



# ITAR Export Controls DoD Perspective

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*Farnborough International Airshow*  
*July 17, 2008*





# Defense Technology Security Administration

**DUSD for Technology Security Policy and National Disclosure Policy  
& Director, Defense Technology Security Administration (DTSA)**

**Deputy Director, DTSA**

**Licensing  
Directorate**

- License Reviews
- Commodity Jurisdictions
- Voluntary Disclosures
- Regulations

**Technology  
Directorate**

- Aeronautical/JSF
- Electronics
- Information Systems/Communications
- Missile Defense/Space
- NBC/Land/Naval/Materials/Machine Tools
- Sensors & Lasers

**Policy  
Directorate**

- Int'l Regimes
- Guidelines
- End-user Reviews

**Space  
Directorate**

- Monitoring/License Enforcement
- Technical Exchanges
- Tech Data Reviews

**Management  
Directorate**

- Personnel
- Security
- Logistics



# ***DTSA's Mission & Strategic Goals***

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To promote United States national security interests by protecting critical technology while building partnership capacity

- Preserve critical US military technological advantages
- Support legitimate defense cooperation with foreign friends and allies
- Assure the health of the defense industrial base
- Prevent proliferation and diversion of technology that could prove detrimental to U.S. national security
- Implement enterprise-wide resources to ensure organizational structures, processes and procedures effectively support DTSA's mission



# ***DoD Review of Defense Transactions Assessing Impact on National Security***

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- **Among the Factors Considered:**
  - **Policies (Region, Country & Technology)**
  - **Level of Technology (vs. U.S. systems and countermeasures)**
  - **End-user & End-use History**
  - **Military Operational Impact**
  - **Inter-operability Requirements**
  - **Bilateral, Multilateral and International Agreements**
  - **Foreign Availability of Like Systems**
  - **Classified Data Transfers**



# ***What DTSA Provides to the Licensing Process***

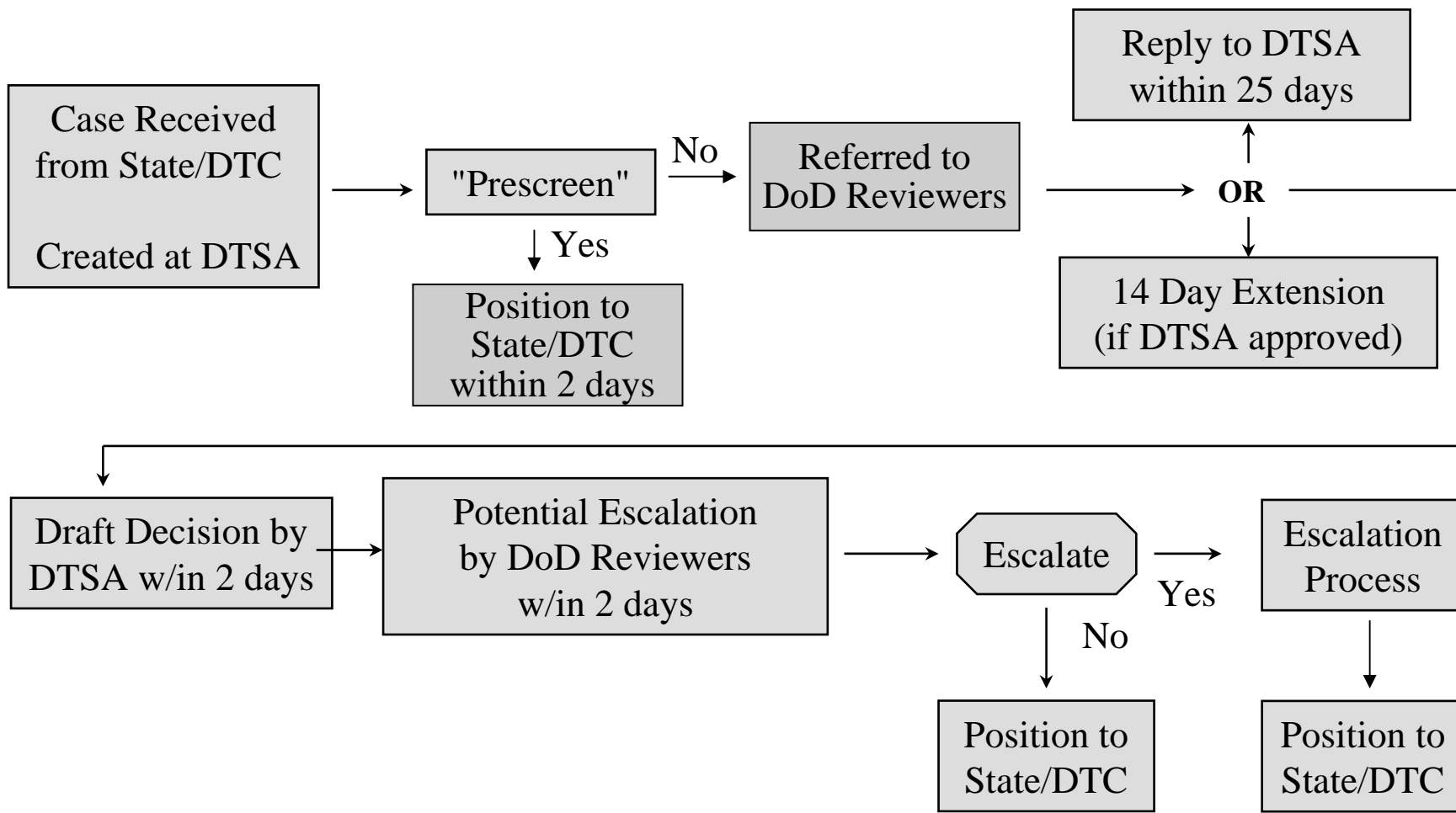
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- **Warfighter Protection**
- **Technical Expertise**
- **National Security Perspective**
- **Honest Broker**
- **Program Insight**



# DoD Munitions License Review Timeline (Calendar Days)





# ***Prescreen Process***

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- **Eligible Licenses**
  - **DSP-5**
  - **DSP-73**
  - **DSP-61**
  - **Agreement amendments**
  - **General Correspondence requests for re-export/re-transfer**



## ***Prescreen Process (Cont'd)***

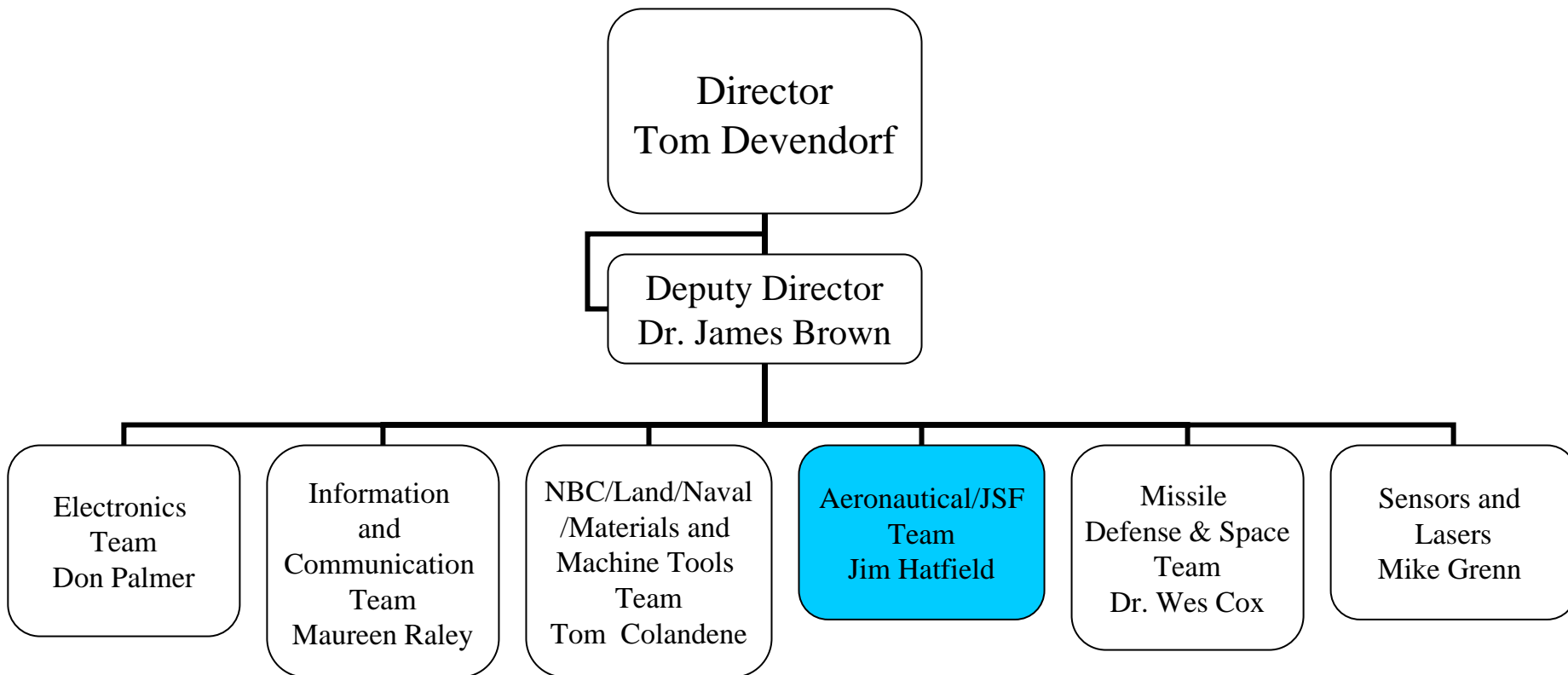
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- **Precedents:**
  - **Same End User Country/Identical Data**
    - Rationale for new license?
  - **Same End User Country/Different Data**
    - What is different?
  - **Different End User Country/Identical Data**
- **Hardware (H/W) in furtherance of an agreement**
  - Where in agreement is H/W identified/referenced?
- **Minor changes with no impact on technology transferred**
- **US Government/US military end user**
- **Non-US origin hardware/technology**
- **Expansion of scope**
  - Major or minor changes?



# Defense Technology Security Administration Technology Directorate





## ***Technology Directorate: Mission***

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- **To provide comprehensive, in-depth technical analysis to support the DoD export review process.**
  - **To ensure that the DUSD (TSP/NDP)'s technology security objectives are considered in the planning and implementation of major international cooperative programs.**
  - **To chair Technical Working Groups in technology specific areas to pinpoint critical U.S. technologies and develop sound export control recommendations for leadership consideration.**
  - **To provide technical advice and consultation to U.S. Defense Industry on proposed international exports.**



# ***Technical Review Process***

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- **Technical review template:**
  - **What is the item?**
  - **What capabilities does it provide?**
  - **Are there other applications in addition to stated end-use?**
  - **What is the foreign availability?**
  - **What is the critical technology we are trying to protect?**
  - **Options:**
    - **Approve**
    - **Approve with provisos**
    - **Deny**
    - **Return without action**
  - **Justification is provided for all recommendations**



# ***Technical Review Process***

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- **Marketing Licenses (DSP-5)**
  - Complete Systems Description
  - Aircraft, Engines
- **Build-to-Print (DSP-5)**
  - 22 CFR 124.13
  - Complete Technical Data
- **Temporary Exports (DSP-73)**
  - “Mock-Up” Terminology
  - No Technical Data
- **Manufacturing License/Technical Assistance Agreements**
  - Information Regarding End-User Capabilities
  - Define “the Box”



# ***Aerospace Technologies***

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- **Matrix Support of Aerospace Licenses within the Technology Directorate (TD)**
- **Aeronautical/JSF Team is TD Focal Point for Aerospace Systems Licenses, excluding UAVs and Spacecraft**



# ***Aerospace ITAR License Areas of Interest***

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- **Design and Development Methodology**
- **Systems Integration Information**
- **Software**
- **Engine Hot Section**
- **Full Authority Digital Engine Controls**
- **Engine Thermodynamics/Aerodynamics Data**
- **Advanced Materials**
- **Signature Suppression**
- **Test Results**



# *Methodology*

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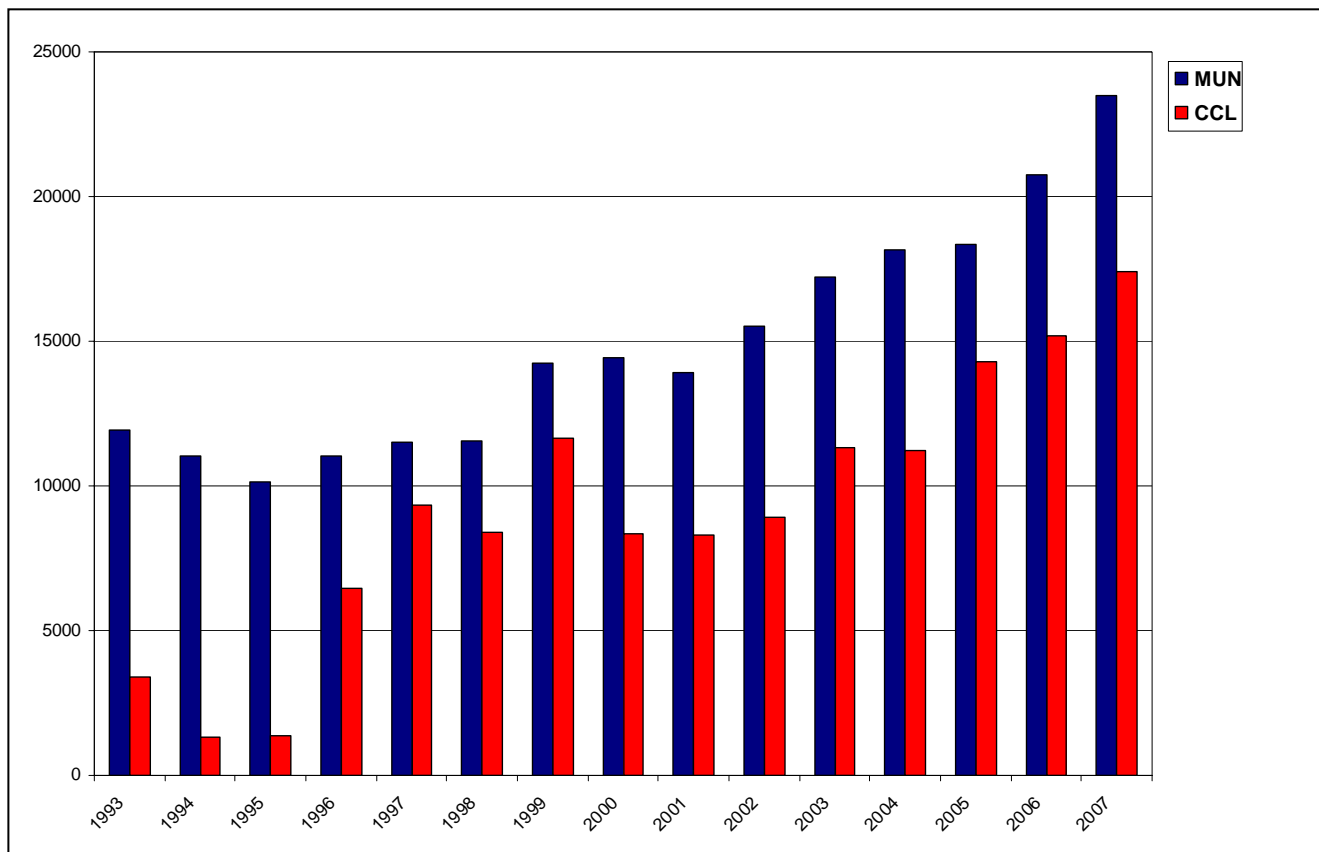
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**In its simplest form, DTSA's role is to answer the following questions:**

- **The Who, What, Where, When , Why and How of the export**
- **Decide whether the export is in the National Security interests of the United States**
- **Approve, limit or deny the export accordingly**

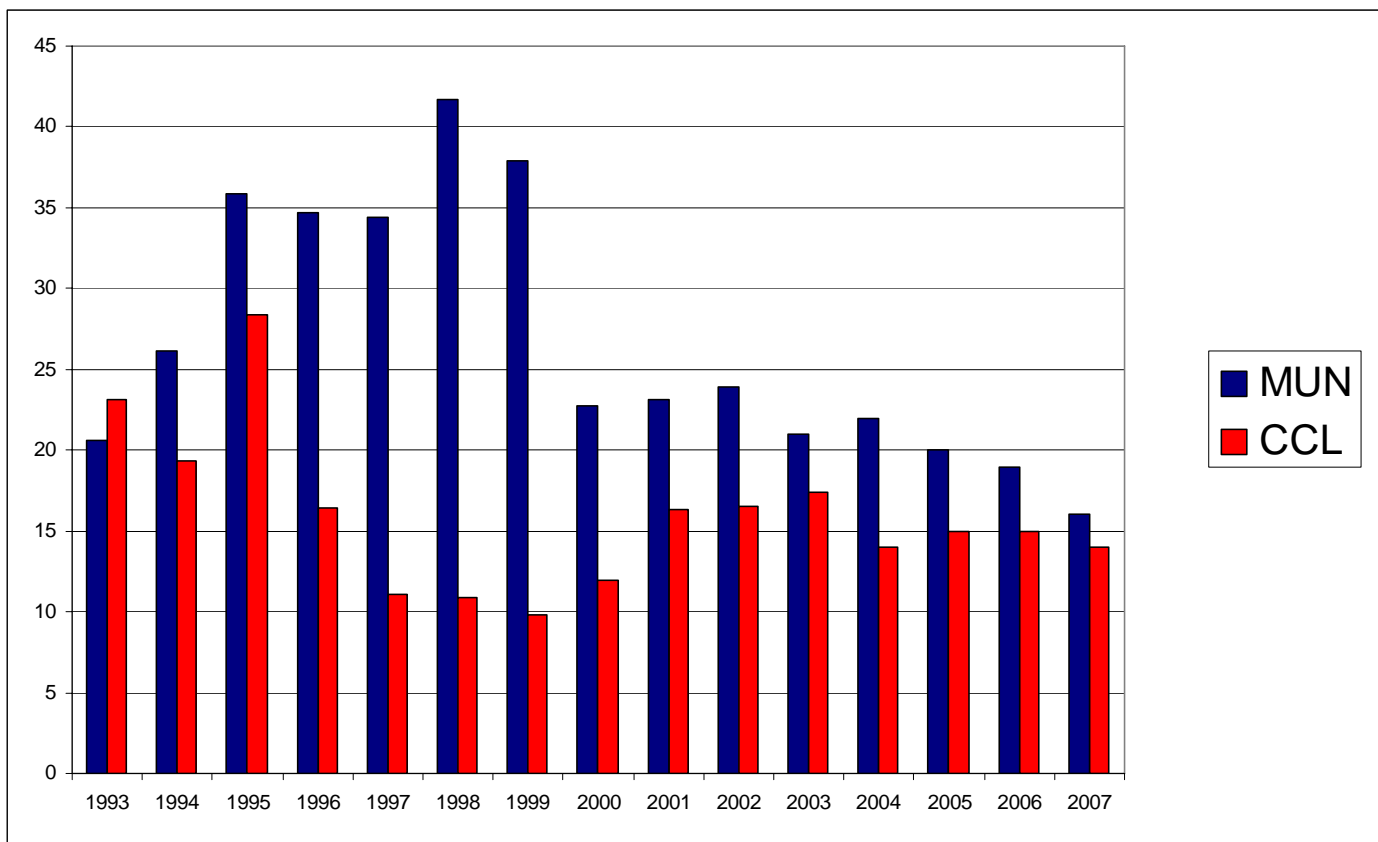


# Total Cases Processed Jan 1993 – Dec 2007





# DoD Average Days Jan 1993 – Dec 2007





# ***2006 USG Licensing Statistics***

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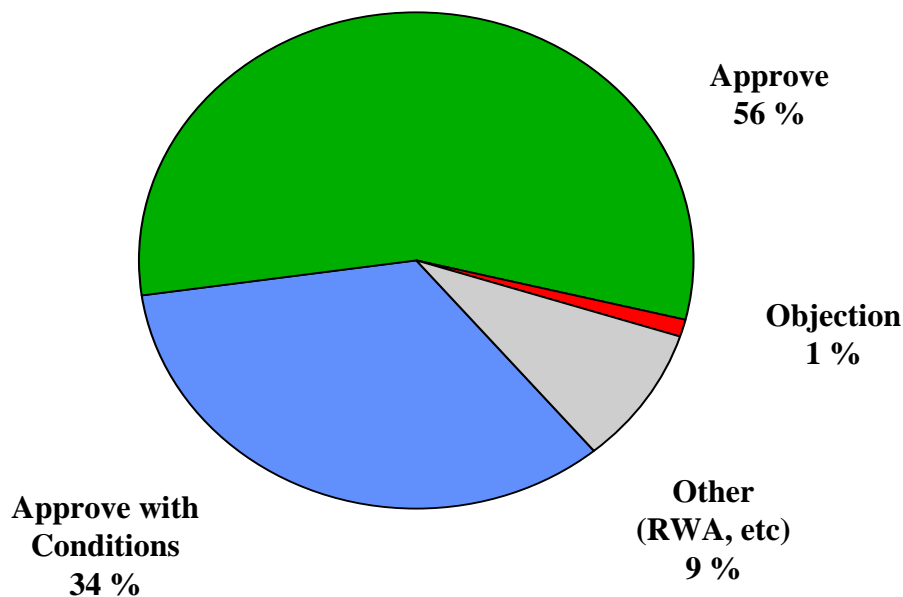
- **Department of State: 65,000 licenses applications; 30% were referred to DoD for review.**
- **Department of Commerce: 20,000 license applications; 80% were referred to DoD for review.**
- **Why the difference?**
  - **Technology Security risk varies. DoD reviews both the applicable control lists and the license history and has notified the licensing departments, in writing, of those licenses types where DoD staffing is not required**



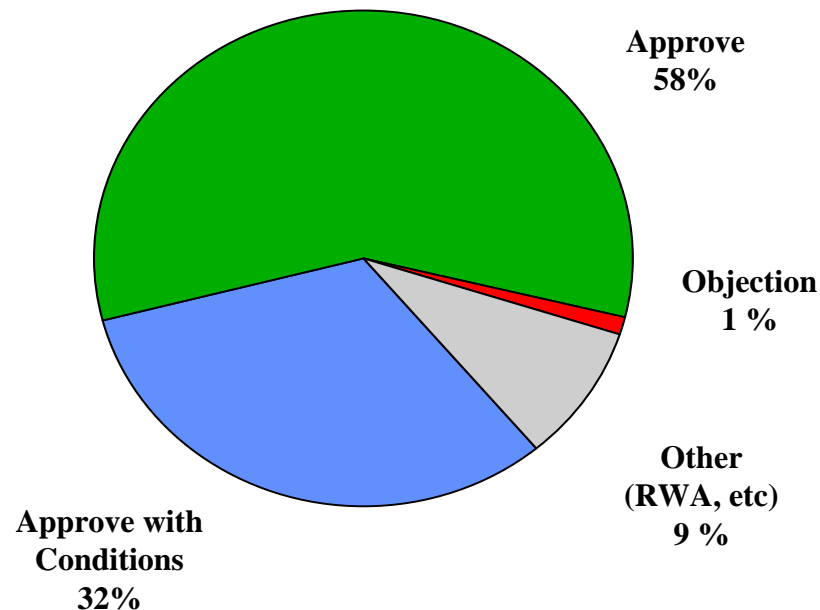
# Outcome of DoD Munitions License Review

Jan – Dec 2006

Jan - Dec 2007



20,735 Licenses Reviewed



23,469 Licenses Reviewed



# ***Statistical Summary***

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**Average case processing days 2007:**                      **Munitions: 15.1**  
**Dual Use: 13.9**

**Number of Cases Processed in CY 2007:**  
**- Munitions: 23,469**  
**- Dual Use: 17,422**

**Percentage of Munitions cases electronically staffed (last 90 days): 22%**

**Percentage of cases prescreened:**                      **Munitions: 37%**  
**(Tiger Team)**                                                      **Dual Use: 43%**



# Practical ITAR Facts/Tips



# ***Practical ITAR Facts/Tips***

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- **Unlike a military service regulation that may be waived by a flag officer, the International Traffic in Arms Regulations (ITAR) is the implementing regulation for Section 38 of the Arms Export Control Act (AECA), violations of which may include fines and imprisonment. (Re: 22 CFR 120.1(a)).**
- **Use of public domain information may constitute a defense service and may require a license, e.g., military training conducted using public domain information is a covered activity under the ITAR (Re: 22 CFR 120.9(a)).**
- **A license for something is not a license for anything/everything. ITAR authorizations are very specific and limited to the details of the license request (including the WHAT, the WHERE, and the WHO) as modified by any provisos, limitations and conditions imposed by the USG.**
- **A license can authorize the export of hardware and technical data.**
- **A Technical Assistance Agreement (TAA) can authorize the export of technical data, hardware and the provision of defense services.**
- **A Manufacturing License Agreement builds on TAA authority and can also authorize the overseas manufacture of hardware (defense articles).**



# ***Practical ITAR Facts/Tips***

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- **A Warehousing and Distribution Agreement is similar to a hardware license except the final end user is not known at the time, only a pre-determined set of authorized end users is known at the time of approval. **READY, FIRE, AIM!****
- **A DSP-5 may be used for marketing an existing product.**
- **If the product requires customization based on customer requirements, a Technical Assistance Agreement should be used. Note: requirements definition is part of the systems engineering process for the design and development of the end item which makes the activity a defense service.**
- **Technical data is any information required during the life cycle of the item, i.e., design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification.**
- **A defense service is any help provided during the life cycle of the item, i.e., design, development, engineering, manufacture, production, assembly, operation, repair, testing, maintenance, modification, demilitarization, destruction or processing.**



# ***Practical ITAR Facts/Tips***

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- **Any time you try to convince your Empowered Official a license is not required, and you begin your argument with "IT'S JUST...", try substituting the defense article with nuclear weapons and the destination with Iran, and see if your argument still holds water.**
- **It is best to get company export experts involved EARLY in the program to prevent avoidable delays and allow time to submit Commodity Jurisdiction (CJ) requests that may eliminate further licensing requirements altogether.**
- **Keep your export office apprised of hardware delivery schedules so they can plan for the licenses and coordinate with the freight forwarders and the like; prevent avoidable delays.**
- **Include export compliance in basic ground rules and assumptions when developing the business case.**
- **Consult with import and export compliance functions before agreeing to transship through foreign ports, vessels, etc.**
- **When the contract review team does text searches on key words in the contract, also look for "export" and "ITAR".**



# ***Practical ITAR Facts/Tips***

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- **Be prepared to explain to the foreign customer that the DSP-83 Non-Transfer and Use Certificate is not a company document but rather a USG document that is required of all foreign partners who want to receive the data/hardware described thereon.**
- **Just because technical data or hardware may be unclassified does not mean it is not ITAR controlled.**
- **Government Program Managers MUST NOT pressure contractors to do anything that the contractor believes exceeds his export authority.**
- **LOA and FMS contracts must be specific and in sync for the contractor to use the 126.6 exemption. The premise behind the 126.6 exemption is that when the LOA has all the details required of an agreement under 124.7(1)-(4) and that details is carried through to the implementing contract, then a TAA is redundant and not necessary. BEWARE that few LOAs are written with the specificity of a TAA/MLA.**
- **The relationship between the USG and the contractors is not a business negotiation, it is a Regulator-to-Regulatee relationship.**



# ***Practical ITAR Facts/Tips***

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- **Exports include disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad. (re: 22 CFR 120.17(a)(4)).**
- **There may be an exemption for plant visits under certain circumstances - contact your export control office to confirm applicability and compliance of all required conditions.**
- **Offset activities often include substantial licensing and reporting requirements, so contact your export control office to get estimated costs for the business case.**
- **Facility visits by foreign persons requires prior planning and coordination with your export control office.**
- **Even domestic procurements may sometimes involve export/import issues, e.g., foreign national employee of domestic vendor/supplier; or drop shipments from foreign outsources.**
- **There are several different specific license applications with different formats, e.g., DSP-5 or TAA. Contact your export control office to determine corporate methods, practices, and parameters and how, as a Program Manager, you can facilitate an actionable request to the USG.**



# ***Practical ITAR Facts/Tips***

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- **Having a person from DOD attend a meeting with a foreign person does NOT give you export authorization. There must be an official written request or directive from an authorized DOD official, (re: 22 CFR 125.4(b)(1)), and DOD guidance established only a few such authorized officials in each DOD Component; see your export control office for further details.**
- **License/TAA/MLA application and approval cycle time needs to be built into the program schedule. If Congressional notification thresholds are met, additional time will be required.**
- **The clearer the information the Program Manager provides, and the better the export control office understands what the Program Manager wants to do, the better the approval received from the USG will meet the Program Manager's needs.**
- **Working with a University does not mean ITAR requirements do not apply.**
- **In the long run, it may NOT save the program money to procure a component abroad (e.g., duties, transportation costs, repair and return costs, time, licensing requirements.)**
- **A Proprietary Information Agreement is NOT an export license.**



# ***Practical ITAR Facts/Tips***

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- **Canada is a foreign country.**
- **There is a specific process for (temporarily or permanently) importing foreign origin items, and the export compliance office should be involved.**
- **Mark briefings and presentations appropriately, and arrange for hand-carry documentation if copies will be taken out of the country after the presentation.**
- **Other countries have national export regulations we must observe.**
- **Program Manager's are responsible for recording exports made via telecons, netmeetings, etc., and identifying all recipients and verifying their authorization to participate (e.g., who is on the other end of the phone?)**
- **Ask before you act on any new contract or new customer. Talk to your export control office.**
- **If you have other U.S. companies (e.g., subcontractors) on your TAA it means you accept responsibility for their actions. Their improper activity could lead to suspension of your TAA; you could lose your export authority due to their action.**



# ***Practical ITAR Facts/Tips***

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- **How you might handle an assembly that has all but one part controlled under EAR and one part controlled under ITAR**
  - **Export the EAR subassembly (less the ITAR part) under the EAR.**
  - **Export the ITAR part and the documentation to assemble and test the next-higher-assembly under the ITAR.**
- **Export requirements exist in different forms throughout the lifecycle of a program (inception/marketing through closeout). Be constantly vigilant in looking for changes that MAY have export implications and bring them to the attention of the export professional so they can help.**
- **Program Manager's should seek common training program on the essentials of export/imports.**
- **Program Manager's need to understand lead times for exporting processes.**
- **Establish a process to notify export control office when foreign vendor/supplier/customer changes locations within their country so licenses and agreements can be amended.**



# ***Practical ITAR Facts/Tips***

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- **At least yearly, if not more often, review scope of agreement(s) to identify any changes required, i.e., make sure the agreement explicitly authorizes what you want to do. If it doesn't, seek an amendment.**
- **At least yearly, review the Part 130 payments to ensure statements to DDTC are current.**
- **ITAR rules govern technology transfers related to defense articles.**
- **Program Manager's should know the rules and guidelines for discussions within the parameters of the license or agreement.**
- **Program Manager's should know the rules and guidelines for discussion (technical) regarding proposed and negotiation phases of contract development.**
- **Foreign visits must be pre-planned and approved before program discussions and process reviews.**
- **Effective ITAR compliance is GOOD for business sales!**



# License Preparation Guidance



# ***Applicant's Role***

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- **It is incumbent on the applicant to:**
  - **Provide the information DoD needs to conduct a thorough technical review**
  - **“Draw the box” for their export request in the application, so provisos are not imposed constraining the applicant for items they have no intention of exporting**



# ***Good Habits That Should Be Hard To Break***

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- **Focus on the basic elements of every license request: country, commodity, end-user and end-use**
- **Identify license precedents or case history. Include copies**
- **Provide clear, concise cover/transmittal letter**
- **Learn the ITAR, both layout and content**
- **Compliance before and after licensing**
- **Improve knowledge through recurrent training**



# ***Reducing RWA's/ Avoiding Death by Proviso***

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- **Tell us in plain English:**
  - **What you are doing**
    - **Scope of the effort/Statement of Work (SOW)**
    - **Concise yet thorough**
  - **What you are not doing**
    - **May be more important**
  - **Avoid jargon, don't rely on program names**
- **Review previous license provisos**
- **Cite previous cases, more than one is OK**



# ***Reducing RWA's/ Avoiding Death by Proviso***

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- **Government POC**
  - **Verify POC information provided**
  - **If none, what Service would be interested**
- **Countries - not all countries are created equal**
- **Temporary Licenses**
  - **Tell us how will you maintain control**
  - **Note that Government and Industry end-users are treated differently**
  - **Be realistic with quantities**
- **List internet web-site to assist tech review**
- **Bottom line, pass the “Grandma check.” Grandma should be able to determine your intentions by reading your application**



# ***Provisos: Draw the Box!***

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- **Most provisos are imposed because the applicant has not satisfactorily “drawn the box.”**
- **Applicants should “draw their own box” on every application.**
- **If the applicant does NOT do a good job of “drawing the box” on their application,**
  - **We will recommend return without action (RWA), or**
  - **Recommend Denial, or**
  - **“Draw the box” (impose limitations/provisos). The applicant may not like our provisos if we are forced to “draw the box” for them.**



# ***Program Technology Release Roadmap***

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- **The key to developing and implementing a program is to address technology release decisions as any other acquisition milestone (e.g., development, testing, production)**
- **The best way to do so is to develop a “Technology Release Roadmap” which defines what technology decisions are required and when they are required to meet program goals**
- **Work backward from the end state, set goals, brief and follow-up!**



# ***Foreign National Employment***

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- **Include the following information for DTSA review:**
  - **Foreign national's biography/resume**
  - **Description of job duties**
  - **Company organization chart showing where the foreign national fits into the organization**
  - **List of all other foreign nationals working at the company, their job title, and where they fit in the organization**
  - **Copy of Non-Disclosure Statement**
  - **Copy of Technology Control Plan**



# ***USXports Impact and Applicant's Role***

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- **We have improved our license review process by the deployment of a database called USXports. This database:**
  - **Accommodates electronically submitted licenses**
  - **Supports automated staffing**
  - **Allows “zero time” referral of cases**
  - **Permits rapid review of electronically submitted data**
- **Will NOT support rapid review if you don't submit electronic files in a text searchable format.**



# *Industry Briefings*

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- **DTSA is constantly asked if a company can come in to brief a program.**
  - **Wrong Answer: After the license is submitted (Too Late!)**
  - **Right Answer: When requested.**
  - **Best Answer: Before you start the program!**
    - **Gives us the opportunity to tell you our concerns so you may be able to engineer around them**
    - **Provides a heads up to you of USG concerns**
- **Remember, we are not buying your product, conduct brief accordingly**



# Summary

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- **Clearly Identify the Specific Items/Technologies Requested for Transfer**
- **Clearly Explain the Need to Transfer the Subject Items/Technologies**
  - **Clearly Identify the End-User and End-Use**
- **Defining “the Box” will Significantly Reduce the Potential for an RWA**
  - **Use Case History to Guide Your Submissions**
- **Good Licenses Make Short Reviews/Limit Provisos**