PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

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SOURCE: 58 FR 39299, July 22, 1993, unless otherwise noted.

§ 123.1 Requirement for export or temporary import licenses.

(a) Any person who intends to export or to import temporarily a defense article must obtain the approval of the Directorate of Defense Trade Controls prior to the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of this subchapter. Applications for export or temporary import must be made as follows:

(1) Applications for licenses for permanent export must be made on Form DSP–5 (unclassified);

(2) Applications for licenses for temporary export must be made on Form DSP–73 (unclassified);

(3) Applications for licenses for temporary import must be made on Form DSP–61 (unclassified); and

(4) Applications for the export or temporary import of classified defense articles or classified technical data must be made on Form DSP–85.

(b) Applications for Department of State export licenses must be confined to proposed exports of defense articles including technical data.

(c) As a condition to the issuance of a license or other approval, the Directorate of Defense Trade Controls may require all pertinent documentary information regarding the proposed transaction and proper completion of the application form as follows:

(1) Form DSP–5, DSP–61, DSP–73, and DSP–85 applications must have an entry in each block where space is provided for an entry. All requested information must be provided.

(2) Attachments and supporting technical data or brochures should be submitted in seven collated copies. Two copies of any freight forwarder lists must be submitted. If the request is limited to renewal of a previous license or for the export of spare parts, only two sets of any attachment (including freight forwarder lists) and one copy of the previous license should be submitted. In the case of fully electronic submissions, unless otherwise expressly required by the Directorate of Defense Trade Controls, applicants need not provide multiple copies of

supporting documentation and attachments, supporting technical data or brochures, and freight forwarder lists.

(3) A certification letter signed by an empowered official must accompany all application submissions (see § 126.13 of this subchapter).

(4) An application for a license under this part for the permanent export of defense articles sold commercially must be accompanied by a copy of a purchase order, letter of intent or other appropriate documentation. In cases involving the U.S. Foreign Military Sales program, three copies of the relevant Department of Defense Form 1513 are required, unless the procedures of § 126.4(c) or § 126.6 of this subchapter are followed.

(5) Form DSP-83, duly executed, must accompany all license applications for the permanent export of significant military equipment, including classified hardware or classified technical data (see §§ 123.10 and 125.3 of this subchapter).

(6) A statement concerning the payment of political contributions, fees and commissions must accompany a permanent export application if the export involves defense articles or defense services valued in an amount of $500,000 or more and is being sold commercially to or for the use of the armed forces of a foreign country or international organization (see part 130 of this subchapter).

(d) Provisions for furnishing the type of defense services described in § 120.9(a) of this subchapter are contained in part 124 of this subchapter. Provisions for the export or temporary import of technical data and classified defense articles are contained in part 125 of this subchapter.

(e) A request for a license for the export of unclassified technical data (DSP-5) related to a classified defense article should specify any classified technical data or material that subsequently will be required for export in the event of a sale.

[58 FR 39299, July 22, 1993, as amended at 70 FR 50960, Aug. 29, 2005; 71 FR 20540, Apr. 21, 2006]

§ 123.2 Import jurisdiction.

The Department of State regulates the temporary import of defense articles. Permanent imports of defense articles into the United States are regulated by the Department of the Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives under the direction of the Attorney General (see 27 CFR parts 447, 478, 479, and 555).

[71 FR 20540, Apr. 21, 2006]

§ 123.3 Temporary import licenses.

(a) A license (DSP-61) issued by the Directorate of Defense Trade Controls is required for the temporary import and subsequent export of unclassified defense articles, unless exempted from this requirement pursuant to § 123.4. This requirement applies to:

(1) Temporary imports of unclassified defense articles that are to be returned directly to the country from which they were shipped to the United States;

(2) Temporary imports of unclassified defense articles in transit to a third country;

(b) A bond may be required as appropriate (see part 125 of this subchapter for license requirements for technical data and classified defense articles.)

[58 FR 39299, July 22, 1993, as amended at 71 FR 20540, Apr. 21, 2006]

§ 123.4 Temporary import license exemptions.

(a) Port Directors of U.S. Customs and Border Protection shall permit the temporary import (and subsequent export) without a license, for a period of up to 4 years, of unclassified U.S.-origin defense items (including any items manufactured abroad pursuant to U.S. Government approval) if the item temporarily imported:

(1) Is serviced (e.g., inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components, but excluding any modifications, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item), and is subsequently returned to the country from which it was imported. Shipment may be made by the U.S. importer or a foreign government representative of the country from which the goods were imported; or

(2) Is to be enhanced, upgraded or incorporated into another item which has already been authorized by the Directorate of Defense Trade Controls for permanent export; or

(3) Is imported for the purpose of exhibition, demonstration or marketing in the United States and is subsequently returned to the country from which it was imported; or

(4) Has been rejected for permanent import by the Department of the Treasury and is being returned to the country from which it was shipped; or

(5) Is approved for such import under the U.S. Foreign Military Sales (FMS) program pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (LOA).

NOTE: These Exceptions do not apply to shipments that transit the U.S. to or from Canada (see §123.19 and §126.5 of this subchapter for exceptions).

(b) Port Directors of U.S. Customs and Border Protection shall permit the temporary import (but not the subsequent export) without a license of unclassified defense articles that are to be incorporated into another article, or modified, enhanced, upgraded, altered, improved or serviced in any other manner that changes the basic performance or productivity of the article prior to being returned to the country from which they were shipped or prior to being shipped to a third country. A DSP–5 is required for the reexport of such unclassified defense articles after incorporation into another article, modification, enhancement, upgrading, alteration or improvement.

(c) *Requirements.* To use an exemption under §123.4 (a) or (b), the following criteria must be met:

(1) The importer must meet the eligibility requirements set forth in §120.1(b) of this subchapter;

(2) At the time of export, the ultimate consignee named on the Shipper's Export Declaration (SED) must be the same as the foreign consignee or end-user of record named at the time of import; and

(3) As stated in §126.1 of this subchapter, the temporary import must not be from or on behalf of a proscribed country listed in that section unless an exception has been granted in accordance with §126.3 of this subchapter.

(d) *Procedures.* To the satisfaction of the Port Director of U.S. Customs and Border Protection, the importer and export must comply with the following procedures:

(1) At the time of temporary import—

(i) File and annotate the applicable U.S. Customs and Border Protection document (e.g., Form CF 3461, 7512, 7501, 7523 or 3311) to read: "This shipment is being imported in accordance with and under the authority of 22 CFR 123.4(a) (identify subsection)," and

(ii) Include, on the invoice or other appropriate documentation, a complete list and description of the defense article(s) being imported, including quantity and U.S. dollar value; and

(2) At the time of export, in accordance with the U.S. Customs and Border Protection procedures, the Directorate of Defense Trade Controls (DDTC) registered and eligible exporter, or an agent acting on the filer's behalf, must electronically file the export information using the Automated Export System (AES), and identify 22 CFR 123.4 as the authority for the export and provide, as requested by U.S. Customs and Border Protection, the entry document number or a copy of the U.S. Customs and Border Protection document under which the article was imported.

[58 FR 39299, July 22, 1993, as amended at 64 FR 17533, Apr. 12, 1999; 68 FR 61101, Oct. 27, 2003; 70 FR 50960, Aug. 29, 2005]

§ 123.5 Temporary export licenses.

(a) The Directorate of Defense Trade Controls may issue a license for the temporary export of unclassified defense articles (DSP–73). Such licenses are valid only if the article will be exported for a period of less than 4 years and will be returned to the United States and transfer of title will not occur during the period of temporary export. Accordingly, articles exported pursuant to a temporary export license may not be sold or otherwise permanently transferred to a foreign person while they are overseas under a temporary export license. A renewal of the license or other written approval must be obtained from the Directorate of Defense Trade Controls if the article is to

remain outside the United States beyond the period for which the license is valid.

(b) *Requirements.* Defense articles authorized for temporary export under this section may be shipped only from a port in the United States where a Port Director of U.S. Customs and Border Protection is available, or from a U.S. Post Office (see 39 CFR part 20), as appropriate. The license for temporary export must be presented to the Port Director of U.S. Customs and Border Protection who, upon verification, will endorse the exit column on the reverse side of the license. In some instances of the temporary export of technical data (e.g., postal shipments), self-endorsement will be necessary (see § 123.22(b)). The endorsed license for temporary export is to be retained by the licensee. In the case of a military aircraft or vessel exported under its own power, the endorsed license must be carried on board such vessel or aircraft as evidence that it has been duly authorized by the Department of State to leave the United States temporarily.

(c) Any temporary export license for hardware that is used, regardless of whether the hardware was exported directly to the foreign destination or returned directly from the foreign destination, must be endorsed by the U.S. Customs and Border Protection in accordance with the procedures in § 123.22 of this subchapter.

[70 FR 50960, Aug. 29, 2005]

§ 123.6 Foreign trade zones and U.S. Customs and Border Protection bonded warehouses.

Foreign trade zones in the United States and U.S. Customs and Border Protection bonded warehouses are considered integral parts of the United States for the purpose of this subchapter. An export license is therefore not required for shipment between the United States and a foreign trade zone or a U.S. Customs and Border Protection bonded warehouse. In the case of classified defense articles, the provisions of the Department of Defense National Industrial Security Program Operating Manual will apply. An export license is required for all shipments of articles on the U.S. Munitions List from foreign trade zones and U.S. Customs and Border Protection bonded warehouses to foreign countries, regardless of how the articles reached the zone or warehouse.

[71 FR 20540, Apr. 21, 2006]

§ 123.7 Exports to warehouses or distribution points outside the United States.

Unless the exemption under § 123.16(b)(1) is used, a license is required to export defense articles to a warehouse or distribution point outside the United States for subsequent resale and will normally be granted only if an agreement has been approved pursuant to § 124.14 of this subchapter.

§ 123.8 Special controls on vessels, aircraft and satellites covered by the U.S. Munitions List.

(a) Transferring registration or control to a foreign person of any aircraft, vessel, or satellite on the U.S. Munitions List is an export for purposes of this subchapter and requires a license or written approval from the Directorate of Defense Trade Controls. This requirement applies whether the aircraft, vessel, or satellite is physically located in the United States or abroad.

(b) The registration in a foreign country of any aircraft, vessel or satellite covered by the U.S. Munitions List which is not registered in the United States but which is located in the United States constitutes an export. A license or written approval from the Directorate of Defense Trade Controls is therefore required. Such transactions may also require the prior approval of the U.S. Department of Transportation's Maritime Administration, the Federal Aviation Administration or other agencies of the U.S. Government.

[71 FR 20540, Apr. 21, 2006]

§ 123.9 Country of ultimate destination and approval of reexports or retransfers.

(a) The country designated as the country of ultimate destination on an application for an export license, or on a Shipper's Export Declaration where an exemption is claimed under this subchapter, must be the country of ultimate end-use. The written approval of the Directorate of Defense Trade

Controls must be obtained before reselling, transferring, transshipping, or disposing of a defense article to any end user, end use or destination other than as stated on the export license, or on the Shipper's Export Declaration in cases where an exemption is claimed under this subchapter. Exporters must ascertain the specific end-user and end-use prior to submitting an application to the Directorate of Defense Trade Controls or claiming an exemption under this subchapter.

(b) The exporter shall incorporate the following statement as an integral part of the bill of lading, and the invoice whenever defense articles on the U.S. Munitions List are to be exported:

These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end-user]. They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of in any other country, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State."

(c) A U.S. person or a foreign person requesting approval for the reexport or retransfer, or change in end-use, of a defense article shall submit a written request which shall be subject to all the documentation required for a permanent export license (see § 123.1) and shall contain the following:

(1) The license number under which the defense article was previously authorized for export from the United States;

(2) A precise description, quantity and value of the defense article;

(3) A description of the new end-use; and

(4) Identification of the new end-user.

(d) The written approval of the Directorate of Defense Trade Controls must be obtained before reselling, transferring, transshipping on a non-continuous voyage, or disposing of a defense article in any country other than the country of ultimate destination, or anyone other than the authorized end-user, as stated on the Shipper's Export Declaration in cases where an exemption is claimed under this subchapter.

(e) Reexports or retransfers of U.S.-origin components incorporated into a foreign defense article to NATO, NATO agencies, a government of a NATO country, or the governments of Australia, Japan, New Zealand, or South Korea, are authorized without the prior written approval of the Directorate of Defense Trade Controls, provided:

(1) The U.S.-origin components were previously authorized for export from the United States, either by a license or an exemption;

(2) The U.S.-origin components are not significant military equipment, the items are not major defense equipment sold under contract in the amount of $25,000,000 ($25 million) or more; the articles are not defense articles or defense services sold under a contract in the amount of $100,000,000 ($100 million) or more; and are not identified in part 121 of this subchapter as Missile Technology Control Regime (MTCR) items; and

(3) The person reexporting the defense article must provide written notification to the Directorate of Defense Trade Controls of the retransfer not later than 30 days following the reexport. The notification must state the articles being reexported and the recipient government.

(4) In certain cases, the Managing Director, Directorate of Defense Trade Controls or the Director, Office of Defense Trade Controls Licensing, may place retransfer restrictions on a license prohibiting use of this exemption.

[58 FR 39299, July 22, 1993, as amended at 71 FR 20541, Apr. 21, 2006; 73 FR 15885, Mar. 26, 2008; 73 FR 38343, Aug. 3, 2009]

§ 123.10 Non-transfer and use assurances.

(a) A nontransfer and use certificate (Form DSP–83) is required for the export of significant military equipment and classified articles, including classified technical data. A license will not be issued until a completed Form DSP–83 has been received by the Directorate of Defense Trade Controls. This form is to be executed by the foreign consignee, foreign end-user, and the applicant. The certificate stipulates that, except as specifically authorized by prior written approval of the Department of State, the foreign consignee and foreign end-user will not reexport,

resell or otherwise dispose of the significant military equipment enumerated in the application outside the country named as the location of the foreign end-use or to any other person.

(b) The Directorate of Defense Trade Controls may also require a DSP-83 for the export of any other defense articles, including technical data, or defense services.

(c) When a DSP-83 is required for an export of any defense article or defense service to a non-governmental foreign end-user, the Directorate of Defense Trade Controls may require as a condition of issuing the license that the appropriate authority of the government of the country of ultimate destination also execute the certificate.

[71 FR 20541, Apr. 21, 2006]

§ 123.11 Movements of vessels and aircraft covered by the U.S. Munitions List outside the United States.

(a) A license issued by the Directorate of Defense Trade Controls is required whenever a privately-owned aircraft or vessel on the U.S. Munitions List makes a voyage outside the United States.

(b) Exemption. An export license is not required when a vessel or aircraft referred to in paragraph (a) of this section departs from the United States and does not enter the territorial waters or airspace of a foreign country if no defense articles are carried as cargo. Such a vessel or aircraft may not enter the territorial waters or airspace of a foreign country before returning to the United States, or carry as cargo any defense article, without a temporary export license (Form DSP-73) from the Department of State. (See § 123.5.)

[58 FR 39299, July 22, 1993, as amended at 71 FR 20541, Apr. 21, 2006]

§ 123.12 Shipments between U.S. possessions.

An export license is not required for the shipment of defense articles between the United States, the Commonwealth of Puerto Rico, and U.S. possessions. A license is required, however, for the export of defense articles from these areas to foreign countries.

§ 123.13 Domestic aircraft shipments via a foreign country.

A license is not required for the shipment by air of a defense article from one location in the United States to another location in the United States via a foreign country. The pilot of the aircraft must, however, file a written statement with the Port Director of U.S. Customs and Border Protection at the port of exit in the United States. The original statement must be filed at the time of exit with the Port Director of U.S. Customs and Border Protection. A duplicate must be filed at the port of reentry with the Port Director of U.S. Customs and Border Protection, who will duly endorse it and transmit it to the Port Director of U.S. Customs and Border Protection at the port of exit. The statement will be as follows:

DOMESTIC SHIPMENT VIA A FOREIGN COUNTRY OF ARTICLES ON THE U.S. MUNITIONS LIST

Under penalty according to Federal law, the undersigned certifies and warrants that all the information in this document is true and correct, and that the equipment listed below is being shipped from (U.S. port of exit) via (foreign country) to (U.S. port of entry), which is the final destination in the United States.

Description of Equipment

Quantity _____

Equipment _____

Value _____

Signed _____

Endorsement: U.S. Customs and Border Protection Inspector.

Port of Exit _____

Date _____

Signed _____

Endorsement: U.S. Customs and Border Protection Inspector.

Port of Entry _____

Date _____

[70 FR 50961, Aug. 29, 2005]

§ 123.14 Import certificate/delivery verification procedure.

(a) The Import Certificate/Delivery Verification Procedure is designed to assure that a commodity imported into the territory of those countries participating in IC/DV procedures will not be diverted, transshipped, or reexported to

another destination except in accordance with export control regulations of the importing country.

(b) *Exports.* The Directorate of Defense Trade Controls may require the IC/DV procedure on proposed exports of defense articles to non-government entities in those countries participating in IC/DV procedures. In such cases, U.S. exporters must submit both an export license application (the completed Form DSP–5) and the original Import Certificate, which must be provided and authenticated by the government of the importing country. This document verifies that the foreign importer complied with the import regulations of the government of the importing country and that the importer declared the intention not to divert, transship or reexport the material described therein without the prior approval of that government. After delivery of the commodities to the foreign consignee, the Directorate of Defense Trade Controls may also require U.S. exporters to furnish Delivery Verification documentation from the government of the importing country. This documentation verifies that the delivery was in accordance with the terms of the approved export license. Both the Import Certificate and the Delivery Verification must be furnished to the U.S. exporter by the foreign importer.

(c) *Triangular transactions.* When a transaction involves three or more countries that have adopted the IC/DV procedure, the governments of these countries may stamp a triangular symbol on the Import Certificate. This symbol is usually placed on the Import Certificate when the applicant for the Import Certificate (the importer) states either (1) that there is uncertainty whether the items covered by the Import Certificate will be imported into the country issuing the Import Certificate; (2) that he or she knows that the items will not be imported into the country issuing the Import Certificate; or (3) that, if the items are to be imported into the country issuing the Import Certificate, they will subsequently be reexported to another destination. All parties, including the ultimate consignee in the country of ultimate destination, must be shown on the completed Import Certificate.

[58 FR 39299, July 22, 1993, as amended at 71 FR 20541, Apr. 21, 2006]

§ 123.15 Congressional certification pursuant to Section 36(c) of the Arms Export Control Act.

(a) The Arms Export Control Act requires that a certification be provided to the Congress prior to the granting of any license or other approval for transactions, in the amounts described below, involving exports of any defense articles and defense services and for exports of major defense equipment, as defined in § 120.8 of this subchapter. Approvals may not be granted when the Congress has enacted a joint resolution prohibiting the export. Certification is required for any transaction involving:

(1) A license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more, or for defense articles and defense services sold under a contract in the amount of $50,000,000 or more to any country that is not a member country of the North Atlantic Treaty Organization (NATO), or Australia, Japan, New Zealand, or South Korea that does not authorize a new sales territory; or

(2) A license for export to a country that is a member country of the North Atlantic Treaty Organization (NATO), or Australia, Japan, New Zealand, or South Korea of major defense equipment sold under a contract in the amount of $25,000,000 or more, or for defense articles and defense services sold under a contract in the amount of $100,000,000 or more and provided the transfer does not include any other countries; or

(3) A license for export of a firearm controlled under Category I of the United States Munitions List, of this subchapter, in an amount of $1,000,000 or more.

(b) Unless an emergency exists which requires the proposed export in the national security interests of the United States, approval may not be granted for any transaction until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1) involving the North Atlantic Treaty

Organization, any member country of the Organization, or Australia, Japan, New Zealand, or South Korea or at least 30 calendar days have elapsed for any other country; in the case of a license for an export of a commercial communications satellite for launch from, and by nationals of, the Russian Federation, Ukraine, or Kazakhstan, until at least 15 calendar days after the Congress receives such certification.

(c) Persons who intend to export defense articles and defense services pursuant to any exemption in this subchapter under the circumstances described in this section must provide written notification to the Directorate of Defense Trade Controls and include a signed contract and a DSP-83 signed by the applicant, the foreign consignee and the end-user.

[70 FR 34654, June 15, 2005, as amended at 73 FR 38343, Aug. 3, 2009]

§ 123.16 Exemptions of general applicability.

(a) The following exemptions apply to exports of unclassified defense articles for which no approval is needed from the Directorate of Defense Trade Controls. These exemptions do not apply to: Proscribed destinations under § 126.1 of this subchapter; exports for which Congressional notification is required (see § 123.15 of this subchapter); MTCR articles; Significant Military Equipment (SME); and may not be used by persons who are generally ineligible as described in § 120.1(c) of this subchapter. All shipments of defense articles, including those to and from Canada, require a Shipper's Export Declaration (SED) or notification letter. If the export of a defense article is exempt from licensing, the SED must cite the exemption. Refer to § 123.22 for Shipper's Export Declaration and letter notification requirements.

(b) The following exports are exempt from the licensing requirements of this subchapter.

(1) Port Directors of U.S. Customs and Border Protection shall permit the export without a license of defense hardware being exported in furtherance of a manufacturing license agreement, technical assistance agreement, distribution agreement or an arrangement for distribution of items identified in Category XIII(b)(1), approved in accordance with part 124, provided that:

(i) The defense hardware to be exported supports the activity and is identified by item, quantity and value in the agreement or arrangement; and

(ii) Any provisos or limitations placed on the authorized agreement or arrangement are adhered to; and

(iii) The exporter certifies on the Shipper's Export Declaration that the export is exempt from the licensing requirements of this subchapter. This is done by writing, "22 CFR 123.16(b)(1) and the agreement or arrangement (identify/state number) applicable"; and

(iv) The total value of all shipments does not exceed the value authorized in the agreement or arrangement.

(v) In the case of a distribution agreement, export must be made directly to the approved foreign distributor.

(2) Port Directors of U.S. Customs and Border Protection shall permit the export of components or spare parts (for exemptions for firearms and ammunition see § 123.17) without a license when the total value does not exceed $500 in a single transaction and:

(i) The components or spare parts are being exported to support a defense article previously authorized for export; and

(ii) The spare parts or components are not going to a distributor, but to a previously approved end-user of the defense articles; and

(iii) The spare parts or components are not to be used to enhance the capability of the defense article;

(iv) Exporters shall not split orders so as not to exceed the dollar value of this exemption;

(v) The exporter may not make more than 24 shipments per calendar year to the previously authorized end user;

(vi) The exporter must certify on the Shipper's Export Declaration that the export is exempt from the licensing requirements of this subchapter. This is done by writing 22 CFR 123.16(b)(2) applicable.

(3) Port Directors of U.S. Customs and Border Protection shall permit the export without a license, of packing cases specially designed to carry defense articles.

(4) Port Directors of U.S. Customs and Border Protection shall permit the export without a license, of unclassified models or mock-ups of defense articles, provided that such models or mock-ups are nonoperable and do not reveal any technical data in excess of that which is exempted from the licensing requirements of §125.4(b) of this subchapter and do not contain components covered by the U.S. Munitions List (see §121.8(b) of this subchapter). Some models or mockups built to scale or constructed of original materials can reveal technical data. U.S. persons who avail themselves of this exemption must provide a written certification to the Port Director of U.S. Customs and Border Protection that these conditions are met. This exemption does not imply that the Directorate of Defense Trade Controls will approve the export of any defense articles for which models or mocks-ups have been exported pursuant to this exemption.

(5) Port Directors of U.S. Customs and Border Protection shall permit the temporary export without a license of unclassified defense articles to any public exhibition, trade show, air show or related event if that article has previously been licensed for a public exhibition, trade show, air show or related event and the license is still valid. U.S. persons who avail themselves of this exemption must provide a written certification to the Port Director of U.S. Customs and Border Protection that these conditions are met.

(6) For exemptions for firearms and ammunition for personal use refer to §123.17.

(7) For exemptions for firearms for personal use of members of the U.S. Armed Forces and civilian employees see §123.18.

(8) For exports to Canada refer to §126.5 of this subchapter.

(9) Port Directors of U.S. Customs and Border Protection shall permit the temporary export without a license by a U.S. person of any unclassified component, part, tool or test equipment to a subsidiary, affiliate or facility owned or controlled by the U.S. person (see §122.2(c) of this subchapter) if the component, part, tool or test equipment is to be used for manufacture, assembly, testing, production, or modification provided:

(i) The U.S. person is registered with the Directorate of Defense Trade Controls and complies with all requirements set forth in part 122 of this subchapter;

(ii) No defense article exported under this exemption may be sold or transferred without the appropriate license or other approval from the Directorate of Defense Trade Controls.

(10) Port Directors of U.S. Customs and Border Protection shall permit, without a license, the permanent export, and temporary export and return to the United States, by accredited U.S. institutions of higher learning of articles fabricated only for fundamental research purposes otherwise controlled by Category XV (a) or (e) in §121.1 of this subchapter when all of the following conditions are met:

(i) The export is to an accredited institution of higher learning, a governmental research center or an established government funded private research center located within countries of the North Atlantic Treaty Organization (NATO) or countries which have been designated in accordance with section 517 of the Foreign Assistance Act of 1961 as a major non-NATO ally (and as defined further in section 644(q) of that Act) for purposes of that Act and the Arms Export Control Act, or countries that are members of the European Space Agency or the European Union and involves exclusively nationals of such countries;

(ii) All of the information about the article(s), including its design, and all of the resulting information obtained through fundamental research involving the article will be published and shared broadly within the scientific community, and is not restricted for proprietary reasons or specific U.S. government access and dissemination controls or other restrictions accepted by the institution or its researchers on publication of scientific and technical information resulting from the project or activity (See §120.11 of this subchapter); and

(iii) If the article(s) is for permanent export, the platform or system in which the article(s) may be incorporated must be a satellite covered by

§ 125.4(d)(1)(iii) of this subchapter and be exclusively concerned with fundamental research and only be launched into space from countries and by nationals of countries identified in this section.

[58 FR 39299, July 22, 1993, as amended at 59 FR 29951, June 10, 1994; 59 FR 45622, Sept. 2, 1994; 67 FR 15100, Mar. 29, 2002; 70 FR 50961, Aug. 29, 2005; 71 FR 20541, Apr. 21, 2006]

§ 123.17 Exports of firearms and ammunition.

(a) Except as provided in § 126.1 of this subchapter, Port Directors of U.S. Customs and Border Protection shall permit the export without a license of components and parts for Category I(a) firearms, except barrels, cylinders, receivers (frames) or complete breech mechanisms when the total value does not exceed $100 wholesale in any transaction.

(b) Port Directors of U.S. Customs and Border Protection shall permit the export without a license of nonautomatic firearms covered by Category I(a) of § 121.1 of this subchapter if they were manufactured in or before 1898, or are replicas of such firearms.

(c) Port Directors of U.S. Customs and Border Protection shall permit U.S. persons to export temporarily from the United States without a license not more than three nonautomatic firearms in Category I(a) of § 121.1 of this subchapter and not more than 1,000 cartridges therefor, provided that:

(1) A declaration by the U.S. person and an inspection by a customs officer is made;

(2) The firearms and accompanying ammunition must be with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(3) They must be for that person's exclusive use and not for reexport or other transfer of ownership. The foregoing exemption is not applicable to a crew-member of a vessel or aircraft unless the crew-member declares the firearms to a Customs officer upon each departure from the United States, and declares that it is his or her intention to return the article(s) on each return to the United States. It is also not applicable to the personnel referred to in § 123.18.

(d) Port Directors of U.S. Customs and Border Protection shall permit a foreign person to export without a license such firearms in Category I(a) of § 121.1 of this subchapter and ammunition therefor as the foreign person brought into the United States under the provisions of 27 CFR 478.115(d). (The latter provision specifically excludes from the definition of importation the bringing into the United States of firearms and ammunition by certain foreign persons for specified purposes.)

(e) Port Directors of U.S. Customs and Border Protection shall permit U.S. persons to export without a license ammunition for nonautomatic firearms referred to in paragraph (a) of this section if the quantity does not exceed 1,000 cartridges (or rounds) in any shipment. The ammunition must also be for personal use and not for resale or other transfer of ownership. The foregoing exemption is also not applicable to the personnel referred to in § 123.18.

(f) Except as provided in § 126.1 of this subchapter, Port Directors of U.S. Customs and Border Protection shall permit U.S. persons to export temporarily from the United States without a license one set of body armor covered by Category X(a)(1) of this subchapter provided that:

(1) A declaration by the U.S. person and an inspection by a customs officer is made;

(2) The body armor is with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed);

(3) The body armor is for that person's exclusive use and not for re-export or other transfer of ownership; and

(4) If the body armor is lost or otherwise not returned to the United States, a detailed report must be submitted to the Office of Defense Trade Controls Compliance in § 127.12(c)(2) of this subchapter entitled "Voluntary disclosures."

(g) The license exemption set forth in paragraph (f) of this section is also available for the temporary export of body armor for personal use to Afghanistan and to Iraq provided that:

(1) The conditions in paragraphs (f)(1)–(f)(3) of this section are met;

(2) For temporary exports to Iraq the U.S. person utilizing the license exemption is either a person affiliated with the U.S. Government traveling on official business or is a person not affiliated with the U.S. Government but traveling to Iraq under a direct authorization by the Government of Iraq and engaging in humanitarian activities for, on behalf of, or at the request of the Government of Iraq.

[58 FR 39299, July 22, 1993, as amended at 64 FR 17534, Apr. 12, 1999; 70 FR 50962, Aug. 29, 2005; 71 FR 20541, Apr. 21, 2006; 74 FR 39213, Aug. 6, 2009]

§ 123.18 Firearms for personal use of members of the U.S. Armed Forces and civilian employees of the U.S. Government.

The following exemptions apply to members of the U.S. Armed Forces and civilian employees of the U.S. Government who are U.S. persons (both referred to herein as personnel). The exemptions apply only to such personnel if they are assigned abroad for extended duty. These exemptions do not apply to dependents.

(a) *Firearms.* Port Directors of U.S. Customs and Border Protection shall permit nonautomatic firearms in Category I(a) of § 121.1 of this subchapter and parts therefor to be exported, except by mail, from the United States without a license if:

(1) They are consigned to servicemen's clubs abroad for uniformed members of the U.S. Armed Forces; or,

(2) In the case of a uniformed member of the U.S. Armed Forces or a civilian employee of the Department of Defense, they are for personal use and not for resale or other transfer of ownership, and if the firearms are accompanied by a written authorization from the commanding officer concerned; or

(3) In the case of other U.S. Government employees, they are for personal use and not for resale or other transfer of ownership, and the Chief of the U.S. Diplomatic Mission or his designee in the country of destination has approved in writing to Department of State the import of the specific types and quantities of firearms into that country. The exporter shall provide a copy of this written statement to the Port Director of U.S. Customs and Border Protection.

(b) *Ammunition.* Port Directors of U.S. Customs and Border Protection shall permit not more than 1,000 cartridges (or rounds) of ammunition for the firearms referred to in paragraph (a) of this section to be exported (but not mailed) from the United States without a license when the firearms are on the person of the owner or with his baggage or effects, whether accompanied or unaccompanied (but not mailed).

[58 FR 39299, July 22, 1993, as amended at 70 FR 50962, Aug. 29, 2005]

§ 123.19 Canadian and Mexican border shipments.

A shipment originating in Canada or Mexico which incidentally transits the United States en route to a delivery point in the same country that originated the shipment is exempt from the requirement for an in transit license.

§ 123.20 Nuclear related controls.

(a) The provisions of this subchapter do not apply to equipment, technical data or services in Category VI(e) and Category XVI of § 121.1 of this subchapter to the extent such equipment, technical data or services are under the export control of the Department of Energy or the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as amended, or is a government transfer authorized pursuant to these Acts.

(b) The transfer of materials, including special nuclear materials, nuclear parts of nuclear weapons, or other nonnuclear parts of nuclear weapons systems involving Restricted Data or of assistance involving any person directly or indirectly engaging in the production or use thereof is prohibited except as authorized by the Atomic Energy Act of 1954, as amended. The transfer of Restricted Data or such assistance is prohibited except as authorized by the Atomic Energy Act of 1954, as amended. The technical data or defense services relating to nuclear weapons, nuclear weapons systems or related defense purposes (and such data

or services relating to applications of atomic energy for peaceful purposes, or related research and development) may constitute Restricted Data or such assistance, subject to the foregoing prohibition.

(c) A license for the export of any machinery, device, component, equipment, or technical data relating to equipment referred to in Category VI(e) of § 121.1 of this subchapter will not be granted unless the proposed equipment comes within the scope of an existing Agreement for Cooperation for Mutual Defense Purposes concluded pursuant to the Atomic Energy Act of 1954, as amended, with the government of the country to which the Article is to be exported. Licenses may be granted in the absence of such an agreement only:

(1) If the proposed export involves an article which is identical to that in use in an unclassified civilian nuclear power plant,

(2) If the proposed export has no relationship to naval nuclear propulsion, and

(3) If it is not for use in a naval propulsion plant.

[67 FR 58988, Sept. 19, 2002]

§ 123.21 Duration, renewal and disposition of licenses.

(a) A license is valid for four years. The license expires when the total value or quantity authorized has been shipped or when the date of expiration has been reached, whichever occurs first. Defense articles to be shipped thereafter require a new application and license. The new application should refer to the expired license. It should not include references to any defense articles other than those of the unshipped balance of the expired license.

(b) Unused, expired, expended, suspended, or revoked licenses must be returned immediately to the Department of State.

§ 123.22 Filing, retention, and return of export licenses and filing of export information.

(a) Any export, as defined in this subchapter, of a defense article controlled by this subchapter, to include defense articles transiting the United States, requires the electronic reporting of export information. The reporting of the export information shall be to the U.S. Customs and Border Protection using the Automated Export System (AES) or directly to the Directorate of Defense Trade Controls (DDTC). Any license or other approval authorizing the permanent export of hardware must be filed at a U.S. Port before any export. Licenses or other approvals for the permanent export of technical data and defense services shall be retained by the applicant who will send the export information directly to DDTC. Temporary export or temporary import licenses for such items need not be filed with the U.S. Customs and Border Protection, but must be presented to the U.S. Customs and Border Protection for decrementing of the shipment prior to departure and at the time of entry. The U.S. Customs and Border Protection will only decrement a shipment after the export information has been filed correctly using the AES. Before the export of any hardware using an exemption in this subchapter, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically provide export information using the AES (see paragraph (b) of this section). In addition to electronically providing the export information to the U.S. Customs and Border Protection before export, all the mandatory documentation must be presented to the port authorities (e.g., attachments, certifications, proof of AES filing; such as the External Transaction Number (XTN) or Internal Transaction Number (ITN)). Export authorizations shall be filed, retained, decremented or returned to DDTC as follows:

(1) *Filing of licenses and documentation for the permanent export of hardware.* For any permanent export of hardware using a license (e.g., DSP–5, DSP–94) or an exemption in this subchapter, the exporter must, prior to an AES filing, deposit the license and provide any required documentation for the license or the exemption with the U.S. Customs and Border Protection, unless otherwise directed in this subchapter (e.g., § 125.9). If necessary, an export may be made through a port other than the

one designated on the license if the exporter complies with the procedures established by the U.S. Customs and Border Protection.

(2) *Presentation and retention by the applicant of temporary licenses and related documentation for the export of unclassified defense articles.* Licenses for the temporary export or temporary import of unclassified defense articles need not be filed with the U.S. Customs and Border Protection, but must be retained by the applicant and presented to the U.S. Customs and Border Protection at the time of temporary import and temporary export. When a defense article is temporarily exported from the United States and moved from one destination authorized on a license to another destination authorized on the same or another temporary license, the applicant, or an agent acting on the applicant's behalf, must ensure that the U.S. Customs and Border Protection decrements both temporary licenses to show the exit and entry of the hardware.

(b) *Filing and reporting of export information*—(1) *Filing of export information with the U.S. Customs and Border Protection.* Before exporting any hardware controlled by this subchapter, using a license or exemption, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically file the export information with the U.S. Customs and Border Protection using the Automated Export System (AES) in accordance with the following timelines:

(i) *Air or truck shipments.* The export information must be electronically filed at least 8 hours prior to departure.

(ii) *Sea or rail Shipments.* The export information must be electronically filed at least 24 hours prior to departure.

(2) *Emergency shipments of hardware that cannot meet the pre-departure filing requirements.* U.S. Customs and Border Protection may permit an emergency export of hardware by truck (e.g., departures to Mexico or Canada) or air, by a U.S. registered person, when the exporter is unable to comply with the SED filing timeline in paragraph (b)(1)(i) of this section. The applicant, or an agent acting on the applicant's behalf, in addition to providing the export information electronically using the AES, must provide documentation required by the U.S. Customs and Border Protection and this subchapter. The documentation provided to the U.S. Customs and Border Protection at the port of exit must include the External Transaction Number (XTN) or Internal Transaction Number (ITN) for the shipment and a copy of a notification to DDTC stating that the shipment is urgent and why. The original of the notification must be immediately provided to DDTC. The AES filing of the export information when the export is by air must be at least two hours prior to any departure from the United States; and, when a truck shipment, at the time when the exporter provides the articles to the carrier or at least one hour prior to departure from the United States, when the permanent export of the hardware has been authorized for export:

(i) In accordance with § 126.4 of this subchapter, or

(ii) On a valid license (*i.e.*, DSP–5, DSP–94) and the ultimate recipient and ultimate end user identified on the license is a foreign government.

(3) *Reporting of export information on technical data and defense service.* When an export is being made using a DDTC authorization (e.g., technical data license, agreement or a technical data exemption provided in this subchapter), the DDTC registered exporter will retain the license or other approval and provide the export information electronically to DDTC as follows:

(i) *Technical data license.* Prior to the permanent export of technical data licensed using a Form DSP–5, the applicant shall electronically provide export information using the system for direct electronic reporting to DDTC of export information and self validate the original of the license. When the initial export of all the technical data authorized on the license has been made, the license must be returned to DDTC. Exports of copies of the licensed technical data should be made in accordance with existing exemptions in this subchapter. Should an exemption not apply, the applicant may request a new license.

(ii) *Manufacturing license and technical assistance agreements.* Prior to the initial export of any technical data and defense services authorized in an agreement the U.S. agreement holder must electronically inform DDTC that exports have begun. In accordance with this subchapter, all subsequent exports of technical data and services are not required to be filed electronically with DDTC except when the export is done using a U.S. Port. Records of all subsequent exports of technical data shall be maintained by the exporter in accordance with this subchapter and shall be made immediately available to DDTC upon request. Exports of technical data in furtherance of an agreement using a U.S. Port shall be made in accordance with § 125.4 of this subchapter and made in accordance with the procedures in paragraph (b)(3)(iii) of this section.

(iii) *Technical data and defense service exemptions.* In any instance when technical data is exported using an exemption in this subchapter (e.g., §§ 125.4(b)(2), 125.4(b)(4), 126.5) from a U.S. port, the exporter is not required to report using AES, but must, effective January 18, 2004, provide the export data electronically to DDTC. A copy of the electronic notification to DDTC must accompany the technical data shipment and be made available to the U.S. Customs and Border Protection upon request.

NOTE TO PARAGRAPH (b)(3)(iii): Future changes to the electronic reporting procedure will be amended by publication of a rule in the FEDERAL REGISTER. Exporters are reminded to continue maintaining records of all export transactions, including exemption shipments, in accordance with this subchapter.

(c) *Return of licenses.* All licenses issued by the Directorate of Defense Trade Controls (DDTC) must be returned to the DDTC in accordance with the following:

(1) *License filed with the U.S. Customs and Border Protection.* The U.S. Customs and Border Protection must return to the DDTC any license when the total value or quantity authorized has been shipped or when the date of expiration is reached, whichever occurs first.

(2) *Licenses not filed with the U.S. Customs and Border Protection.* Any license that is not filed with the U.S. Customs and Border Protection (e.g., oral or visual technical data releases or temporary import and export licenses retained in accordance with paragraph (a)(2) of this section), must be returned by the applicant to the DDTC no later than 60 days after the license has been expended (e.g., total value or quantity authorized has been shipped) or the date of expiration, whichever occurs first.

[68 FR 61101, Oct. 27, 2003, as amended at 70 FR 50962, Aug. 29, 2005]

§ 123.23 Monetary value of shipments.

Port Directors of U.S. Customs and Border Protection shall permit the shipment of defense articles identified on any license when the total value of the export does not exceed the aggregate monetary value (not quantity) stated on the license by more than ten percent, provided that the additional monetary value does not make the total value of the license or other approval for the export of any major defense equipment sold under a contract reach $14,000,000 or more, and provided that the additional monetary value does not make defense articles or defense services sold under a contract reach the amount of $50,000,000 or more.

[70 FR 50963, Aug. 29, 2005]

§ 123.24 Shipments by U.S. Postal Service.

(a) The export of any defense hardware using a license or exemption in this subchapter by the U.S. Postal Service must be filed with the U.S. Customs and Border Protection using the Automated Export System (AES) and the license must be filed with the U.S. Customs and Border Protection before any hardware is actually sent abroad by mail. The exporter must certify the defense hardware being exported in accordance with this subchapter by clearly marking on the package "This export is subject to the controls of the ITAR, 22 CFR (identify section for an exemption) or (state license number) and the export has been electronically filed with the U.S. Customs and Border Protection using the Automated Export System (AES)."

(b) The export of any technical data using a license in this subchapter by the U.S. Postal Service must be notified electronically directly to the Directorate of Defense Trade Controls (DDTC). The exporter, using either a license or exemption, must certify, by clearly marking on the package, "This export is subject to the controls of the ITAR, 22 CFR (identify section for an exemption) or (state license number)." For those exports using a license, the exporter must also state "The export has been electronically notified directly to DDTC." The license must be returned to DDTC upon completion of the use of the license (*see* § 123.22(c)).

[68 FR 61102, Oct. 27, 2003, as amended at 70 FR 50963, Aug. 29, 2005]

§ 123.25 Amendments to licenses.

(a) The Directorate of Defense Trade Controls may approve an amendment to a license for permanent export, temporary export and temporary import of unclassified defense articles. A suggested format is available from the Directorate of Defense Trade Controls.

(b) The following types of amendments to a license that will be considered: Addition of U.S. freight forwarder or U.S. consignor; change due to an obvious typographical error; change in source of commodity; and change of foreign intermediate consignee if that party is only transporting the equipment and will not process (e.g., integrate, modify) the equipment. For changes in U.S. dollar value see § 123.23.

(c) The following types of amendments to a license will not be approved: Additional quantity, changes in commodity, country of ultimate destination, end-use or end-user, foreign consignee and/or extension of duration. The foreign intermediate consignee may only be amended if that party is acting as freight forwarder and the export does not involve technical data. A new license is required for these changes. Any new license submission must reflect only the unshipped balance of quantity and dollar value.

[58 FR 39299, July 22, 1993, as amended at 71 FR 20542, Apr. 21, 2006]

§ 123.26 Recordkeeping requirement for exemptions.

When an exemption is claimed for the export of unclassified technical data, the exporter must maintain a record of each such export. The business record should include the following information: A description of the unclassified technical data, the name of the recipient end-user, the date and time of the export, and the method of transmission.

§ 123.27 Special licensing regime for export to U.S. allies of commercial communications satellite components, systems, parts, accessories, attachments and associated technical data.

(a) U.S. persons engaged in the business of exporting specifically designed or modified components, systems, parts, accessories, attachments, associated equipment and certain associated technical data for commercial communications satellites, and who are so registered with the Directorate of Defense Trade Controls pursuant to part 122 of this subchapter, may submit license applications for multiple permanent and temporary exports and temporary imports of such articles for expeditious consideration without meeting the documentary requirements of § 123.1(c)(4) and (5) concerning purchase orders, letters of intent, contracts and non-transfer and end use certificates, or the documentary requirements of § 123.9, concerning approval of re-exports or re-transfers, when all of the following requirements are met:

(1) The proposed exports or re-exports concern exclusively one or more countries of the North Atlantic Treaty Organization (see § 120.31 of this subchapter) and/or one or more countries which have been designated in accordance with section 517 of the Foreign Assistance Act of 1961 and with section 1206 of the Foreign Relations Authorization Act, Fiscal Year 2003 as a major non-NATO ally (see § 120.32 of this subchapter).

(2) The proposed exports concern exclusively one or more foreign persons (e.g., companies or governments) located within the territories of the countries identified in paragraph (a)(1)

of this section, and one or more commercial communications satellite programs included within a list of such persons and programs approved by the U.S. Government for purposes of this section, as signified in a list of such persons and programs that will be publicly available through the Internet Web site of the Directorate of Defense Trade Controls and by other means.

(3) The articles are not major defense equipment sold under a contract in the amount of $14,000,000 or more or defense articles or defense services sold under a contract in the amount of $50,000,000 or more (for which purpose, as is customary, exporters may not split contracts or purchase orders). Items meeting these statutory thresholds must be submitted on a separate license application to permit the required notification to Congress pursuant to section 36(c) of the Arms Export Control Act.

(4) The articles are not detailed design, development, manufacturing or production data and do not involve the manufacture abroad of significant military equipment.

(5) The U.S. exporter provides complete shipment information to the Directorate of Defense Trade Controls within 15 days of shipment by submitting a report containing a description of the item and the quantity, value, port of exit, and end-user and country of destination of the item, and at that time meets the documentary requirements of §123.1(c)(4) and (5), the documentary requirements of §123.9 in the case of re-exports or re-transfers, and, other documentary requirements that may be imposed as a condition of a license (e.g., parts control plans for MTCR-controlled items). The shipment information reported must include a description of the item and quantity, value, port of exit and end user and country of destination of the item.

(6) At any time in which an item exported pursuant to this section is proposed for re-transfer outside of the approved territory, programs or persons (e.g., such as in the case of an item included in a satellite for launch beyond the approved territory), the detailed requirements of §123.9 apply with regard to obtaining the prior written consent of the Directorate of Defense Trade Controls.

(b) The re-export or re-transfer of the articles authorized for export (including to specified re-export destinations) in accordance with this section do not require the separate prior written approval of the Directorate of Defense Trade Controls provided all of the requirements in paragraph (a) of this section are met.

(c) The Directorate of Defense Trade Controls will consider, on a case-by-case basis, requests to include additional foreign companies and satellite programs within the geographic coverage of a license application submitted pursuant to this section from countries not otherwise covered, who are members of the European Space Agency or the European Union. In no case, however, can the provisions of this section apply or be relied upon by U.S. exporters in the case of countries who are subject to the mandatory requirements of Section 1514 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261), concerning national security controls on satellite export licensing.

(d) Registered U.S. exporters may request at the time of a license application submitted pursuant to this section that additional foreign persons or communications satellite programs be added to the lists referred to in paragraph (a)(2) of this section, which additions, if approved, will be included within the publicly available lists of authorized recipients and programs.

[65 FR 34091, May 26, 2000, as amended at 67 FR 58988, Sept. 19, 2002; 69 FR 40314, July 2, 2004; 70 FR 50963, Aug. 29, 2005; 71 FR 20542, Apr. 21, 2006]

PART 124—AGREEMENTS, OFFSHORE PROCUREMENT AND OTHER DEFENSE SERVICES

Sec.

124.1 Manufacturing license agreements and technical assistance agreements.
124.2 Exemptions for training and military service.
124.3 Exports of technical data in furtherance of an agreement.
124.4 Deposit of signed agreements with the Directorate of Defense Trade Controls.