

exports of unclassified technical data (see § 123.22 (d) of this subchapter.

(b) If a District Director of Customs or Postmaster is unavailable at the time of export, or if the export is via oral, visual, or electronic means, the exporter must also complete a written certification as indicated in paragraph (a) of this section.

**§ 125.7 Procedures for the export of classified technical data and other classified defense articles.**

(a) All applications for the export or temporary import of classified technical data or other classified defense articles must be submitted to the Office of Defense Trade Controls on Form DSP-85.

(b) An application for the export of classified technical data or other classified defense articles must be accompanied by seven copies of the data and a completed Form DSP-83 (see § 123.10 of this subchapter). Only one copy of the data or descriptive literature must be provided if a renewal of the license is requested. All classified materials accompanying an application must be transmitted to the Office of Defense Trade Controls in accordance with the requirements of the Defense Industrial Security Manual (Department of Defense Manual Number 5220.22-M).

**§ 125.8 Filing of licenses for exports of unclassified technical data.**

(a) Licenses for the export of unclassified technical data must be presented to the appropriate District Director of Customs or Postmaster at the time of shipment or mailing. The District Director of Customs or Postmaster will endorse and transmit the licenses to the Office of Defense Trade Controls in accordance with the instructions contained on the reverse side of the license.

(b) If a license for the export of unclassified technical data is used but not endorsed by U.S. Customs or a Postmaster for whatever reason (e.g., electronic transmission, unavailability of Customs officer or Postmaster, etc.), the person exporting the data must self-endorse the license, showing when and how the export took place. Every license must be returned to the Office of Defense Trade Controls when the total value authorized has been shipped or when the date of expiration has been reached, whichever occurs first.

**§ 125.9 Filing of licenses and other authorizations for exports of classified technical data and classified defense articles.**

Licenses and other authorizations for the export of classified technical data or classified defense articles will be

forwarded by the Office of Defense Trade Controls to the Defense Investigative Service of the Department of Defense in accordance with the provisions of the Department of Defense Industrial Security Manual. The Office of Defense Trade Controls will forward a copy of the license to the applicant for the applicant's information. The Defense Investigative Service will return the endorsed license to the Office of Defense Trade Controls upon completion of the authorized export or expiration of the license, whichever occurs first.

**PART 126—GENERAL POLICIES AND PROVISIONS**

Sec.

- 126.1 Prohibited exports and sales to certain countries.
  - 126.2 Temporary suspension or modification of this subchapter.
  - 126.3 Exceptions.
  - 126.4 Shipments by or for United States Government agencies.
  - 126.5 Canadian exemptions.
  - 126.6 Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program.
  - 126.7 Denial, revocation, suspension or amendment of licenses and other approvals.
  - 126.8 Proposals to foreign persons relating to significant military equipment.
  - 126.9 Advisory opinions.
  - 126.10 Disclosure of information.
  - 126.11 Relation to other provisions of law.
  - 126.12 Continuation in force.
  - 126.13 Required information.
- Authority: Secs. 2, 38, 40, 42, and 71, Arms Export Control Act, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, and 2791, and 2797); E.O. 11958, 42 FR 4311, E.O. 11322, 32 FR 119; 22 U.S.C. 2658.

**§ 126.1 Prohibited exports and sales to certain countries.**

(a) It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to: Albania, Armenia, Azerbaijan, Bulgaria, Byelarus, Cambodia, Cuba, Estonia, Georgia, Iran, Iraq, Libya, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, North Korea, Romania, Russia, South Africa, Syria, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g., Burma, China, Liberia, Somalia, the Sudan, the former Yugoslavia, and Zaire) or for whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Comprehensive arms embargoes are

normally the subject of a State Department notice published in the Federal Register. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries or areas.

(b) Shipments. A defense article licensed for export under this subchapter may not be shipped on a vessel, aircraft or other means of conveyance which is owned or operated by, or leased to or from, any of the proscribed countries or areas.

(c) South Africa. South Africa is subject to an arms embargo and thus to the policy specified in paragraph (a) of this section. Exceptions may be made to this policy only if the Assistant Secretary for Politico-Military Affairs determines that:

- (1) The item is not covered by United Nations Security Council Resolution 418 of November 4, 1977; and
- (2) The item is to be exported solely for commercial purposes and not for use by the armed forces, police, or other security forces of South Africa or for any other similar purpose.

(d) Terrorism. Exports to countries which the Secretary of State has determined to have repeatedly provided support for acts of international terrorism are contrary to the foreign policy of the United States and are thus subject to the policy specified in paragraph (a) of this section and the requirements of section 40 of the Arms Export Control Act (22 U.S.C. 2780) and the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986 (22 U.S.C. 4801, note). The countries in this category are: Cuba, Iran, Iraq, Libya, North Korea and Syria. The same countries are identified pursuant to section 6(j) of the Export Administration Act, as amended (50 U.S.C. App. 2405(j)).

(e) Proposed sales. No sale or transfer and no proposal to sell or transfer any defense articles, defense services or technical data subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of the Office of Defense Trade Controls. However, in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny licenses and approvals in such cases. Any person who knows or has reason to know of such a proposed or actual sale, or transfer, of such articles, services or data must immediately

inform the Office of Defense Trade Controls.

**§ 126.2 Temporary suspension or modification of this subchapter.**

The Director, Office of Defense Trade Controls, may order the temporary suspension or modification of any or all of the regulations of this subchapter in the interest of the security and foreign policy of the United States.

**§ 126.3 Exceptions.**

In a case of exceptional or undue hardship, or when it is otherwise in the interest of the United States Government, the Director, Office of Defense Trade Controls may make an exception to the provisions of this subchapter.

**§ 126.4 Shipments by or for United States Government agencies.**

(a) A license is not required for the temporary import, or temporary export, of any defense article, including technical data or the performance of a defense service, by or for any agency of the U.S. Government (1) for official use by such an agency, or (2) for carrying out any foreign assistance, cooperative project or sales program authorized by law and subject to control by the President by other means. This exemption applies only when all aspects of a transaction (export, carriage, and delivery abroad) are effected by a United States Government agency or when the export is covered by a United States Government Bill of Lading. This exemption, however, does not apply when a U.S. Government agency acts as a transmittal agent on behalf of a private individual or firm, either as a convenience or in satisfaction of security requirements. The approval of the Office of Defense Trade Controls must be obtained before defense articles previously exported pursuant to this exemption are permanently transferred (e.g., property disposal of surplus defense articles overseas) unless (i) the transfer is pursuant to a grant, sale, lease, loan or cooperative project under the Arms Export Control Act or a sale, lease or loan under the Foreign Assistance Act of 1961, as amended, or (ii) the defense articles have been rendered useless for military purposes beyond the possibility of restoration.

*Note: Special definition.* For purposes of this section, defense articles exported abroad for incorporation into a foreign launch vehicle or for use on a foreign launch vehicle or satellite that is to be launched from a foreign country shall be considered a permanent export.

(b) This section does not authorize any department or agency of the U.S.

Government to make any export which is otherwise prohibited by virtue of other administrative provisions or by any statute.

(c) A license is not required for the temporary import, or temporary or permanent export, of any classified or unclassified defense articles, including technical data or the performance of a defense service, for end-use by a U.S. Government Agency in a foreign country under the following circumstances:

(1) The export or temporary import is pursuant to a contract with, or written direction by, an agency of the U.S. Government; and

(2) The end-user in the foreign country is a U.S. Government agency or facility, and the defense articles or technical data will not be transferred to any foreign person; and

(3) The urgency of the U.S. Government requirement is such that the appropriate export license or U.S. Government Bill of Lading could not have been obtained in a timely manner.

(d) A Shipper's Export Declaration (SED), required under § 123.22(c) of this subchapter, and a written statement by the exporter certifying that these requirements have been met must be presented at the time of export to the appropriate District Director of Customs or Department of Defense transmittal authority. A copy of the SED and the written certification statement shall be provided to the Office of Defense Trade Controls immediately following the export.

**§ 126.5 Canadian exemptions.**

(a) District Directors of Customs and postmasters shall permit the export or temporary import without a license of any unclassified defense article or any unclassified technical data to Canada for end-use in Canada by Canadian citizens or return to the United States, or from Canada for end-use in the United States or return to a Canadian citizen in Canada, with the exception of the articles or related technical data listed in paragraph (b) of this section.

(b) Exceptions. The exemptions of this section do not apply to the following articles and related technical data:

(1) Fully automatic firearms in Category I(a) which are not for end-use by the Federal Government, or a Provincial or Municipal Government of Canada;

(2) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(3) Nuclear weapon design and test equipment listed in Category XVI;

(4) Naval nuclear propulsion equipment listed in Category VI(e);  
(5) Aircraft listed in Category VIII(a);  
(6) Submersible and oceanographic vessels and related articles listed in Category XX (a) through (d).

(7) Technical data for use by a foreign national other than a Canadian.

(8) Unclassified technical data directly related to a classified defense article.

(c) Related requirements. The foregoing exemption from obtaining an export license does not exempt an exporter from complying with the requirements set forth in § 123.15 of this subchapter or from filing the Shipper's Export Declaration required by § 123.22 of this subchapter.

(d) Part 124 agreements. The requirements of part 124 of this subchapter must be complied with in the situations contemplated in that part. For example, the exemptions of this section may not be used for the provision of defense services except pursuant to an approved manufacturing license agreement or technical assistance agreement.

**§ 126.6 Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program.**

(a) A license from the Office of Defense Trade Controls is not required if:

(1)(i) The article or technical data to be exported was sold, leased, or loaned by the Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended, and

(ii) The article or technical data was delivered to representatives of such a country or organization in the United States; and

(iii) The article or technical data is to be exported from the United States on a military aircraft or naval vessel of that government or organization or via the Defense Transportation Service (DTS).

(b) Foreign military aircraft and naval vessels. A license is not required for the entry into the United States of military aircraft or naval vessels of any foreign state if no overhaul, repair, or modification of the aircraft or naval vessel is to be performed. However, Department of State approval for overflight (pursuant to the 49 U.S.C. 1508) and naval visits must be obtained from the Bureau of Politico-Military Affairs, Office of International Security Operations.

(c) Procedures for the Foreign Military Sales Program. (1) District Directors of Customs are authorized to permit the