

General Correspondence for Amendment of Existing ITAR Authorizations Due to U.S. Entity Name/Address and/or Registration Code Changes

Pursuant to §122.4, a registrant must notify the Directorate of Defense Trade Controls (DDTC) of all material changes to their registration file. These changes include restructuring, merger/acquisitions and/or registration code consolidations. Per §122.4(c)(3), the licenses affected by these changes must be identified via a list to DDTC. Any licenses not identified on the list will be considered invalid. Per §122.4(c)(4), affected agreements require an executed amendment for a U.S. entity name change within 60 days of notification. Any agreements not so amended will be considered invalid.

Historically, these changes have been made via a DSP-119 for a DSP license or a major amendment for agreements. Amending existing authorizations because of a name/address or registration code change can impact a large number of licenses and involve many hours of work for both the U.S. Government and the applicant as well third-party license holders. Recently, DDTC has moved to utilizing General Correspondence (GC) requests to approve and document U.S. entity name/address and registration code changes. The GC covers approval for both DSP licenses and agreements. This was done as a way to reduce the administrative burden on industry and DDTC in processing such amendments.

The guidelines that follow offer a procedure to make this process more efficient while ensuring the integrity of the historical database and all requirements are met. The use of a GC request is applicable regardless of the number of authorizations to be amended.

Timing: The GC request should be submitted within 60 days after the Directorate of Defense Trade Controls-Compliance (DTCC) approval/acknowledgement of the change.

Registrant Requesting Name/Address or Registration Code Changes

The registrant notifying DDTC of the change is responsible for submitting a GC for U.S. entity name/address and/or registration code changes. All requests for the transfer of licenses and agreements must include the following documentation.

- 1) A GC letter
- 2) §126.13 certification letter
- 3) Copy of the DTCC's letter acknowledging the requested change(s), if issued

4) Matrix/spreadsheet of authorizations to be transferred

The GC request must have a subject line clearly stating the GC request is to amend export authorizations due to restructuring, merger/acquisition and/or registration code consolidation. The request must provide DDTC with concise description of the proposed transaction, in particular identifying the registrant code of the acquiring company and the registration code of the company being acquired. The request must list the submitted documentation and specifically state if a DTCC letter is attached.

The GC request must also include the following statement for the amendment of agreements as a result of mergers and acquisitions. If no executed amendment is required then this statement is not necessary:

“Modifications to the existing agreements submitted as part of this letter are specifically limited to **a change to the registration code and/or to the U.S. entity name as a result of an approved merger or acquisition**, and are signed by the new U.S. entity, the former U.S. licensor and the foreign licensee(s). Any other modifications will be requested through a proposed amendment in accordance with §124.1(c) or (d).”

The spreadsheet/matrix of authorizations to be transferred must include all existing and pending authorizations. Only those authorizations identified in the list will be amended. Any authorization not included will be considered invalid and a new authorization must be obtained. The spreadsheet/matrix must include the following information for each authorization:

- 1) Type of authorization (TA, MA, DSP-5, DSP-73, etc.)
- 2) License or agreement number (for agreements, the last approved amendment should be identified)
- 3) Country/s of export
- 4) Unshipped value for licenses/total value for agreements
- 5) Disposition of authorization (Approved or Pending Approval)
- 6) Date of Authorization Expiration
- 7) State Y or N if an executed amendment is required, for agreements only

For ease of review, the list should be separated into existing authorizations and pending authorizations.

Affected agreements will be annotated in DDTC's database but only those identified on the spreadsheet will be processed. If only the registration code is changing with no resulting name change, the GC request is the only required action by the registrant. If the U.S. entity's name changes, an executed amendment must be submitted to DDTC under separate cover but the agreement must be listed in the GC request. The executed amendments must be submitted in accordance with §124.1(d) and cite the GC case number in the body of the cover letter. Prior written approval by Directorate of Defense Trade Controls-Licensing (DTCL) is required for any amendment making a substantive change.

The DDTC response for the GC will include an annotated spreadsheet/matrix identifying any authorizations not amended. If no annotations are provided then all requests authorizations have been amended. Prior written approval by DTCL is required for any amendment making a substantive change.

Third Parties Affected by Change

A "third-party" is a U.S. entity other than the registrant who has submitted the GC request. DDTC will issue a web notice acknowledging the U.S. entity change and providing instruction on third party authorization holders as below.

When a third party license is affected by a U.S. entity name change, a DSP-119 will not be required to be processed for the affected DSP license. The DDTC issued web notice will serve as approval for the change and must be attached by the license holder to the affected license.

When a third party agreement is affected by a U.S. entity name change, the agreement holder will be responsible for amending their agreement. The executed amendment will be treated as a minor amendment per §124.1(d) and must be submitted as such. The agreement applicant of a pending agreement/amendment request requiring change is responsible for notifying the assigned Agreements Officers. The necessary changes will be made prior to issuance when the Agreements Officer has been notified.

General Correspondence for Amendment of Existing ITAR Authorizations Due to Foreign Entity Name Change

Pursuant to §123.9(a), the written approval of DDTC must be obtained before “reselling, transferring, transshipping, or disposing of a defense article ...to any end-user...other than as stated on the export license...” This citation includes the name change of a foreign entity on an ITAR authorization. Historically, these changes have required a replacement DSP authorization or DSP-119 depending on the reason for the name change, and through a formal amendment to an agreement. Amending existing authorizations because of a name change can impact a large number of authorizations and involve many hours of work for both the U.S. Government and the applicant.

A policy decision has been made to regularize the process for addressing foreign entity name changes for ITAR authorizations and to utilize a General Correspondence (GC) request to document and acknowledge such changes on ITAR authorizations in the future. The guidance that follows offers a procedure to make this process more efficient while ensuring all ITAR requirements are met.

Documentation Requirements: The GC must be authored by the foreign entity responsible for the requested action (e.g., surviving company due to acquisition and/or merger). All applications for guidance on foreign entity name changes must include the following documentation.

- 1) A GC letter as per below
- 2) An organizational matrix/flowchart showing the current structure of the entity that is seeking authorization from DDTC regarding the name change.
- 3) A copy of the press release announcing the name change and/or the circumstances that led to the name change.

The GC letter must have a subject line stating “General Correspondence Notification of Foreign Entity Name Change and/or Merger, Acquisition, or Reorganization”. The first paragraph must provide DDTC with concise description of what the package includes, an explanation of the name change and the reason for the change, including a summary of acquisition/merger/reorganization activities that led to the change, and which clearly answers the following required questions:

- 1) Why is the name of the entity changing? What is the estimated effective date of the change?
- 2) If the name change is due to an acquisition or merger, what is the role of the acquiring company or the merger partner in the day-to-day operations of the foreign entity seeking authorization for name change from DDTC?

- 3) What will be the role of the acquiring company or merger partner in regards to currently held ITAR authorizations? A declarative statement must be made as to whether or not the acquiring company will require access to U.S. origin ITAR-controlled defense articles and/or technical data. If the acquiring company or merger partner will require access to previously exported ITAR-controlled defense articles and/or technical data, provide explanation on the scope of the transfer and complete company/country information for the applicable entities.
- 4) If no access is required or granted to the acquiring company or merger partner, what mechanisms are in place to protect ITAR-controlled defense articles and/or technical data from unauthorized access?
- 5) In connection with the requested change, is there any ownership and/or control of the effected foreign entity by a §126.1 entity? Please see §122.2(c) for definitions of ownership and control.

The GC letter must also include the following statement: “[New name/Foreign Entity seeking authorization for name change from DDTC] now assumes all rights, responsibilities, liabilities and obligations that existed, exist or may develop regarding transferred ITAR-controlled defense articles and/or technical data. [New name] must adhere to all limitations and provisos associated with any DDTC-issued authorizations.

DDTC Response: Based on the answers to the above stated questions, DDTC will provide guidance to the requesting entity. The guidance will either be that DSP-119s are not required for DSP authorizations/minor amendments for agreements or that replacement authorizations must be obtained/formal amendments to agreements must be submitted. As necessary, DDTC will publish a web notice to inform U.S. entities of the change.

An amendment to an agreement addressing only a foreign entity name change will be accepted as a minor amendment per §124.1(d) if the foreign entity name change has been reviewed under a GC per this guidance. The minor amendment must be submitted within 60 days of notification by the foreign entity.

If an ownership change or other transfer has taken place, an amendment must be submitted in accordance §124.1(c) and receive approval by DDTC. The DDTC response letter will state this requirement.