

This guidance is effective upon the entry into force of the Treaty. A rule document will be published in the Federal Register announcing the effective date. Until such time, please monitor <http://www.pmdtc.state.gov> for effective date.

DEPARTMENT OF DEFENSE • DEFENSE SECURITY SERVICE
27130 Telegraph Road, Quantico, VA 22134-2253



INDUSTRIAL SECURITY

LETTER

Industrial Security Letters (ISLs) are issued periodically to inform cleared contractors, user agencies and DoD activities of developments relating to industrial security. The contents of these letters are for information and clarification of existing policy and requirements. Suggestions for Industrial Security Letters are appreciated and should be submitted to the local Defense Security Service (DSS) cognizant industrial security office. Articles and ideas contributed will become the property of DSS. Inquiries concerning specific information in Industrial Security Letters should be addressed to the cognizant DSS industrial security office.

ISL 2013-03

March 20, 2013

Transfers of Defense Articles to Australia without a License or Other Written Authorization

The U.S. Government signed a treaty with the Government of Australia Concerning Defense Trade Cooperation on September 5, 2007. This treaty provides a comprehensive framework for certain exports from the United States to Australia and vice versa, as well as certain transfers within and between the United States (U.S.) and Australia (AUS) of certain classified and unclassified Defense Articles without a license or other written authorization. This Industrial Security Letter (ISL) promulgates updated guidance for information and interpretation of existing paragraphs in Chapters 4 and 10 of the National Industrial Security Program Operating Manual (NISPOM) based on the requirements of that Treaty, for exports and transfers of Defense Articles to Australia. Specific changes to Chapters 4 and 10 of the NISPOM will be published shortly.

Part 126 of the International Traffic in Arms Regulations (ITAR) has been amended to add a new exemption in §126.16 to implement the Treaty, and to revise Supplement No. 1 to Part 126, which identifies those Defense Articles exempt from the scope of §126.16, as well as §126.5 and §126.17. The guidance provided in this article applies to contractors registered with the Department of State, Directorate of Defense Trade Controls (DDTC) and who are eligible to export.

Definitions:

Defense Articles are those articles, services, and related technical data, including software, in tangible or intangible form, listed on the United States Munitions List (USML). Defense Articles exempt from the scope of §126.16 of the ITAR are identified in Supplement No. 1 to Part 126 of the ITAR.

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Defense Articles fall under the scope of §126.16 when they are in support of:

1. U.S. and AUS combined military or counter-terrorism operations;
2. U.S. and AUS cooperative security and defense research, development, production, and support programs;
3. Mutually agreed specific security and defense projects where the Government of Australia is the end-user; or
4. U.S. Government end-use.

A listing of approved operations, programs, projects and end-uses is available on DDTC's website under the Treaty tab at (<http://pmdtdc.state.gov/>).

AUS Community consists of the Government of Australia entities and Australian non-governmental facilities identified on the DDTC website (<http://pmdtdc.state.gov/>) at the time of export or transfer.

Marking:

Contractors are required to mark Defense Articles that fall under the scope of the Treaty prior to transferring from the United States to Australia as follows:

Treaty with the Government of Australia

Classified U.S. Defense Articles will be marked:

*//CLASSIFICATION LEVEL USML//REL AUS AND USA TREATY
COMMUNITY//*

For example, for Defense Articles classified SECRET, the marking will be
“//SECRET USML//REL AUS AND USA TREATY COMMUNITY//”

All other standard classification markings in accordance with NISPOM Chapter 4, Section 2 will apply.

Unclassified U.S. Defense Articles will be marked

//RESTRICTED USML//REL AUS AND USA TREATY COMMUNITY//

When U.S.-origin Defense Articles are returned to a member of the United States, any Defense Articles marked or identified as RESTRICTED, for the purposes of the Treaty, will be considered UNCLASSIFIED and the marking or identification will be removed.

The following notice shall be included (e.g., as part of the bill of lading) whenever defense articles are exported in accordance with the provisions of these treaties:

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"These U.S. Munitions List commodities are authorized by the U.S. Government under the U.S.-[Australia or United Kingdom, as applicable] Defense Trade Cooperation Treaty for export only to [Australia or United Kingdom, as applicable] for use in approved projects, programs or operations by members of the [Australian or United Kingdom, as applicable] Community. They may not be retransferred or reexported or used outside of an approved project, program, or operation, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State."

Defense articles (as defined in ITAR §120.6) (other than technical data) shall be individually labeled with the appropriate identification; or, where such labeling is impracticable (*e.g.*, propellants, chemicals), shall be accompanied by documentation (such as contracts or invoices) clearly associating the defense articles with the appropriate markings;

Technical data (as defined in ITAR §120.10) (including data packages, technical papers, manuals, presentations, specifications, guides and reports), regardless of media or means of transmission (*i.e.*, physical, oral, or electronic), shall be individually labeled with the appropriate identification detailed; or, where such labeling is impracticable shall be accompanied by documentation (such as contracts or invoices) or oral notification clearly associating the technical data with the appropriate markings; and

Defense services (as defined in ITAR §120.9) shall be accompanied by documentation (contracts, invoices, shipping bills, or bills of lading) clearly labeled with the appropriate identification.

Transfers:

In accordance with NISPOM Chapter 10, Section 4, all Defense Articles that fall under the scope of the Treaty must be transferred from the U.S. point of embarkation through channels approved by both the United States and Australia.

For transfers of Defense Articles as freight, the contractor will prepare a transportation plan. For transfers of classified U.S. Defense Articles, a freight forwarder must have a valid facility security clearance (FCL) and storage capability at the appropriate level. For unclassified U.S. Defense Articles that are transferred as freight, a freight forwarder is not required to be cleared.

Records:

Contractors will maintain records of exports and transfers of Defense Articles falling under the scope of the Treaty for a minimum of five years. Records will be made available to the Defense Security Service (DSS) upon request. The records will contain the following information (as required by ITAR §126.16(l)(1)):

1. Port of entry/exit;
2. Date of export/import;
3. Method of export/import;

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4. Commodity code and description of the commodity, including technical data;
5. Value of export;
6. Reference to ITAR §126.16, and justification for export under the Treaty;
7. End-user/end-use;
8. Identification of all U.S. and foreign parties to the transaction;
9. How export was marked;
10. Security classification of the export;
11. All written correspondence with the U.S. Government on the export;
12. All information relating to political contributions, fees, or commissions furnished or obtained, offered, solicited, or agreed upon as outlined in ITAR §126.16(m);
13. Purchase order or contract;
14. Technical data actually exported;
15. The Internal Transaction Number for the Electronic Export Information filing in the Automated Export System;
16. All shipping documentation (including, but not limited to the airway bill, bill of lading, packing list, delivery verification, and invoice); and
17. Statement of Registration (Form DS-2032).