

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 company 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 § 120.9(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.

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

No, registration is not required if you are physically located 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, you would be required to register with the Department unless otherwise exempted.

- 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 § 120.9(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*.

- 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 § 120.9(a) by granting an authorization under ITAR § 126.9(b). In most cases, DDTC will authorize defense services furnished by U.S. persons to foreign employers via general correspondence and pursuant to §126.9(b).

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5. What information should a U.S. person submit to DDTC for an ITAR § 126.9(b) authorization to furnish a defense service to a foreign employer?

In order to consider licensing a U.S. person to furnish defense services to his or her foreign employer outside the United States in accordance with ITAR § 126.9(b), the U.S. person applicant should submit the following information to DDTC's Licensing Division:

- (a) A description of the scope of the request, including:
 - (i) A description of the program or defense article that is the subject of the proposed defense service; and
 - (ii) A description of the defense services to be provided (ITAR § 120.9(a)).

- (b) A description of the defense service provider's ties to the United States, including:
 - (i) Any employment/education in the United States;
 - (ii) A full description of any previous work activities or coursework that pertain to USML-controlled defense articles or defense services; and
 - (iii) Information about any prior work on any U.S. government program(s), including the name of the program(s).

In addition to the above information, it is recommended that applicants submitting such a request for authorization provide a copy of their resume and a detailed job description for the position for which the authorization is being requested.

6. How should an ITAR § 126.9(b) request for authorization be submitted?

ITAR § 126.9(b) requests for authorization should be addressed and submitted in hardcopy to DDTC's Licensing Division as General Correspondence requests (see the "General DDTC Information Contacts" section of the DDTC Contacts page of our website for address information).

7. Can a non-U.S. person who is a prospective employer submit an authorization request under ITAR § 126.9(b) on behalf of the prospective U.S. person employee?

Non-U.S. person employers may help facilitate the submission of ITAR § 126.9(b) requests. However, authorizations will be 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 § 126.9(b) be submitted for multiple potential employees at one time?

Similar applications may be grouped and their submission facilitated by a prospective employer. However, the individual U.S. person employees are responsible for ensuring compliance with the ITAR as the exporters of a defense service and DDTC Licensing will issue individual authorizations to each U.S. person, not to the foreign employer.

9. What is the validity period for authorizations issued under ITAR § 126.9(b)?

Four years unless otherwise described in the authorization.

10. If the job description changes for the U.S. person who holds an ITAR § 126.9(b) authorization is a new authorization required?

If there is a change in the defense services to be furnished by the U.S. person such that the approval granted by DDTC no longer reflects the defense services to be furnished, a new authorization under § 126.9(b) will be required.

11. 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.

12. 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.

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13. 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.

14. How does the current authorization process for U.S. persons furnishing defense services abroad relate to the 2015 proposed rule (80 FR 30001, May 26 2015) on this topic?

The 2015 proposed rule on this topic was never adopted as a final rule and has no regulatory effect. To the extent that exporters or foreign employers undertook a good faith effort to guide their actions based on the provisions of the proposed rule, DDTC will generally view any controlled activity in that light.

15. Will DDTC provide a "safe harbor" period for U.S. persons who request authorization for defense services they are currently performing without a license?

DDTC encourages regulated persons to obtain all required authorizations for their activities, given the U.S. national security and foreign policy reasons for which defense services are regulated. U.S. persons who believe they may have been furnishing defense services without authorization, and request authorization for current or future defense services, may disclose their activities in conjunction with their request for authorization. Such disclosures will be treated as an initial notification in accordance with ITAR § 127.12(c) and should contain the information requested in that section. To the extent that DDTC learns of the prior unauthorized furnishing of defense services in a disclosure, the facts will be reviewed subject to the totality of the facts and circumstances. DDTC will consider the non-adoption of the 2015 proposed rule, as well as the recent promulgation of this FAQ guidance and good faith efforts by an applicant to comply with the ITAR.

16. If I request authorization for defense services that describe my current employment, do I need to cease the activities that constitute defense services until I receive authorization from DDTC?

U.S. persons who believe they may have been furnishing defense services without authorization and request authorization for current or future defense services may disclose their activities in conjunction with their request for authorization. Such disclosures will be treated as an initial notification in accordance with ITAR § 127.12(c) and should contain the information requested in that section. In such cases, the applicant may proceed with the described activities on a provisional basis unless otherwise notified by DDTC.