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International Traffic in Arms Regulations

22 C.F.R. Chapter I, Subchapter M, Parts 120-130

Latest amendment 77 Fed. Reg. 16670-16671 (Mar. 22, 2012) *Latest editorial revisions March 22, 2012*

Bartlett's Annotated ITAR (BITAR) is a reprint of the International Traffic in Arms Regulations with features added by the author, including a Table of Contents, footnotes, section histories, appendixes containing government guidance and articles of interest, and an Index. Many readers have contributed practice tips and commentary.

§ 120.16 Foreign Person

Foreign person means any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).⁴³

[71 FR 20537, Apr. 21, 2006]

§ 120.17 Export

(a) *Export* means:

- (1) Sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a person whose personal knowledge includes technical data; or
- (2) Transferring registration, control or ownership to a foreign person of any aircraft, vessel, or satellite covered by the U.S. Munitions List, whether in the United States or abroad; or
- (3) Disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); or
- (4) Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad;⁴⁴ or
- (5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.
- (6) A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. However, for certain limited purposes (see § 126.1 of this subchapter), the controls of this subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.

⁴³ Practice tip: Although a U.S. person who is “seconded to” a foreign company or otherwise represents a foreign person is not defined as a foreign person in 120.16, see 22 U.S.C. 2778(g)(6): “The President may require a license (or other form of authorization) before any item on the United States Munitions List is sold or otherwise transferred to the control or possession of a foreign person or a person acting on behalf of a foreign person.”

⁴⁴ This section is roughly equivalent to the definitions of “deemed export” and “deemed reexport” in the Export Administrations Regulations, 15 CFR § 734.2(b)(2)(ii) and § 734.2(b)(5), which state the release of controlled technology to a foreign national “is deemed to be an export to the home country or countries of the foreign national,” and “any release of technology or source code to a foreign nationals of another country is a deemed reexport to the home country or countries of the foreign national.” See also ITAR § 125.2(c) requiring licenses for disclosures of technical data to foreign persons.