

State Department Responds to COVID-19 by Allowing Certain Third Country Remote Work, Extending Registrations and Licenses, and Reducing Registration Fees to Mitigate Effects of COVID-19 on Defense Industrial Base

May 15, 2020

Key Points

- On May 1, 2020, the State Department's Directorate of Defense Trade Controls (DDTC) temporarily revised certain International Traffic in Arms Regulations (ITAR) requirements due to the ongoing COVID-19 pandemic. On May 6, 2020, DDTC followed up by reducing ITAR registration fees for new users and Tier I and II users to \$500.
- Notably, the changes allow employees of licensed entities to work remotely, including in a country that is not previously authorized, without jeopardizing their status as "regular employees" and authorizes the employee to send, receive, or access any technical data that DDTC has authorized to their employer, until at least July 31, 2020. This temporary authorization does not apply if the regular employee is in Russia, China, or another country listed in ITAR Section 126.1.
- DDTC also extended expiring ITAR registration for two months and ITAR licenses and agreements for six months so long as there is no change to the scope or value of the authorization and no name/address changes are required

On May 1, 2020, the State Department's Directorate of Defense Trade Controls (DDTC) temporarily suspended, modified, or made exceptions to certain International Traffic in Arms Regulations (ITAR) requirements to ensure operational continuity and ease the exceptional hardships and safety risks presented by COVID-19. DDTC followed up on May 6, 2020 by also reducing registration fees.

DDTC's COVID-19 Response Measures

DDTC announced the following changes:

1. ITAR registrations expiring on February 29, March 31, April 30, May 31, or June 30, 2020 will be extended for two months from the original date of expiration.

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2. ITAR licenses expiring between March 13, 2020 and May 31, 2020 will be extended for six months from the original date of expiration, so long as there is no change to the scope or value of the authorization and no name/address changes are required.
3. Company personnel will not be required to work at a company's facilities to be considered a regular employee, including in a third country, provided that the regular employee is not in Russia or a 126.1 country, until at least July 31, 2020.
4. Regular employees of licensed entities who are working remotely in a country not included in the relevant authorization are temporarily authorized to send, receive, or access any technical data authorized for export, reexport, or retransfer to their employer using that authorization, provided that the regular employee is not in Russia or a 126.1 country, until at least July 31, 2020.
5. DDTC will also reduce registration fees for some DDTC registrants. The registration fee will be \$500 for new DDTC registrants that submit their application between May 1, 2020 and April 30, 2021. The registration fee will also be \$500 for existing Tier I and Tier II registrations with an original expiration date between May 31, 2020 and April 30, 2021. The Tier III registration fees remain the same. The fee structure will last until April 30, 2021.

In the Federal Register notices announcing the changes, DDTC explicitly noted that the relief in No. 3, No. 4, and No. 5 listed could be extended beyond the above expiration dates.

Impact

The changes will likely provide welcome relief for companies trying to ensure ITAR compliance continuity during the pandemic. DDTC noted that it anticipates the fee reduction alone will save the defense industrial base approximately \$20 million over the coming year. The majority of registrants under Tier I and Tier II are small and medium-sized businesses, many of which are struggling to ensure business keeps moving despite the paralyzing effects of the pandemic. In addition to the changes above, DDTC has also announced through their [website](#), adjustments to certain procedures to reflect the new reality of conducting highly regulated business during a global pandemic. This includes allowing various submissions, such as voluntary disclosures and Part 130 reports, to be provided electronically and/or via email, and DDTC has also begun sending applicants email scans of certain documents in lieu of hard copy mailings. While exporters should continue to consider ITAR compliance in ongoing operations, the changes indicate that DDTC is willing to working with the industry to ensure compliance continuity.

For non-U.S. companies, complying with the ITAR is always a challenge, including identifying and tracking dual and third country nationals working on ITAR projects and programs. The amendment to the rules on regular employees, and particularly allowing remote work from third countries that were not previously authorized under the license, agreement or exemption, introduces flexibility that could be helpful to non-U.S. companies.

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