

ITAR MATERIAL CHANGE AND REGISTRATION RENEWAL GUIDE AND CHECKLIST

Any U.S. company that manufactures, exports, or temporarily imports items or performs defense services that are controlled under the International Traffic in Arms Regulations (ITAR) is required to register with the U.S. Department of State Directorate of Defense Trade Controls (DDTC) and keep that registration current. *Current* in the context of the ITAR means not only the company information that is current at the time the registration is initially submitted, but the information in the registration must accurately reflect the registered company's current information at any point in the company's timeline. When certain changes occur within the registered company, such as a change of control, a merger or acquisition, or a change in executive leadership, those changes must be reported to DDTC and the company's ITAR registration must be updated. At a minimum, ITAR registration must be renewed annually.

This Guide provides a summary and checklist of some common types of company changes that require notice to DDTC and the actions that must be taken to keep ITAR registration current.

5-Day Material Change Notice

Written notification to DDTC is required within **5 days** when any of the below Triggering Events occur to:

- i. The registered company, parent company, or any subsidiary or affiliate listed in the DS-2032 Statement of Registration (ITAR Registration); **or**
- ii. The registered company's chief executive officers, presidents, vice presidents, secretaries, partners, members, or other senior officers or officials (such as comptroller, treasurer, general counsel) listed in the ITAR Registration; **or**
- iii. Any member of the registered company's board of directors or any member of the board of directors of the parent, subsidiaries, or affiliates listed in the ITAR Registration:

Triggering Events:

- A change to any of the following information contained in the ITAR Registration:
 - Registered company name;
 - Registered company address;
 - Registered company's legal organization structure;

- Registered company's ownership or control (*for changes of ownership or control to a foreign person or entity, see below additional instructions*);
- Registered company establishes, acquires, or divests any U.S. or foreign subsidiary or affiliate that is engaged in the manufacture or export of defense articles or defense services; or,
- Registered company's board of directors, senior officers, partners, or owners; **or**,
- Any of the above-listed business entities or persons are charged, indicted, or convicted of violating any of the criminal statutes listed in ITAR §120.27 *U.S. Criminal Statutes*; **or**
- Any of the above-listed business entities or persons violate a foreign criminal law on exportation of defense articles where conviction under such law carries a minimum term of imprisonment of greater than 1 year; **or**
- Any of the above-listed business entities or persons becomes ineligible to contract with, or to receive an export license or other approval to export or temporarily import ITAR-controlled articles or services from any U.S. Government agency.

Required Actions Checklist:

To create a material change notice:

- Prepare a Material Change Notification Letter to DDTC. The letter should be on company letterhead and signed by a senior officer.
 - a. If the Material Change is due to a merger, acquisition, or divestiture, include:
 - i. The new company name and all previous company names being disclosed; and,
 - ii. The ITAR Registration Number that will survive and any Registration Numbers that will be discontinued (if applicable);
- Determine if there will be any impact on existing ITAR licenses or agreements. If so, prepare a detailed list of all affected licenses or agreements and include that information in the Material Change Notification Letter.

Note: To amend existing ITAR licenses and agreements to reflect a U.S. party name change requires a specific type of notification to DDTC known as a "General Correspondence." Any licenses not identified on the list to DDTC and in the General Correspondence will be considered invalid by DDTC.

- Log into the registered company's ITAR Registration in the Defense Export Control and Compliance System (DECCS).

- a. In the Registration, go to Tab 2 and select “Amend.”
 - b. Select the appropriate Material Change Type(s) in the drop-down menu.
 - c. Make the applicable changes to the Registration in the various tabs in DECCS.
- Attach any additional documentation that may be needed to further explain the Material Change request. For example:
 - Material Change Notification Letter
 - List of affected ITAR licenses or agreements
 - Amended Articles of Incorporation
 - Legal documentation (e.g., copy of indictment or judgment/conviction; notice letter of suspension or debarment)
 - Permanent residence card or U.S. visa for all non-U.S. persons involved in the change
 - Liquidation or bankruptcy documents.

Change of Control to Foreign Person or Entity

In the event ownership or control of a registered company is to be transferred to a foreign person or entity, DDTC must be notified **at least 60 days** in advance of the transfer or intended sale. (Note: You should also consider filing with the Committee on Foreign Investment in the United States “CFIUS,” or contact CFIUS counsel. Importantly, certain filings with CFIUS are mandatory).

Required Actions Checklist:

- Prepare a letter to DDTC explaining the impending transfer to a foreign person or foreign entity. The letter should be on company letterhead and must be signed by a senior officer.
- Send the signed letter via registered mail to DDTC.

Note: Pursuant to the COVID-19 pandemic, DDTC has established a new mechanism for electronically submitting 60-day advance notifications of foreign acquisitions of ITAR registrants. Such notifications and materials may be sent via email to PM-DTCC-MAD@state.gov.

- Within **5 days** of the effective date of the change of control, complete the 5-Day Material Change Notice requirements listed above.

Annual Registration Renewal

1201 Main St. Suite 1350, Dallas, TX 75202 • Phone: 214.295.8473 • Fax: 214.396.1583
1050 Connecticut Avenue NW, Suite 500, Washington, DC 20036 • Phone: 202.851.8200

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ITAR Registration is valid for one year from the date of issuance. Registration must be renewed annually if a company is engaging in manufacture, export, or temporary import of ITAR-controlled items or providing ITAR-controlled defense services. DDTC states that its ITAR Registration Renewal review typically takes 30-45 days, so it is imperative to submit the annual ITAR Registration Renewal as soon as possible within the 60-day window.

Required Actions Checklist:

- Log into the registered company’s ITAR Registration in DECCS.
 - a. Select “Renew” on the DECCS dashboard to begin the renewal process.
Note: “Renew” will only be visible **within 90 days** of registration expiration date, but you may only officially submit the Renewal **within 60 days** of the Registration expiration.
 - b. Review and validate the information in all fields beginning with Block 1.
 - i. For Material Changes in the Registration information, follow the 5-day Material Change Notice instructions above.
 - ii. For any Non-Material Changes (any change other than those listed in the 5-day Material Change Notice instructions above) update the applicable fields. Some examples of Non-Material Changes are subsidiary or affiliate change of address or adding or deleting USML categories that correspond to the registered company’s ITAR-controlled products or services.
 - c. When complete, the Registration submission must be reviewed, signed, and submitted by a Senior Officer authorized in DECCS to sign the registration.

Once the registration renewal is approved, payment of the annual registration fee is required. Payment can be made in DECCS.

This Guide highlights common change scenarios for ITAR registration; however, it is not exhaustive. For additional guidance regarding company changes that affect ITAR registration, contact the Attorneys and Advisors at Torres Law, PLLC.