

STATE DEPARTMENT EXPANDS ITAR 126.4 EXEMPTION FOR US GOVERNMENT CONTRACTORS

On April 19, 2019, the State Department's Directorate of Defense Trade Controls (DDTC) issued a long-delayed revision to the International Traffic in Arms Regulations (ITAR) licensing exemption for shipments by or for the US Government, 22 CFR 126.4. Historically the ITAR 126.4 "by or for" exemption was narrowly tailored to a few situations:

1. Defense articles, technical data and defense services could be temporarily exported by the US Government for official use by a US Government agency or for a foreign assistance or cooperative project or sales program;
2. Defense articles, technical data and defense services could be permanently exported by the US Government for carrying out military assistance programs; and
3. Defense articles, technical data and defense services could be permanently exported by parties other than the US Government for end use by a US Government agency, if there was not time to obtain an export license or US Government bill of lading and the export was specifically authorized by a US Government agency in a contract or other written direction. Material exported in this way could not be transferred to any foreign person after export.

The exemption, while helpful for purely governmental exports, was of limited use for contractors supporting US Government activities overseas. Only the third option allowed exports by the private sector, and it was limited to cases of extreme urgency and where only US persons would have access to the material. Both of these constraints reduced its application considerably.

The new ITAR 126.4 replaces these provisions with an exemption authorizing a broader range of exports. Specifically, it allows the following transfers without a license:

1. Permanent exports **by the US Government** for its own use, for use by contractors working on US Government facilities or subject to US Government oversight, or for carrying out cooperative activities or foreign assistance programs;
2. Permanent exports **by parties other than the US Government** for delivery to a **US Government agency** at that agency's request;

3. Permanent exports **by parties other than the US Government** for delivery to **end users other than the US Government** at the written request or direction of the US Government;
4. Permanent exports **by parties other than the US Government** pursuant to a foreign assistance or cooperative project or sales program, provided the exporter is acting on behalf of the US Government agency authorized to deliver those exports under the relevant program; and
5. **Returns** to the United States of defense articles exported under the exemption.

These changes should make the ITAR 126.4 exemption more broadly useful for contractors. In particular, the changes authorize exports in support of US Government programs even when the export is not urgent, when the end user is not the US Government and where non-US persons may have access to the exported materials. US contractors working to support US Government programs may find the exemption a welcome alternative to specific licensing going forward.

The new rules are effective immediately, and can be found at [84 FR 16398](#).

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