

Directorate of Defense Trade Controls

ITAR Revisions for Dual/Third Party Nationals (Updated)

Last Updated: March 4, 2008

This notice supersedes the prior notice of the same subject dated January 4, 2008. Any amendment submitted using the prior guidance must be re-accomplished using the procedures identified below.

On December 19, 2007, an amendment to the ITAR was published ([72 FR 71785](#)) that revised licensing procedures with regard to third country/dual nationals for technical assistance/manufacturing license agreements. In particular, a new ◆124.16 has been added to no longer require additional approval for release of technical data, defense services, and access to defense articles for third country/dual national employees of the foreign signatory/sublicensee to an agreement that are exclusively from NATO, EU Australia, New Zealand, Japan, and Switzerland. They may not hold nationality from any other country and any retransfer between the foreign signatory/sublicensee and the third country/dual national employees of the foreign signatory/sublicensee must take place completely within the physical territories of these ◆124.16 countries or the United States. As stated in the *Federal Register* notice, when determining nationality the Department considers country of origin or birth in addition to citizenship. This action has been taken to further facilitate defense trade after taking into account foreign policy, national security, and regulatory considerations, which have been the subject of discussions with the Defense Trade Advisory Group (DTAG). A new section of the transmittal letter has also been added at ◆124.12(a)(10) to specifically request the authorization under ◆124.16. Specific language should also be added as a section in the agreement that is executed with the foreign party to identify the authorization.

ALL applicants desiring to use this new authorization against **currently** approved TAAs or MLAs **MUST** amend such agreements using the following procedures:

1. If you currently have an approved TAA or MLA which grants authorization for third country/dual national employees who meet the requirements of ◆124.16, you **MAY** execute a minor amendment to relieve yourself of the requirement to execute and retain Non-Disclosure Agreements for such qualified employees. Such minor amendments must be executed with the foreign signatories and must be submitted to the Office of Defense Trade Controls Licensing (DTCL) as a minor amendment in accordance with ◆124.1(d) prior to **October 1, 2008**. Such amendments will not be subject to prior approval by DTCL. The amendment must contain a clause listing the specific countries of the nationals currently authorized by the TAA or MLA which meet the requirements of ◆124.16. The following is provided as an example statement:

Pursuant to ITAR **◆** 124.16, this agreement authorizes access to unclassified defense articles and/or retransfer of technical data/defense services to individuals who are third country/dual national employees of the foreign licensees **[and its approved sublicensees **◆** include only if sublicensing is authorized in the agreement]**. The exclusive nationalities authorized are limited to **[list of **◆**124.16 nationals currently authorized by the TAA or MLA]**. All access and/or retransfers must take place completely within the physical territories of these countries or the United States. For the purposes of this authorization, these employees are not required to execute a Non-Disclosure Agreement (NDA).

2. If you currently have an approved TAA or MLA which does not include authorization for third country/dual national employees OR you desire to expand the current authorization to take advantage of this change, you **MUST** submit a proposed amendment under the requirements of **◆** 124.1(c) to DTCL using the [guidance](#) posted on the Web site. Such amendments will be subject to formal review and may not enter into force until approved by the Directorate of Defense Trade Controls.