

## **DSP-5 – License for Permanent Export**

The following information provides an overview and considerations in preparing a DSP-5 license for permanent export as defined by the International Traffic Arms Regulations (ITAR). It is based on DTC's license guidelines and through lessons learned from our years of defense export license experience. The intent of the information is to be brief and concise (as best we can) so please drop us an email or give us a call if you have additional questions. The ITAR is administered by Defense Trade Controls (DTC) which is a directorate under the U.S. Department of State.

- A Permanent Export License (DSP-5) is for the permanent export of unclassified articles or hardware as found in the United State Munitions List which is defined by ITAR. The DSP-5 can include hardware, software, or documents and is the mechanism used to obtain a Marketing License for information that is not public domain.
- To submit a DSP-5 your company must be registered with DTC and the empowered official must sign the application. The other option is to have Excelerate obtain the license and coordinate the delivery for you.
- If the permanent export is for classified articles a DSP-85 must be submitted instead of a DSP-5.
- Defense articles or hardware can only be exported to the country and end user as called out on the approved export license. Re-export or transfers to any other country or non-U.S. nationals are not allowed unless found on the approved license.
- Consignees and carriers allowed are only those that are found on the approved export license.
- The applicant maintains the export license while it is active. The license is returned to DTC when the authorized value has shipped, there are no further shipments, license expiration occurs, or requested by DTC.
- Export shipment of the articles or hardware must be made when the license is valid.
- Supporting documentation must be submitted with the initial application.
- DTC can make three choices regarding the license application: Approval, Denial, or Return Without Action (RWA). If a denial or RWA is received DTC will tell you why and you can rectify the situation and resubmit the license.

- Processing time is directly related to staffing and if the license application is staffed plan on a minimum of two (2) months for license processing. If not staffed the license usually is returned within the month. Our experience is that 95% of new licenses are staffed.
- The DSP-5 does not allow for the export of manufacturing information or technical assistance. Training can be provided on the use or maintenance of a hardware/software delivery but not for topics such as integration with an existing system.
- It is the responsibility of the company to inform employees of the scope and purpose of the DSP-5 when coming in contact with foreign nationals. The transfer of Technology data / information or Manufacturing know how to foreign nationals are covered under separate Technology Assistance or Manufacturing License Agreements that are also administered by DTC. This applies to employees, sub-contractors, and consultants coming in contact with foreign nationals within the U.S. or abroad.
- Section 120 of the ITAR gives the definitions for items like technical data, a US person, a foreign person, an export, etc. One important point is that a U.S. person working for a foreign employer must be considered a foreign person, and that a foreign person working for a U.S. company is also considered a foreign person.
- Excelerate cannot guarantee approval of your DSP-5. We will use our experience to prepare the proper documentation based on the facts you provide. An important factor for approval is the preparation of enough information that explains the export but not too much information to be confusing. Excelerate is technical and we can help.
- DTC will provide a set of provisos and limitations when the license is approved. These are for the exporter's use and in most cases should not be shared with the end user. For instance, a common proviso is that no source code can be delivered.
- Keep in mind that you will only be able to export the quantity shown and the value shown in the export license. Customs will confirm this before the item leaves the U.S. Partial shipment can be made but the total value or quantity can not be exceeded. The ITAR says that the total value exported can be exceeded by 10% but we have not tested nor want to guarantee that this regulation will be honored by U.S. customs.
- Significant Military Equipment (SME) as determined per the U.S. Munitions List requires that DSP-83 (Non-Transfer and Use Certificate) be submitted with the DSP-5 application. The DSP-83 basically has everyone agree not to transfer or use the delivered articles except for how the license defines. The DSP-83 requires a signature from the end user, any consignee,

the manufacturer, and the government. Some countries sign the DSP-83 quickly while others have great concern. Excelerate can help with the DSP-83.

## **THE PROCESS**

Below is the basic DSP-5 process.

1. Is your company registered with DTC? If you are submitting the license then we need to get you registered.
2. Does your company have a security certificate registered with DTC so that you can submit licenses on line? If not then you will need to obtain a certificate – we can help.
3. Excelerate and the customer obtain the necessary DSP-5 information from the checklist below.
4. Excelerate prepares the DSP-5 in e-file format for your review.
5. If the company is submitting the license then their Empowered Official digitally signs DSP-5 e-file and submits to DTC.
6. DSP-5 progress is tracked through D-Trade on the DTC website.
7. DTC provides a decision on the DSP-5 application and if approved the provisos are reviewed. If not approved we review the reason why and decide the next course of action.
8. Execute the effort and make the delivery.

## **DSP-5 INFORMATION CHECKLIST**

The following checklist provides the initial information required to prepare a DSP-5. Depending on the commodity and situation there may be more information required. Please review the checklist and assemble the necessary information.

- Your legal company name, address, and phone number.
- The company DTC registration number if available.
- The complete name, address, and phone number of the ultimate end user. For instance, if the delivery is to a company in France, say Dassault Aviation, but they will deliver the system to the French Air Force then the ultimate end user is the French Air Force.

- The complete names, addresses, and phone numbers of any foreign consignees – agents, brokers, companies, etc. Whoever will touch the delivered article before it arrives to the ultimate end user.
- The US freight forwarder responsible for the export. We typically list a few freight forwarders – there is no limit. The only stipulation is that the freight forwarder you will use MUST be listed on the license with the correct address.
- You must have a purchase order or letter of intent from the end user (recently we have had issues with letters of intent so a PO is better if possible) that shows end user name, end user address, items to be purchased, quantity, price, and end use. This may be difficult to obtain before the license is approved but it is a requirement and the license application will be RWA'd without it. Often we obtain a preliminary PO from the end user to fulfill the license requirement. The PO must match the license value and quantity being requested.
- If the PO does not contain a description of the end use and end user then a separate signed document must be provided that details the end use and user.
- Any descriptive literature of a product, if available, that will be exported – sales brochures, flyers, etc. in .pdf format. Part numbers are nice to have if they are available.
- A description of the delivery and end use. If appropriate, and it is in 90% of licenses, we will include an additional write-up based on a discussion with you that provides DTC a clear understanding of the license request. It helps to give DTC an understanding of the history, what the use will be, any past deliveries, etc.
- Attach a copy of the signed form DSP-83 for all significant military equipment (SME). We can submit the license application without the signed DSP-83 but you run the risk of having the license RWA'd. Some license officers at DTC will include a proviso that the DSP-83 must be signed before an export can occur and other officers RWA the application. If possible, play it safe and get the DSP-83 signed, if required, before submitting the application.
- Are there any precedent licenses related to this export? If the articles have been exported before, all or in part, then please provide the license number(s).
- If appropriate, provide the name and contact information for a U.S. Government employee that is familiar with the commodity being exported. Such as a government Program Manager.

For most of the applications the information from the checklist above will be all we need to complete and submit your DSP-5 application. Let us know if you have any questions or concerns.