Frequently Asked Questions Related to Defense Services and U.S. Persons Abroad

1. I am a U.S. citizen and I want to work for a foreign entity that works with defense articles. Does the ITAR regulate this activity even if the entity is physically located outside the United States?

It will depend on the individual circumstances and what your role is in the entity. The ITAR regulates the furnishing of defense services. You would be furnishing a defense service as defined in ITAR §120.32(a) if you, as a U.S. person, provide assistance to a foreign entity in a foreign country *and* that assistance relates to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of a defense article; furnish technical data; or provide military training to foreign units and forces.

Question/Response last modified: 7 December 2022

2. If I am a U.S. person providing a defense service to a foreign entity, do I need to register with DDTC?

That will depend on whether you are permanently residing in the United States or abroad. Registration is not required if you both physically reside and provide the defense service outside the United States. Under ITAR §122.1(a), registration is required only for persons who engage *in the United States* in the business of furnishing defense services or manufacturing, exporting, or temporarily importing defense articles. If at any point you engage in the United States in the business of furnishing defense services (to include remote work/telework), you would be required to register with the Department unless otherwise exempted from the registration requirement as described in ITAR §122.1(b).

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3. I am a U.S. person and I want to work for a foreign entity and furnish a defense service (as described under ITAR §120.32(a))—for example, assisting in the design or maintenance of a defense article—for that entity in a foreign country. Do I need DDTC authorization?

Yes, a U.S. person who wishes to furnish a defense service is required to seek authorization from DDTC pursuant to ITAR §124.1(a) prior to furnishing such a service, regardless of whether that service is to be furnished within or outside the United States.

Question/Response last modified: 6 September 2022

4. If I do need DDTC authorization to furnish a defense service to my foreign employer, what kind of authorization do I apply for?

Although ITAR §124.1 provides for authorization by "manufacturing license agreement" or "technical assistance agreement," DDTC may at its discretion approve the furnishing of defense services described in ITAR §120.32(a) by granting an authorization under ITAR §120.22(b) for individuals located outside the United States. In most cases, DDTC will authorize defense services furnished by U.S. persons to foreign employers via general correspondence and pursuant to §120.22(b).

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5. What information should a U.S. person submit to DDTC for an ITAR §120.22(b) authorization to furnish a defense service to a foreign employer?

A USPAB authorization request consists of the following elements:

- Form DS-6004
- Submission letter
- Resume
- Detailed job description (if not included in the submission letter)
- ITAR §126.13(a) certification
- Other supporting documentation

For more detailed information, refer to the "Guidance for USPAB Authorization Requests" document located on the DDTC website at https://www.pmddtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=f9ccfe96dbb4130044f9ff621f961929.

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6. How should an ITAR §120.22(b) request for authorization be submitted?

In order to facilitate the most expeditious review of a USPAB authorization request, submit the Form DS-6004 via the Defense Export Control and Compliance System (DECCS) website (https://deccs.pmddtc.state.gov/deccs). Applicants do not need to be registered with DDTC in order to use DECCS to submit a DS-6004.

For instructions on completing a DS-6004 for USPAB requests specifically, refer to Part 4 of the "Guidance for USPAB Authorization Requests" document located on the DDTC website at https://www.pmddtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=f9ccfe96dbb4130044f9ff621f961929.

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7. Can a third party, such as my prospective employer, a U.S. affiliate of my prospective employer, or an attorney, submit an authorization request under ITAR §120.22(b) on my behalf?

Third parties may help facilitate the submission of ITAR §120.22(b) requests. However, third parties may not submit "on behalf of" a USPAB. The applicant of a USPAB authorization request is the **U.S. PERSON**. DDTC grants authorization for the U.S. person to furnish defense services, **NOT** for a foreign employer to hire a U.S. person.

Furthermore, authorizations are issued to the individual U.S. person seeking to furnish defense services, not to the prospective employer. The U.S. person is responsible for ensuring compliance with the ITAR as the exporter of a defense service.

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8. Can authorizations under ITAR §120.22(b) be submitted for multiple potential employees at one time?

No. Each U.S. person is an individual applicant and requires an individual authorization.

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9. What is the validity period for authorizations issued under ITAR §120.22(b)?

Four years unless otherwise described in the authorization.

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10. If the job description changes for the U.S. person who holds an ITAR §120.22(b) authorization, is a new authorization required?

If there is any change in the scope of the defense services to be furnished by the U.S. person, including the technical scope of work, the addition of defense articles, or a change in recipients of defense services, a new authorization under §120.22(b) will be required.

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11. I have an authorization from DDTC pursuant to ITAR §120.22(b) to perform defense services abroad and now wish to change employers. Can my authorization transfer over to my new prospective employment if my job description does not change?

No. Adjudication decisions are based on the entirety of the applicant's submission. A change in employer will require a new authorization even if the job description and defense services to be provided do not change.

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12. Do the nationalities of my prospective foreign employer's customers affect the requirements for registration and licensing?

The nationalities of the prospective foreign employer's customers do not affect the registration or authorization requirements applicable to a U.S. person. However, such factors may be assessed by DDTC in determining whether to issue an authorization.

Question/Response last modified: 14 February 2020

13. Does a U.S. person working on a foreign-origin defense article render that foreign defense article subject to the ITAR by virtue of their involvement?

The mere presence or involvement of a U.S. person during the design, development, etc. of a foreign-origin defense article, or the provision of defense services that are authorized via a mechanism other than a TAA or MLA, does not subject the resultant foreign-origin defense article to the ITAR or its reexport/retransfer requirements. However, consistent with ITAR §124.8(a)(5), defense articles "produced or manufactured from" technical data or defense services provided pursuant to a TAA or MLA cannot be transferred to a foreign person, except pursuant to ITAR §126.18, as specifically authorized, or with the prior written approval of the Department of State.

Question/Response last modified: 14 February 2020

14. What is DDTC's policy with respect to compliance with the European Union General Data Protection Regulation (GDPR)?

Foreign regulatory compliance requirements, including the GDPR, arise independently from the ITAR and do not modify its requirements.

Question/Response last modified: 14 February 2020

15. If I am furnishing defense services to my current employer without an authorization, what can I do?

U.S. persons who believe they may have furnished or may be furnishing defense services without authorization may submit a voluntarily disclosure to the Office of Defense Trade Controls Compliance (DTCC) pursuant to ITAR §127.12(c). Such disclosures should contain all the information requested in ITAR §127.12(c). Persons may still apply for a USPAB authorization while their disclosure remains under DTCC review.

Question/Response last modified: 7 December 2022

16. I have an existing USPAB authorization. If I travel to the United States for a technical meeting or a trade show as part of my employment and furnish a defense service to a foreign person while in the United States, is it covered by my authorization?

No. Pursuant to ITAR §122.1(a), any person who engages *in the United States* in the business of furnishing defense services is required to register with the Directorate of Defense Trade Controls. If

you furnish a defense service to a foreign person in the United States, you are required to register with the Directorate of Defense Trade Controls and obtain a separate authorization.

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17. Does a USPAB authorization allow me to telework?

It depends on your residency status and your physical location while you are teleworking. An authorization granted pursuant to ITAR §120.22(b) is intended for individuals who permanently reside and work overseas. It does not authorize you to provide defense services while either physically located in the United States or while permanently residing in the United States.

For further information, see the following FAQs:

- If I am a U.S. person providing a defense service to a foreign entity, do I need to register with DDTC?
- I have an existing USPAB authorization. If I travel to the United States for a technical meeting or a trade show as part of my employment, is it covered by my authorization?

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18. I work on a project that is subject to an existing Technical Assistance Agreement (TAA). Do I need a USPAB authorization?

Your USPAB authorization is separate and distinct from the TAA. The TAA authorizes the applicant on the TAA to export technical data or furnish defense services to your foreign employer under the conditions of the TAA. It does NOT authorize you to furnish defense services to your employer or any other foreign party unless you are a signatory to the TAA. If you are not a signatory, you will need a USPAB authorization in order to provide defense services to your foreign employer.

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19. I have a USPAB authorization and work on a project that is subject to an existing Technical Assistance Agreement (TAA). If the TAA is amended, do I need to request a new authorization?

It depends on whether the amendment affects the scope of your USPAB authorization. Any change to the scope of your authorization, to include a change in the defense services to be furnished by you, the technical scope of work you perform, or the addition of defense articles or recipients of defense services, will require a new USPAB authorization.

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20. I work on a project that is subject to an existing Technical Assistance Agreement (TAA) which is in the process of being amended to add additional parties. Once approved, my job will require me to provide defense services to these new parties. Can I request authorization for

these parties even though they have not yet been approved?

Yes. You may request authorization for actual or potential recipients of defense services. However, it is your responsibility to communicate with your employer to ensure that you are working within the bounds of both your USPAB authorization and any applicable TAA. If the TAA amendment is not executed, your employer may not be authorized to transfer defense articles, including technical data, to the potential parties, even if they are authorized to receive defense services from you personally in your USPAB authorization.

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21. DECCS says that my authorization has been approved but I have not yet received my authorization letter. What do I do?

Authorization letters are electronically sent to the to the applicant's email address as provided in the application. If it has been more than a week since the case closed in DECCS, check your junk mail folder. Authorization letters will come from DDTCPaperCase@state.gov. If after checking your spam folder you find that you still have not received the authorization, email the USPAB Case Status Orgbox at PM-DTCL-USPAB-Status@state.gov.

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22. My job requires me to oversee vendors and subcontractors. Do I need to request authorization to interact with these parties?

It depends on whether you will be furnishing a defense service to these parties. Defense services furnished to any foreign third parties to include vendors, subcontractors, actual and potential customers, or other foreign entities with whom you may work directly, even when done on behalf of your foreign employer, are considered defense services to those parties and require authorization. For instance, engaging in technical discussions with a customer or subcontractor in which you furnish assistance in the development of a defense article would be considered the furnishing of a defense service to both your foreign employer and the customer/subcontractor. Authorization for third parties may be requested by specifically identifying these parties in your application as recipients of defense services.

If you are unsure whether the activities in which you will engage constitute a defense service, you may submit a commodity jurisdiction request.

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