign person employment vs. Foreign Person ability to use § 126.18 exemption.

# Issue 1



## Citizenship vs Nationality vs Permanent Residence

- AECA 38(g)(9)(C) “the term “foreign person” means any person **who is not a citizen or national** of the United States or lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act...”
- In the ITAR:
  - Citizenship is used at least 9 times
  - National or Nationality is used at least 30 times
  - Permanent Residence is used at least 5 times
- Agreements Guidelines also uses these terms throughout, and suggests nationality is based on ALL citizenships OR permanent residency



# Issue 2

## Dual Nationals vs Third Country Nationals

---

- Nationality is typically acquired at birth, and may be difficult to renounce.
  - Not always tied to citizenship
  - Nationality often connotes ethnicity which brings up additional issues
- One may acquire further citizenships and resident status for numerous and valid reasons.
- “Nationality” is undefined, making it difficult for an employer to assess an employee’s nationality, let alone dual nationality and third country nationality.
- Increasingly difficult to see a national security or foreign policy rationale extended to citizenship or nationality
- The foreign person may not understand or appreciate what is being requested of them.



# Issue 3

## Individuals from § 126.1 Countries

The ITAR generally prohibits transfers to certain countries named in § 126.1.

DDTC regards a transfer to a “national” of a country as a transfer to that country. For purposes of the ITAR, someone born in a prohibited country will ALWAYS be that country, and will be barred from accessing ITAR information.

Employers must track every country in which a person has had “nationality,” and compare it to a changing list of § 126.1 “prohibited” countries.

§ 126.18(c)(2) addresses terrorism, and references some specific countries listed in § 126.1(d)(1) as requiring further review from DDTC. It is unclear how to treat the other § 126.1(d) countries

- Many of the § 126.1(d)(2) countries – such as Cyprus – are limited to prohibitions on government or specifically identified entities – not individual persons who are no longer residents of those countries.
- Clarification on handling individuals from the countries in § 126.1(d)(2) is needed for effective implementation of the reexport requirements.



# Issue 4

## Privacy and Anti-Discrimination Laws

- ITAR requires that an employee know every “nationality” held by an employee.
- In many countries, it is illegal to ask such questions on privacy and anti-discrimination grounds.
- Once obtained, it also may be illegal to retain such information.
- Open borders and the free movement of people in areas such as the EU impacts the gathering of information.
- If a person is a legal resident and has passed a background check, difficult to see how country of birth or last residence is relevant to export controls.
- Already mechanisms in place to monitor access and use of technical data which reduces administrative burden and duplicative tracking.
  - § 126.18
  - Individual Technology Control Plan

# Issue 5



## U.S. Person vs Foreign Person Requirements

- Different requirements for U.S. persons who employ foreign persons and foreign persons who employ dual/third country nationals (e.g., § 126.18).
- U.S. person requires a DSP-5 export license to employ a French person
  - More time and paperwork intensive.
  - More restrictive than obligations placed on foreign persons outside U.S. for same activity.
  - Challenge of managing authorizations as scope or programs changes
- French company is authorized to use § 126.18 to reexport technical data to a national of a country which may not be part of the original authorization.
  - Placing more trust in a foreign party than in a U.S. Person who is required to seek a DSP-5 for same transaction.

# Issue 6

## Regulatory Burden



- Must avoid violating local non-discrimination, privacy and data retention laws
- Must constantly review § 126.1 country list
- Must apply regulations differently inside the U.S. and outside
- Must control access to ITAR data depending on various “nationality” rules
- USG must constantly adjudicate cases
- USG looking to streamline regulations and reduce administrative burden



# Examples of Export Situations

- Foreign Citizen
  - Individual born in China, moves to France one day later, becomes French citizen.
- U.S. dual nationals
  - UK national has obtained U.S. citizenship while retaining UK passport and resides in U.S.
  - U.S. citizen resides in Norway and obtains Norwegian citizenship retaining U.S. passport.
- Dual nationals – Individual born in the UK obtains French citizenship and now resides in France.
  - Same individual now residing in U.S. and maintaining residences in all 3 countries





# Examples of Export Situations (cont'd)

- Third Country Nationals – French company hires individuals with citizenships/nationalities from other countries and they reside in France.
- Seconded Employees
  - French company seconds French employee to U.S. parent.
  - French company seconds French employee to Brazilian affiliate for the same project; Brazilian affiliate does not have French employees.
- Temporary/Seasonal – Short-term employees to satisfy a production or contract need who do not meet the definition of regular employee.
- Continuing Tiers of Sublicensees – How far down the chain do the requirements flow for responsibility of U.S. party?



# Examples of Export Situations (cont'd)

- Litigations – Technical data provided in a U.S. courtroom but there is no restriction or protective order limiting foreign person access.
- M&A / Due Diligence – Foreign persons are involved in reviewing technical data as part of the determination to pursue an acquisition or other investment.
- Foreign Government Certification/QA – access to technical data by government certifying agencies
- Consolidation of Business – Business units or business lines are in multiple foreign locations and employees transition within the business.
- U.S. Branches of Foreign Companies – Need to staff with parent company individuals; FOCI concerns.

# Examples of Export Situations (cont'd)



- IP Prosecution – Foreign patent agents resident in U.S. law firms in the U.S. reviewing technical data to prepare patent applications (pre-filing).
- Retired Military Persons working for foreign companies – U.S. retired military persons working in the Middle East (or elsewhere) supporting U.S. or foreign platforms.
- U.S. Subsidiaries or Offices – U.S. subsidiary or office in a foreign country who is not a foreign person; cannot utilize § 126.18 to hire local staff.
- Foreign Government Employees – often difficult to ascertain the nationality or citizenship of foreign government employees.



# Next Steps

- Provide recommendation on the issue of undefined terms “citizenship” or “nationality” or “permanent residence”
  - Possible regulatory changes
  - Reassess value of any designation other than Foreign Person
- Reassess policy that a person is associated with all citizenships.
- Reassess § 126.1(d)(1) countries as meaningful export control screen.
- Review and provide alternative licensing options to address export situations which involve citizenship or nationality concerns



---

Thank you

**Defense Trade Advisory Group**

**Working Group 5**

**10-Yr Standard for Agreement  
Expiration Date**

**September 8, 2017**



# Team Members

## **WG5 Members**

- Michelle Avallone, Columbia University
- Michael Cormaney, Luks Cormaney LLP
- Greg Creeser, International Trade Compliance Strategies
- Sandra Cross, Huntington Ingalls Industries \*
- Tom Donovan, Northrop Grumman Corporation \*
- Cindy Keefer, BAE Systems, Inc.
- Angie Noll, Knights Armaments

\* Co-Chairs



# Taskings

## Initial Tasking (*Task 1*)

- “DDTC requests DTAG’s assessment, including a cost-benefit analysis, of DDTC standardizing the expiration date for all new agreements to a fixed 10 year period from the date of initial approval.”

## Expanded Tasking (*Task 2*)

- Provide analysis of specific time-limit requirements associated with agreements identified in § 124.4, § 124.5, and § 124.6, which will also impact specific clauses under § 124.12(b) and § 124.14(f).





# Background (Task 1)

- DDTC is considering a 10-year fixed standard for agreement expiration dates.  
*(Note: DDTC clarified consideration is to have agreements automatically default to ten year expiration from the date of issue)*
- Currently:
  - Section 3.1a of the Guidelines for Preparing Agreements (GFA) states that proposed expiration dates cannot exceed 10 years in duration.
  - GFA section 3.1b further directs the proposed expiration month to coincide with a table based on Registered Company Name.
  - This system was designed “to avoid an overwhelming number of proposed amendments for extensions at the end of the calendar year.”



# Approach (Task 1)

- Initial Task Approach:
  - Review regulatory or legal requirements (AECA, ITAR, Guidelines, past DTAG recommendations) and why the current expiration structure exists
  - Analyze the impact (cost/burden) of expirations that are no longer aligned to a common date
  - Analyze whether a 10-year duration for an agreement is appropriate (less than 10-years or no duration)
  - Consider the impact of the regulatory and broader industry environment on agreement duration
  - Assumption that amendments will default to 10-years from issuance as well



# Regulatory Review

- Legal: AECA does not require a specified expiration timeframe
- Regulatory: ITAR does not require a specified expiration timeframe
- Agreement durations and expirations are managed primarily through Agreement Guidelines or other procedural guidance. For example:
  - Guidelines for Preparing Agreements (Revision 4.4b)
  - 78 FR 22740 and 61750 Amendment to the ITAR: Initial Implementation of ECR
  - DDTC web notice published on October 9, 2015: [http://www.pmdtdc.state.gov/documents/IndustryNotice\\_ECRTransitionPlan.pdf](http://www.pmdtdc.state.gov/documents/IndustryNotice_ECRTransitionPlan.pdf).

Changes to a 10-year standard expiration appear within the control of DDTC



# Historical Basis for Review

- Historically, agreements were tied to duration of a business contract
- Maximum duration of an agreement set at 10 years in the late 1990s
- Expiration timeline methodology migrated from end of calendar year to a designated month based on company name in 2004
- 10-year standard was used as a mechanism to drive rebaseline of agreements and convert to conformed electronic agreements beginning in 2008
- 78 FR 22740 and 61750 specified that agreements impacted by USML category changes as a result of ECR be amended within 2 years
- 2015 DDTC Web Notice specified that agreements impacted as a result of ECR be amended within 3 years



# Current State

## Common Date Alignment

- Analysis of impact of simultaneous expirations
  - Based on significant activities (Automation, ECR) and dynamic defense industry environment (name changes, M&A, other modifications) most agreements have not reached 10 years
  - Difficult to assess full impact due to lack of available data
- Cost/Benefit Analysis
  - Low volume of test cases negates ability to draw substantive conclusions on cost benefits (USG or Industry)
  - Can assume some cost benefit to moving to a default expiration
    - Would eliminate potential RWA or post submittal document modifications due to incorrect dates in transmittal letters and agreements
- General preference analysis – Internal DTAG Polling
  - Known common expiration dates allow for ease of planning, preparation and resource allocation
  - Varying reactions to expiration date, including removal of 10-year standard (flexibility)



# 10-year Duration

- Analysis of impact of simultaneous expirations
  - Difficult to assess volume of agreements amended solely to extend duration
- Cost/Benefit Analysis
  - No identified benefit for shorter durations
  - Potential Cost benefit and reduced burden with longer durations
    - If agreement reaches duration, there is a cost and burden associated with amending simply to extend a duration
- Analysis of “derived observation”: Why is a duration required?
  - Regulatory and environmental change likely to mandate amendments
  - Exports occur under separate licenses for hardware, or exemptions (e.g., § 125.4(b)(2)) which are not duration dependent
  - Industry is responsible for ensuring any authorization is valid for use (agreement, license, or exemption)



# DTAG Recommendation

- DTAG member feedback favors expirations aligned with a common month/date as currently implemented
  - Many companies align key compliance activities with common expiration dates (e.g., agreement audits)
  - Easier resource planning and allocation
  - Comfort in what is known
  - No regulatory requirement to drive a change or apparent cost/benefit

**DTAG recommends agreement expiration dates remain aligned with a common month/date**



# DTAG Recommendation

- Regarding duration:
  - No identified legal or regulatory requirement to limit the duration of an agreement
  - No cost benefit to maintaining an expiration
  - Environment will likely force amendments
  - For agreements that would reach duration, an identifiable burden exists to amend the agreement simply to extend a duration

**DTAG recommends DDTC eliminate expiration dates associated with agreements**





# Background (Task 2)

- DTAG offered to address time-limit requirements associated with agreements identified in § 124.4 - § 124.6  
*(Note: by default, requires assessment of § 124.12(b) and 124.14(f))*
- Currently:
  - § 124.4 Deposit of signed agreements with the Directorate of Defense Trade Controls
    - Not later than 30 days after it enters into force
    - If not concluded within one year of the date of approval, must be notified in writing
  - § 124.5 Proposed agreements that are not concluded
    - Must inform... within 60 days of the date of the decision
  - § 124.6 Termination of manufacturing license agreements and technical assistance agreements
    - Must inform not less than 30 days prior to the expiration date



# Approach (Task 2)

- Expanded Task Approach:
  - Review regulatory or legal requirements (AECA, ITAR, Guidelines, past DTAG recommendations) and why the current suspense structure exists
    - Includes DDTC discussion regarding why the deliverables and suspense are required
  - Analyze the impact (cost/burden) of paperwork requirements, administrative processing, tracking and record keeping
  - Explore alternative solutions



# Regulatory Review

- Legal: AECA review did not find requirements to notify on agreement status as identified in § 124.4- § 124.6
- ITAR review included:
  - § 124.3
  - § 124.4
  - § 124.5
  - § 124.6
  - § 124.12
  - § 124.14(f)(3)
  - § 125.4(b)(4)
  - § 123.22

Agreement Reporting Requirements/Timelines appear within the control of DDTC



# Current State

- Analysis of volume

- The review of the ITAR § 124.4, 124.5, and 124.6 identified the following specific reporting requirements:

- Signed copies of executed agreements 30 days after it enters into force
    - Notification of annual status of unsigned agreements
    - Notification of decision not to conclude an agreement within 60 days of the date of decision
    - Notification of termination

- Three

	Total New Agreements	Agreements and Amendments
2014	3,440	6,193
2015	2,636	5,378
2016	2,457	4,986
		Source: DTC Licensing, Aug 16, 2017

- For every agreement, at least one additional document must be generated ( § 124.5 Decision not to Conclude)
    - Vast majority will require at least two additional documents ( § 124.4 Execution and § 124.6 Termination)



# Impact (cost/burden)

- Volume of paper notifications are significant
  - As many as 5,000 documents generated based upon 2016 New Agreement approvals alone
  - Resource drain on both government and industry
- Recordkeeping requirements grow with each notification
- Inconsistent suspense requirements complicate monitoring and compliance
- Administrative based disclosures
  - Any lapse in meeting prescribed timelines generates a disclosure to DTCC
    - Significant resource burden on industry to submit disclosures
    - Over commitment of DTCC assets that could focus on other substantive matters



# Impact (cost/burden)

- Subject of administrative based disclosures was addressed in the October 29, 2015 Plenary under Trade Compliance Process

## Alternative Processes for Category 3



- Precedent: Alternative to VD for certain Temporary Import Violations - [http://pmdrtc.state.gov/licensing/documents/WebNotice\\_TemporaryImportViolations.pdf](http://pmdrtc.state.gov/licensing/documents/WebNotice_TemporaryImportViolations.pdf)
- Extend same concept to create options for other Category 3 violations
  - Periodic reports or “binning” of Category 3 violations
  - Report issue in application
  - Notification of corrective action
  - DTCC issue guidance that Category 3 violations do not affect ability to continue with program
  - Remove requirement from ITAR, if no significant USG purpose
- DTCC has ability to rescind a company’s ability to use alternative processes

Standard 127.12 process *always* remains an option

17

## Part 124 - AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

§124.1(a) - Requirement to obtain DDTC approval to provide defense services to foreign persons	2	
§124.1(c) - Requirement to obtain DDTC approval for any amendments that change the scope of approved Agreements	2	
§124.2 - Exemptions for training and military service	2	
§124.4(a) - Applicant must file a copy of the concluded TAA or MLA with DDTC not later than 30 days after Agreement enters into force	3	Upload executed agreement to D-Trade with cover letter that explains reason for missed deadline, root cause & corrective action(s)
§124.4(b) - Application must furnish additional information specified in paragraphs (1) - (4) when submitting executed copy of MLA	3	Upload letter with required information to D-Trade - Include reason for missed deadline, root cause & corrective action(s)
§124.5 - Applicant must inform DDTC if a decision is made not to conclude an approved agreement within 60 days of the decision	3	Upload notice with required information to D-Trade - Include reason for missed deadline, root cause & corrective action(s)
§124.6 - Applicant must inform DDTC in writing of impending termination of Agreement not less than 30 days prior to expiration date	3	Upload notice with required information to D-Trade - Include reason for missed deadline, root cause & corrective action(s)
§124.16 - Retransfer authorization for unclassified technical data and defense services to member states of NATO and EU, Australia, Japan, New Zealand & Switzerland	2	



# DTAG Recommendation

- Make Agreement reporting/notification requirements consistent with other requirements:
  - Eliminate § 124.4(a) requirement “Deposit of signed agreements” and require the notification of initial export only to be consistent with § 123.22(b)(3)(i)
  - Eliminate § 124.4(a) requirement for notification on “not concluded status” and § 124.5 “decision not to conclude” to align with § 123.22 (c)(3) which states *“A license issued by DDTC but not used by the applicant does not need to be returned to DDTC, even when expired.”*
- Eliminate paper notifications by providing “block checks” in DECCS (*addressed in the March 30, 2017 Plenary under IT Modernization*)
  - Select “Ready to use Tab” for simultaneous notification of initial export
  - Select for termination of agreement to satisfy § 124.6 “Notice of termination”
- End State: All potential notification requirements identified under § 124.4 - § 124.6 satisfied by two “block checks”

A light blue silhouette of a world map is centered on a dark blue gradient background. The map shows the outlines of all major continents.

**QUESTIONS**





# Next Steps

- Working Group Charts will be posted to DDTC website
- White Papers posted at a later date
  - Details the deliberations of each group



# Questions

---

Please send your DTAG  
questions to Sandra Cross

[Sandra.Cross@hii-co.com](mailto:Sandra.Cross@hii-co.com)

A light blue world map is centered in the background of the slide. The map shows the continents in a slightly darker shade of blue against a lighter blue background. The text is overlaid on this map.

# **Defense Trade Advisory Group (DTAG)**

**Thank You!**