

Defense Technology Security Administration

"ENSURING THE EDGE"



DTSA Brief DOD ITAR Exemption Guidelines



POLICY

Roles Responsibilities



- **State Department, PM DDTC-P**
 - Establishes regulatory interpretations of the ITAR
 - Holds issuing service/agency and exporter liable for ITAR compliance
 - Reviews Exemption Certificate documentation in USXports
- **Defense Technology Security Administration (DTSA)**
 - DoD Lead for the review and regulatory revision for rules referred by Department of State or the Department of Commerce
 - Implementation oversight of the DoD ITAR Exemption Guidelines
 - Serve as focal point for DoD inquiries with State on interpretation of the ITAR exemptions
- **DoD User Community (e.g. U.S. Army, Navy, Air Force)**
 - Knowledge and compliance with the ITAR
 - Management and oversight of exemption validations
 - Required to document Exemption Certificate
 - Ensure disclosure release of information is authorized



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Overview of the Guidelines

What's new



- **Replaces “Certify” with “Validation.”**
 - “Certification” implied approval
 - “Validate” means to check for accuracy. DoD organizations are simply “validating” the company’s use of the exemption is within the scope or pursuant to DoD’s written direction
 - The ultimate decision to execute an export still resides with a company’s empowered official
- **Previously, certifications were limited to one year.**
 - Validation period can now match the program supported
- **Implements annual review of the Guidelines**



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Guidelines Scope



- **These guidelines:**
 - provide guidance on how to “use” exemptions
 - are intended as guidance for DoD organizations only
 - do not interpret or supersede the ITAR
 - do not grant permission to export
- **Validating the use of the exemptions is at DoD’s discretion.**
- **If a DoD organization implements an exemption outside of the guidelines, both the DoD organization and the exporter will be liable to the Department of State.**



126.4 DOD Best Practices



<u>Export Scenario</u>	<u>DOD Best Practices</u>
§ 126.4(a) By a USG entity	<i>Usually self-certified</i> by the exporting DoD activity; MILDEPS provides reach-back guidance to activities' counsel
§ 126.4(b)(1) By non-USG entity to <i>the USG</i> overseas at USG <i>request</i>	DoD recommends exporters determine for themselves whether a given "request" is sufficient to self-certify use of this exemption. A valid "request" must originate with the cognizant DoD authority for the related activity. A "request" <u>does not</u> need to be written, however, as a best practice, DoD recommends that the exporter document the request to ensure compliance with the §§ 123.22 and 123.26 Recordkeeping requirement for exemptions..
§ 126.4(b)(2) By non-USG entity to a <i>foreign entity</i> at USG <i>written direction</i>	The " written direction " required under ITAR § 126.4(b)(2) must be in writing . A valid "written direction" document must originate from the cognizant DoD authority for the proposed activity. If an exporter is unsure whether their written direction (e.g. contract) qualifies under this section, as a best practice, DoD recommends that the exporter seek written validation from the DoD Component rather than assume their particular contract constitutes "written direction."
§ 126.4(b)(2) By non-USG entity to a <i>foreign entity</i> , pursuant to an <i>International Agreement or Arrangement</i>	Does not require a "request" or "written direction" but is NOT open-ended ; DoD strongly recommends that non-USG entities coordinate closely with the cognizant USG officials to ensure that the contemplated scope is authorized for release under § 126.4(a)(1-4).



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Important notes



- The DoD “validation” letter does not grant the exporter permission to invoke a particular exemption. That decision falls solely under the exporter’s responsibility.
- The use of an exemption does not mean less documentation is required; rather there is a higher level of due diligence placed on the empowered official to ensure compliance under the ITAR.
- Documents to support the use of an exemption should closely mirror that which exporters would provide under § 123.28 *Scope of a License* and § 123.26 *Recordkeeping for Exemptions*.