



# COMPLYING WITH ITAR CONTROLS LICENSE PREPARATION

9/19/2016



# AGENDA



- DSP License Types
- DSP-5 Overview
  - Scenarios/Purpose
  - Supporting Documentation
  - Transaction Flow
- Renewal/Replacement Licenses
- Amendments
- Retransfer/Re-export
- Proviso Reconsideration



# DSP LICENSE TYPES



- DSP-5 Permanent Export\*\*
  - DSP-6 Amendment\*\*
- DSP-73 Temporary Export\*\*
  - DSP-74 Amendment\*\*
- DSP-61 Temporary Import\*\*
  - DSP-62 Amendment\*\*
- DSP-85 Classified Transactions - **Paper Submission**
  - DSP-119 Amendment

\*\*D-TRADE only\*\*



# VALIDITY PERIOD FOR LICENSES



- Valid for maximum of 48 months/4 years
  - Exceptions:
    - Firearms authorization will be limited in duration based on foreign import certificate
    - Foreign person employment limited by work authorization
- A license expires whenever:
  - Total authorized quantity exhausted, or;
  - Total authorized value exhausted, or;
  - Expiration date reached



# DSP-5 PERMANENT EXPORT SCENARIOS/PURPOSE



- Defense Articles (hardware)
  - Only one ultimate foreign end-user
  - Must be supported by documentation from a foreign party to the transaction
  - Purpose and commodity blocks must be consistent with support documentation
  - Part 130 statement



# DSP-5 PERMANENT EXPORT SUPPORT DOCUMENTATION



- Purchase order, letter of intent, contract, end user statement, or other appropriate documentation
  - Commodity
  - Quantity
  - Price
  - End-use
  - End-user
- DSP-83 (Non Transfer and Use Certificate)
- Must be consistent to the information on license application



# DSP-5 PERMANENT EXPORT SUPPORT DOCUMENTATION



- Must be addressed to the U.S. applicant applying for the export license
- Must be provided by a foreign party to the transaction
- Must be in English
- Should not be over 1 year old
- Must have U.S. dollar value identified
- Cannot use "classified" terms or phrases



# DSP-5 PERMANENT EXPORT SCENARIOS/PURPOSE



- Technical Data
  - Marketing/bid and proposal
  - Plant Visit
  - Offshore procurement
- Defense Services – Exceptional circumstances!
  - Short-term training
  - Foreign Person Employment
- Can be multiple ultimate foreign end-users for technical data and defense services



# DSP-5 PERMANENT EXPORT SUPPORT DOCUMENTATION



- Technical Data
  - Copies of technical data OR sufficient information for DoD to conduct a technical review
- Defense Services
  - Letter requesting exception per 22 CFR 124.1(a) – DDTC discretion on approval
  - Description of services to be provided



# DSP-5 PERMANENT EXPORT SCENARIOS/PURPOSE



- Foreign Person Employment
  - Employment by a U.S. Person
    - Requires a DSP-5 from DDTC regardless of physical location, U.S. or abroad
    - Does cover interaction with other parties, U.S. or foreign with notification by employing person
    - No longer requires a TAA in addition to DSP-5
    - Ensure you submit all required support documentation



# DSP-73 TEMPORARY EXPORT LICENSE



- Series versus single departure
  - Quantity restored upon return to U.S.
- Can be multiple temporary foreign end-users
- Encourage limiting transactions to one geographic region (Europe, Middle East, South America, *etc.*)
- Purpose and commodity blocks must be consistent with request



# DSP-73 TEMPORARY EXPORT LICENSE: SUPPORT DOCUMENTATION



- Often initiated by U.S. applicant so there is no foreign support documentation
- Block 23 or attached cover letter
  - Summarize the transaction
  - Explain roles of the parties to the transaction
- Descriptive literature/technical data on commodity being exported
- Additional documentation may be required based on commodity (*i.e.*, booth registration)



# DSP-61 TEMPORARY IMPORT LICENSE



- 22 CFR 123.3(a)(1) – Temporary imports of unclassified defense articles that are to be returned directly to the country from which they were shipped to the United States. Corresponds to Block 23(b) option 1:
  - Overhaul/repair
  - Modification/upgrade
  - Demonstration/Trade Shows (foreign-manufactured goods)
  - Military exercises at U.S. bases/ranges
- Single entry and exit authorized
  - Per line item
  - Cannot exceed approved quantity/scope



# DSP-61 TEMPORARY IMPORT LICENSE



- 22 CFR 123.3(a)(2) – Temporary import of unclassified defense articles in transit to a third country. Corresponds to Block 23(b) option 2:
  - Transshipment
- Single entry and exit authorized
- Block 23(a) option “other” includes transshipment, trade shows, demonstration and military exercises



# DSP-61 TEMPORARY IMPORT LICENSE: SUPPORT DOCUMENTATION



- 22 CFR 123.3(a)(1): Return to Original Country
- Documentation from foreign party requesting overhaul/repair/modification;
- Documentation identifying the U.S. or foreign party maintaining control of defense articles in U.S. for trade show and/or demonstration;
- Documentation from foreign party identifying participation in a military exercise



# DSP-85 CLASSIFIED TRANSACTIONS SCENARIOS/PURPOSE



- Classified transactions:
  - Permanent/Temporary Exports
  - Temporary Imports
- Defense services must be under an agreement
- Purpose and commodity blocks must be consistent with supporting documentation
- Facility Security Clearance Code (FSC), level and date for all parties to the transaction (some exceptions)
- Defense Security Service (DSS) office



# DSP-85 CLASSIFIED TRANSACTIONS



## Supporting Documentation

- Same documentation as the unclassified DSP licenses

## Application Submission

- Still a paper process!
- DSP-85 is a form-fillable .pdf
  - No longer accepting carbon form
- Original signature not required in Block 24
- DSS Retains the Original Version



# DSP-83 NON-TRANSFER AND USE CERTIFICATE



- 22 CFR 123.10 and 124.10
  - SME, classified hardware or technical data
  - Signed by foreign consignee, foreign end-user and applicant
  - Can require for any application (22 CFR 123.10)
  - Can require 'appropriate authority of the government of the country of ultimate destination also execute'
  - Required for exemption use, too



## DSP-83 NON-TRANSFER AND USE CERTIFICATE



- Be sure that your DSP-83 matches all of your other documents (i.e. purchase order, license application).
- DSP-83 needs to be submitted with hardware licenses for SME
- When signing the DSP-83, the applicant is certifying that they have made no changes to the form after it was signed by the foreign parties.



# DSP-5 PERMANENT EXPORT SUPPORT DOCUMENTATION



- Foreign Person Employment
  - Resume
  - Copy of Passport Photo Page
  - Work Authorization, if applicable
  - Job Description
  - Description/copies of technical data
  - Kept by applicant:
    - Non-disclosure Agreement (NDA)
    - DSP-83, as applicable



# DSP-5 PERMANENT EXPORT TRANSACTION FLOW SCENARIO #1



**U.S. Seller / Applicant**



**Source or Manufacturer of Commodity**



**U.S. Consignor / Freight Forwarder**



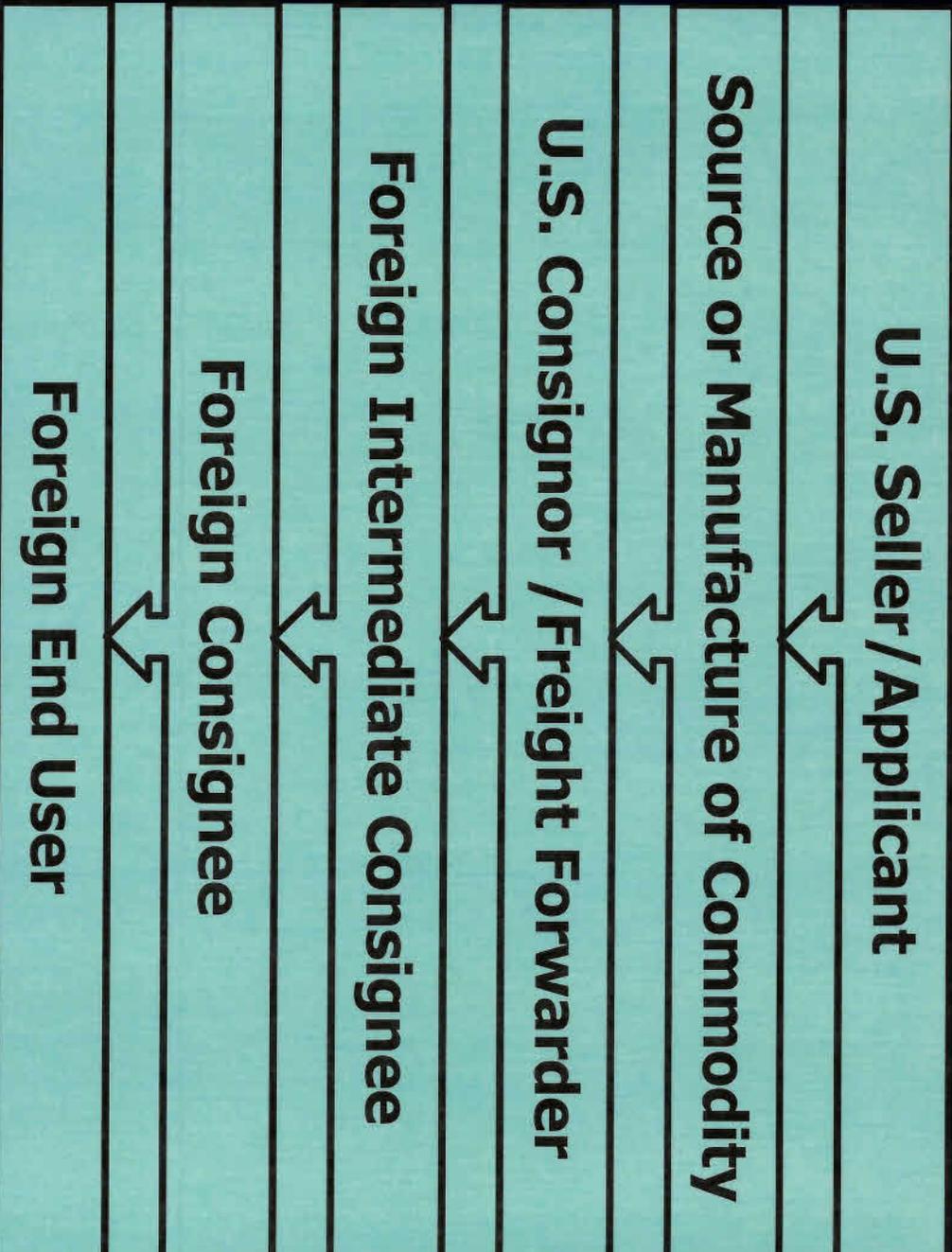
**Foreign Intermediate Consignee**



**Foreign End User**



# DSP-5 PERMANENT EXPORT TRANSACTION FLOW SCENARIO #2





# DSP-5 PERMANENT EXPORT TRANSACTION FLOW SCENARIO #3



**U.S. Seller/Applicant**



**Source or Manufacture of Commodity**



**U.S. Consignor/Freight Forwarder**



**Foreign End User**



# PREPARING YOUR DSP-5 UNDER EXPORT CONTROL REFORM



- Applicant is responsible for choosing correct USML Category (ies) and Sub Category (ies)
- Support documents remain the same
- Commodities or software described in 120.41(b)(1-5) are not ITAR-controlled items can be referenced with paragraph (x) when used "in or with" ITAR controlled items
- Gas Turbine Engines are controlled solely under USML category XIX
- Aircraft IMUs are found in VIII (e) and all others in category XII(d)



# DSP-73 TEMPORARY EXPORT LICENSE



- Temporary export of defense articles only. Export of technical data is a permanent export.
- \*Exception: Software loaded on a computer or manuals/operating instructions for trade show/demonstration
  - Repair and/or replacement
  - Test equipment/testing and "fit-checks"
  - Demonstration/marketing
  - Trade shows



# RENEWAL/REPLACEMENT LICENSES



- Renewals submitted for review 60 days prior to expiration of current authorization
  - Copy of current authorization
  - Cover letter explaining need for continued activity and shipment summary for unshipped balances
- Repair/Replacement license submitted as needed and should emphasize need for replacement of defective parts, components, and accessories.



# AMENDMENTS



- 22 CFR 123.25(b) changes considered:
  - Addition/change of U.S. freight forwarder/consignor
  - Addition/change of source/manufacturer
  - Change due to obvious typographical error
  - Addition/change of foreign intermediate consignee if party is only transporting equipment and will not process (integrate, modify, etc.)



# AMENDMENTS



- All other changes require a new license per 22 CFR 123.25(c):
  - Additional quantity
  - Changes in commodity (includes USML)
  - Country of ultimate destination, end-use or end-user
  - Add foreign consignee and foreign intermediate consignee (if more than transporting equipment)
  - Extension of duration



## RETRANSFER/RE-EXPORT (GENERAL CORRESPONDENCE)



- 22 CFR 123.9(a) prior written approval of DDTC for any changes and applies to shipment under license or exemption
- Request submitted by U.S. or foreign person
- Must meet the requirements of 22 CFR 123.9(c)
- If hardware is SME must include a DSP-83
- Exception for NATO (governments and agencies), Australia, New Zealand, Japan, South Korea at 22 CFR 123.9(e)
- Ensure updated USML category (ies) and sub categories are listed on request



# PROVISO RECONSIDERATIONS



- Provisos must be satisfied prior to export
- Applies to all parties to the transaction
- Provisos are imposed to:
  - Permit exports that might otherwise be denied
  - Establish level technology release
  - Protect against diversion and unauthorized use
- Request for clarification, revision or deletion of a proviso imposed on an authorization:
  - Replacement authorization
  - Letter from applicant with justification or rationale to include recommended change



# QUESTIONS