

PUBLICATION

Can You Take Technical Data Outside of the United States Without a License? Can You Send Technical Data Outside of the United States Without a License?

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The answers are NO and YES.

The State Department's International Traffic in Arms Regulations (ITAR) requires U.S. persons and companies to acquire an export license prior to sending or taking a defense article (including technical data) out of the United States. There are exceptions that apply. For instance, approval is not needed from the Directorate of Defense Trade Control (DDTC) for a U.S. corporation to send ITAR controlled technical data, including classified information, to a U.S. person employed by that corporation overseas or to a U.S. government agency. However, this exception does not apply to ITAR controlled technical information taken or carried out of the United States on a laptop, on a CD or in hard copy. The exception only applies to data that is "sent" or transmitted out of the United States by whatever means to the employee or U.S. government agency in the foreign country. The State Department maintains that this policy promotes accountability by the responsible authorities in the registered company for the export of the technical data. However, the murky waters remain.

What are "defense articles"? Unfortunately, there is no precise answer. The definition is anything on the State Department's Munitions List (USML). In turn, the USML is not a list of products, but a list of categories, or types of products, and technology related to those categories; the decision as to whether a product is or is not on the USML is subjective. Many kinds of technical data have military applications and could be deemed to be "defense articles." If you are uncertain about whether a product or technology is a "defense article," we can help you determine whether it is likely to be one or not.

The Department of Justice (DOJ), as well as the State Department, are paying significant attention to the prosecution of export issues. The DOJ recently appointed a task force to train its staff on export violations. The penalties for violations apply to individuals, employers, and owners of Technical Data. Penalties range from civil fines per violation to criminal fines of up to \$1,000,000 and ten years in prison. Also at stake is the right to do business with the government. Additionally, the investigation and prosecution of a case can extend for years while the government maintains possession of your computers, research and data and curtails your ability to do business. The best defense remains a good offense - know the rules.