

DEPARTMENT OF STATE

22 CFR Parts 121, 122, 123, 124, 125, 126, 127, 128, 129, and 130

[Departmental Reg. 108.840]

Revision of the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: On December 19, 1980, the Department of State published a proposed comprehensive revision of the International Traffic in Arms Regulations (the ITAR) (45 FR 83970). The purpose of this proposed revision was to simplify and clarify the regulations and to improve the regulatory scheme established under the Arms Export Control Act. Numerous comments were received from the public and from U.S. Government agencies. This publication publishes the final rule, which shall enter into force on January 1, 1985.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT:

Mr. William B. Robinson, (202) 235-9755, Director, Office of Munitions Control; Mr. Mark L. Wiznitzer, (202) 235-9756, Office of Munitions Control; Ms. Jean U. Bailly, (202) 632-0568, Office of the Legal Adviser.

SUPPLEMENTARY INFORMATION:

Background. The International Traffic in Arms Regulations were first published in their current form on August 26, 1955 (20 FR 6250) pursuant to the authority of section 414 of the Mutual Security Act of 1954 (68 Stat. 848). The Mutual Security Act replaced the Neutrality Act of 1939 (54 Stat. 11), which had constituted the authority of the President to control exports of arms, ammunition, and implements of war. The provisions of the Mutual Security Act of 1954 were to a large extent superseded in 1976 by the Arms Export Control Act (22 U.S.C. 2778), referred to in this summary as the Act. Section 38 of the Act continued the President's authority to control the export and import of defense articles and defense services (including exports of technical data related to defense articles). It also continued to authorize the President to promulgate regulations for the import and export of defense articles and defense services and to provide foreign policy guidance to persons involved in such exports and imports. Executive Order 11958 of January 18, 1977 as amended (44 FR 4311) delegated authority to regulate exports of defense articles and defense services to the

Secretary of State, in consultation with the Secretaries of Commerce and Defense.

Revision of the ITAR. The ITAR have been amended from time to time to reflect statutory enactments and to implement the foreign policy of the United States. However, the last substantial revision of the regulations occurred in 1969. There was a felt need in recent years to simplify whenever possible the structure and terminology of the regulations. As a result, the Department of State undertook in 1979 to revise the ITAR. A proposed revision was published on December 19, 1980 (45 FR 83970).

Extensive comments were received from the public and U.S. Government agencies. Many of those comments resulted in changes in the proposed regulations.

On August 29, 1984, the Department of State published a notice in the Federal Register (49 FR 34240) that the revision was complete. The public was informed that any person who wished to comment further on the regulations could do so by contacting the Office of Munitions Control. The proposed regulations were again modified in view of these latest comments and are published today as a final rule.

Most of the provisions of the ITAR have been modified in some way, generally for editorial purposes. However, the basic regulatory scheme is not changed under the revision. The changes in the revision attempt primarily to: incorporate changes in government policies and licensing procedures; improve its organization; simplify and modernize its terminology; improve its enforceability; and implement recent Congressional notification requirements. The major changes from the prior edition of the ITAR and the proposed revision of December 19, 1980, are as follows.

Part 120. Many of the comments on the proposed revision of the ITAR made it clear that there was considerable confusion on the relation of the ITAR to the export regulations administered by the Department of Commerce; on how defense articles and defense services are placed on the Munitions List; on the standards used to designate defense articles and services; on whether "dual use" items or technical data were controlled under the ITAR; and on whether the proposed foreign end-use of the item to be exported is relevant in determining whether State or Commerce controls a particular export. Part 120 is new, and provides information on these basic matters and a basic conceptual introduction to the regulatory scheme. Part 120 simply codifies the practice and

standards of the Office of Munitions Control. No new policy is established by this Part.

The definitions which apply to the ITAR are now located in Part 120. These were previously found at the end of Part 121. A listing of U.S. Government forms referred to in the regulations has been included at the end of Part 120. The interpretations of the Munitions List in Part 121 and the definitions which apply specifically to the reporting requirements of Part 130 remain in those parts. Several definitions have been revised. Perhaps the most important definition is that of "technical data" (§ 120.21). Many of the comments received on the proposed revision of the ITAR were on the proposed definition of technical data of December 19, 1980 (as well as the related exemptions on certain exports of technical data). The final definition, and the related definitions of "public domain" (§ 120.18) and "defense services" (§ 120.8), took into account the public comments and seeks to reflect the actual practice of the Office of Munitions Control of controlling only exports of certain technical data directly related to defense articles and not general, theoretical information.

Some of the public comments received assumed that all activity or data described in the definitions section of Part 120 (e.g., defense services or technical data) required a license. This is not the case. The substantive provisions on when licenses or approvals are required are in Part 123 for unclassified defense articles; and Part 124 for technical assistance and licensing agreements; and Part 125 for technical data and classified articles and data.

Part 121. This part consists of the Munitions List and interpretations. The Munitions List itself has been changed in that certain defense articles (listed below) have been added and deleted from it. The structure of the Munitions List has been modified only in minor respects (e.g., "defense services" and "technical data" are placed in separate categories). Several comments were received regarding whether "software" should be deemed to be a defense article or technical data for purposes of the ITAR. Section 121.8 was consequently changed to address these comments.

Notable changes to the U.S. Munitions List or its interpretations are as follows:

Additions

—Aluminum powder (spherical) (see § 121.12(s)).

- Floating dry docks, class ARDM (see § 121.15(d) (4)).
- Armored coaxial cable capable of RF, optical, or high voltage power transmission, and designed, modified or configured for military application (see Category XI(a) (3)).
- Certain structural materials specifically designed or modified for defense articles, such as carbon/carbon and metal matrix composites (see Category XIII(d)).
- Combat shotguns (see § 121.9(a)).
- Cryptographic software (see Category XIII(b)).
- Devices embodying particle beam and electromagnetic pulse technology (see Category XIII(h)).
- Metal embrittling agents (see Category XIII(i)).

Deletions

- Muzzle-loading (black powder) firearms (see § 121.9(a)).
- Bayonets (deleted from Category I).
- Floating dry docks, classes YFDM, YR, YRDH, YRDM, YHL, YSD (see § 121.15(d)(4)).
- Submarine and torpedo nets (deleted from Category VI).
- Parachutes (deleted from Category VIII).
- Certain trainer aircraft (see § 121.3(2)).
- Certain inertial navigation systems (see Category VIII(j)).
- Fixed land-based arresting gear (see Category VIII(e)).
- Instrument flight trainers, except for combat simulation trainers (deleted from category IX(a)).
- Standard military helmets (deleted from Category X(a)).
- Pressurized breathing equipment (deleted from Category X(b)).
- Military oxygen masks (deleted from Category X(b)).
- Protective clothing for handling corrosive fuels (deleted from Category X (b)).

Items which no longer qualify as significant military equipment

- Non-military communication satellites (See Category VIII(b) (2) and Category XI(b) (2)).
- Radios (See Category XI(a) (2)).

Part 122. This Part deals with the registration of manufacturers and exporters. Registration is now required for U.S. persons who furnish defense services. The fees charged for registration have been increased for the first time since 1969.

Part 123. The current system requires that licenses be obtained before the physical export of defense articles outside of U.S. jurisdiction and generally requires that the applicant be a U.S.

person (although licenses are granted to foreign diplomatic missions). In the proposed revision of December 19, 1980, the Department proposed that only U.S. persons could obtain licenses for the export of defense articles, and that licenses would be required before articles could be transferred to foreign persons in the U.S. All of the public comments were opposed to these changes. The Department has decided not to make these changes. The Department will continue the traditional policies on these matters.

Most of the changes in Part 123 are technical in nature. They provide more guidance to applicants on how to apply for licenses and clarifications on existing exemptions. Licenses are formally made valid for two years rather than one.

Part 124. This part deals primarily with agreements between U.S. and foreign persons which involve the furnishing of defense services for the production or maintenance of defense articles. It has been the consistent policy of the United States under the ITAR to require that such agreements be submitted to the Office of Munitions Control for approval and that they contain certain clauses. Part 124 continues this policy. The structure of the chapter has been revised for clarity. Some of the standard clauses have been simplified, and some have been modified to ensure that statutory requirements on the transfer of defense articles manufactured under licensing agreements can be fully implemented. The standards and procedures applicable to the export of technical data for purposes of offshore procurement have been revised and clarified.

Part 124 contains one significant revision. The comments indicated that it was not clear whether certain activities involving defense articles, but which did not involve the use or disclosure of technical data, were subject to ITAR controls. It has been the practice of the Department of State in the past to control training in the use of defense articles only if it involved the disclosure of technical data or the use of technical data that was not exempt from the licensing requirements of Part 125. This practice on training services was narrower than what the express terms of the ITAR or the Act would have permitted. It also meant that certain important defense services related to defense articles were not necessarily regulated. For example, the training of pilots to fly military aircraft, or training individuals in combat skills, was not always regulated under the ITAR. § 124.1 provides that the furnishing of

any defense service, as defined in § 120.8(a), will henceforth require the approval of the Department of State, regardless of whether technical data will be used or disclosed. This provision does not affect any of the neutrality laws of the U.S.

Part 125. This Part, which deals with the export of technical data, and the definitions of technical data and public domain in Part 120 are closely related. The most significant changes in Part 125 are in § 125.4, which contains a listing of the exemptions from the licensing requirements of the ITAR. This provision was one on which numerous comments were received. Concerns were expressed, for example, on licensing requirements as they relate to the First Amendment to the Constitution. The revision seeks to reflect these concerns, and certain new exemptions are provided. Nontransfer and use assurances are now required for all exports of classified articles or classified technical data.

In recent years, some parts of the academic community have expressed concern about the application of government export regulations to disclosures of information in university classrooms. This concern (for example, that the language of the ITAR was overly broad) did not occur because of any changes in the text of the ITAR, or in the policies and practices of the Department of State in administering the regulations. In order to address the concerns expressed about the regulations, however, the language with regard to what information is subject to ITAR controls has been clarified. The Department's long-standing practice of regulating only information that is directly related to defense articles, as reflected in *U.S. v. Edler*, 579 F. 2d 516 (9th cir. 1978), remains unchanged. In the future, the Department will consider incorporating in the ITAR appropriate recommendations regarding scientific communications which are developed by an interagency group currently studying proposals in the context of the Export Administration Regulations of the Department of Commerce.

Part 126. Part 126 contains general policies that are applicable to all exports under the ITAR. Most of the revisions in this part are clarifications or amplifications of existing provisions. Some of the provisions that were in more than one part of the previous ITAR have been consolidated (e.g., provisions on proposals related to significant military equipment and general policies on license denials and approvals).

Section 126.6 provides a significant new exemption for certain exports of

defense articles and defense services sold by the U.S. Department of Defense to foreign governments or international organizations under the Foreign Military Sales (FMS) program. This new section envisions the use of a new form, DSP-XX, as the documentation and authority for such exports. Details of implementation will be incorporated in the instructions to DSP-XX. This exemption will become effective upon publication of the DSP-XX.

Section 126.8 deals with proposals either to sell significant military equipment or to enter into manufacturing license agreements or technical assistance agreements for the production or assembly of such equipment. This requirement will no longer apply with respect to sales of defense articles to members of NATO, Australia, Japan and New Zealand. The monetary threshold for cases that must be submitted to the Department for approval prior to making the proposals described in the provision have been increased (from seven to fourteen million dollars).

Section 126.10 deals with the confidentiality of information provided to the Office of Munitions Control.

Part 130. This part has been changed in one significant aspect. The monetary thresholds on which sales are subject to this Part's requirements have been increased. The structure of the Part has been revised for clarity.

List of Subjects in 22 CFR Parts 120 through 130

Arms and Munitions, Exports.

Subchapter M (consisting of Parts 120 through 130) of Chapter I of Title 22, Code of Federal Regulations, is consequently revised to read as follows:

SUBCHAPTER M—INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

Part

- 120—Purpose, background and definitions.
- 121—The United States Munitions List.
- 122—Registration of manufacturers and exporters.
- 123—Licenses for the export of defense articles.
- 124—Manufacturing license agreements, technical assistance agreements, and other defense services.
- 125—Licenses for the export of technical data and classified defense articles.
- 126—General policies and provisions.
- 127—Violations and penalties.
- 128—Administrative procedures.
- 129—[Reserved].
- 130—Political contributions, fees, and commissions.

PART 120—PURPOSE, BACKGROUND AND DEFINITIONS

Sec.

- 120.1 Purpose.
- 120.2 Designation of defense articles and defense services.
- 120.3 Policy on designating defense articles and services.
- 120.4 Relation to Department of Commerce regulations.
- 120.5 Commodity jurisdiction procedure.

Definitions

- 120.6 General.
- 120.7 Defense articles.
- 120.8 Defense services.
- 120.9 District director of customs.
- 120.10 Export.
- 120.11 Foreign person.
- 120.12 Intransit shipment.
- 120.13 License.
- 120.14 Manufacturing license agreement.
- 120.15 Office of Munitions Control.
- 120.16 Person.
- 120.17 Presiding official.
- 120.18 Public domain.
- 120.19 Significant military equipment.
- 120.20 Technical assistance agreement.
- 120.21 Technical data.
- 120.22 United States.
- 120.23 U.S. person.

Forms

- 120.24 Listing of forms referred to in this subchapter.

Authority—Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 120.1 Purpose.

Section 38 of the Arms Export Control Act (22 U.S.C. 2728) authorizes the President to control the export and import of defense articles and defense services. It is the purpose of this subchapter to implement this authority. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 11958, as amended (42 FR 4311). By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Director of the Office of Munitions Control, Bureau of Politico-Military Affairs, Department of State (35 FR 5422).

§ 120.2 Designation of defense articles and defense services.

The Arms Export Control Act also provides (22 U.S.C. 2778(a) and 2794(7)) that the President shall designate which articles shall be deemed to be defense articles and defense services for purposes of this subchapter. The items so designated constitute the United States Munitions List, and are specified in Part 121 of this subchapter. Such designations are made by the Department of State with the

concurrence of the Department of Defense.

§ 120.3 Policy on designating defense articles and services.

Designations of defense articles and defense services are based primarily on whether an article or service is deemed to be inherently military in character. Whether it has a predominantly military application is taken into account. The fact that an article or service may be used for both military and civilian purposes does not in and of itself determine whether it is subject to the export controls of this subchapter. (Narrow exceptions to this general policy exist with respect to exports of certain spare parts and components in Categories V(d); VIII (e) and (g); XI(e); XII(c); and XVI(b).) The intended use of the article or service after its export (i.e., for a military or civilian purpose) is also not relevant in determining whether the export is subject to the controls of this subchapter.

§ 120.4 Relation to Department of Commerce regulations.

If an article or service is placed on the United States Munitions List, its export is regulated exclusively by the Department of State. Exports which are not subject to the controls of this subchapter are generally under the regulatory jurisdiction of the Department of Commerce pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420) and the implementing Export Administration Regulations (15 CFR Parts 368-399).

§ 120.5 Commodity jurisdiction procedure.

The Office of Munitions Control will provide, upon written request, a determination on whether a particular article is included on the United States Munitions List. Such requests should be accompanied by five copies of the letter requesting a determination and any brochures or other documentation or specifications relating to the article. A "commodity jurisdiction" procedure is used if a doubt exists within the U.S. Government on whether an article is on the Munitions List. The procedure entails consultations among the Departments of State, Commerce and Defense.

Definitions

§ 120.6 General.

The definitions contained in this part (listed alphabetically) apply to the use of the defined terms throughout this subchapter unless a different meaning is

specified. See also §§ 130.2-130.8 for definitions applicable to Part 130.

§ 120.7 Defense articles.

"Defense article" means any item designated in § 121.1. This term includes models, mockups, and other such items which reveal technical data directly relating to items designated in § 121.1.

§ 120.8 Defense services

Defense service means:

(a) the furnishing of assistance, including training, to foreign persons in the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles, whether in the United States or abroad; or

(b) the furnishing to foreign persons of any technical data, whether in the United States or abroad.

§ 120.9 District director of customs.

"District director of customs" means the district directors of customs at customs headquarters ports (other than the port of New York City, New York); the regional commissioners of customs, the deputy and assistant regional commissioners of customs for customs region II at the port of New York, New York; and port directors at customs ports not designated as headquarters ports.

§ 120.10 Export.

"Export" means, for purposes of this subchapter:

(a) Sending or taking defense articles out of the United States in any manner; or

(b) Transferring registration or control to a foreign person of any aircraft, vessel, or satellite on the United States Munitions List, whether in the United States or abroad; or

(c) Sending or taking technical data outside 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

(d) Disclosing or transferring technical data to a foreign person, whether in the United States or abroad; or

(e) The performance of a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.

As of the effective date of the Commercial Space Launch Act, a launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter.

§ 120.11 Foreign person.

"Foreign person" means any person (§ 120.16) who is not a citizen or national of the United States unless that person has been lawfully admitted for permanent residence in the United States under the Immigration and Naturalization Act (8 U.S.C. 1101, section 101(a)(20, 60 Stat. 163) (i.e., individuals referred to as "immigrant aliens" under previous laws and regulations). It includes foreign corporations (i.e., corporations that are not incorporated in the United States), international organizations, foreign governments, and any agency or subdivision of foreign governments (e.g., diplomatic missions).

§ 120.12 Intransit shipment.

"Intransit shipment" means a temporary import into the United States of a defense article.

§ 120.13 License.

"License" means a document bearing the word "license" which when issued by the Director, Office of Munitions Control, or his authorized designee, permits the export or intransit shipment of a specific defense article, defense service, or technical data.

§ 120.14 Manufacturing license agreement.

An agreement (e.g., contract) whereby a U.S. person grants a foreign person an authorization or a license to manufacture defense articles abroad and which involves or contemplates (a) the export of technical data (as defined in § 120.21) or defense articles or the performance of defense services, or (b) the use by the foreign person of technical data or defense articles previously exported by the U.S. person.

§ 120.15 Office of Munitions Control.

"Office of Munitions Control" means the Office of Munitions Control, Bureau of Politico-Military Affairs, Department of State, Washington, D.C. 20520.

§ 120.16 Person.

"Person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. If a provision in this subchapter does not refer exclusively to a foreign person (§ 120.11) or U.S. person (§ 120.23), then it refers to both.

§ 120.17 Presiding official.

"Presiding official" means a person authorized to conduct hearings in administrative proceedings.

§ 120.18 Public domain.

"Public domain" means information which is published and which is generally accessible or available to the public:

(a) Through sales at newsstands and bookstores;

(b) Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;

(c) through second class mailing privileges granted by the U.S. Government; or,

(d) at libraries open to the public.

§ 120.19 Significant military equipment.

(a) "Significant military equipment" means articles, as identified in paragraph (b) of this section, for which special export controls are warranted because of their capacity for substantial military utility or capability.

(b) Articles designated as significant military equipment under the criterion specified in paragraph (a) of this section include all classified articles and the articles enumerated in § 121.1 in Categories I (a) and (c) (in quantity); II (a) and (b); III(a) (excluding ammunition for firearms in Category (I)) and (d); IV (a), (b), (d), (e), (f) and (g); V (a) (in quantity) and (b); VI (a), (b) (inclusive only of turrets and gun mounts, missile systems, and special weapons systems) and (e); VII (a), (b), (c), (e), (f) and (g); VIII (a), (b)(1), (c) and (d), GEMS as defined in (j), and inertial systems as defined in (j); XI (a)(1), (b)(1), (c); XII (a) and (b); XIV (a), (b), (c) and (d); XVI; XVII; and XX (a) and (b).

(c) Items in § 121.1 which are preceded by an asterisk are "significant military equipment."

(d) Section 47(6) of the Arms Export Control Act (22 U.S.C. 2794(6) note) provides a definition of "major defense equipment" and refers to certain significant combat equipment on the U.S. Munitions List. The terms "significant military equipment" and "significant combat equipment" are considered to be equivalent for purposes of that section of the Arms Export Control Act and this subchapter.

§ 120.20 Technical assistance agreement.

An agreement (e.g., contract) for the performance of defense services or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles.

§ 120.21 Technical data.

"Technical data" means, for purposes of this subchapter:

(a) Classified information relating to defense articles and defense services:

(b) Information covered by an invention secrecy order;

(c) Information which is directly related to the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles. This includes, for example, information in the form of blueprints, drawings, photographs, plans, instructions, computer software and documentation. This also includes information which advances the state of the art of articles on the U.S. Munitions List. This does not include information concerning general scientific, mathematical or engineering principles.

§ 120.22 United States.

"United States", when used in the geographical sense, includes the several States, the Commonwealth of Puerto Rico, the insular possessions of the United States, the District of Columbia, and any territory over which the United States exercises any powers of administration, legislation, and jurisdiction.

§ 120.23 U.S. Person.

"U.S. Person" means a person (§ 120.16) who is a citizen or national of the United States, or a permanent resident of the United States under the Immigration and Nationality Act (8 U.S.C. 1101, section 101(a)20, 60; Stat. 163).

Forms

§ 120.24 Listing of forms referred to in this subchapter.

The forms referred to in this subchapter are available from the following government agencies:

(a) Department of State:

(1) Application/License for permanent export of unclassified defense articles and related technical data (Form DSP-5).

(2) Application for registration (Form DSP-9).

(3) Application/License for temporary import of unclassified defense articles (Form DSP-61).

(4) Application/License for temporary export of unclassified defense articles (Form DSP-73).

(5) Nontransfer and use certificate (Form DSP-83).

(6) Application/License for permanent/temporary export or temporary import of classified defense articles and related classified technical data (Form DSP-85).

(b) Department of Commerce:

(1) International Import Certificate (Form ITA-645P/ATF-4522/DSP-53).

(2) Shipper's export declaration (Form No. 7525-V).

(c) Department of Defense:
Offer and acceptance (DD Form 1513).

PART 121—THE UNITED STATES MUNITIONS LIST

Enumeration of Articles

- Sec.
- 121.1 General. The United States Munitions List.
- 121.2 Interpretations of the United States Munitions List.
- 121.3 Aircraft and related articles.
- 121.4 Amphibious vehicles.
- 121.5 Apparatus and devices under Category IV(c).
- 121.6 Cartridge and shell casings.
- 121.7 Chemical agents.
- 121.8 End-items, components, accessories, attachments, parts, firmware, software and systems.
- 121.9 Firearms.
- 121.10 Forgings, castings and machined bodies.
- 121.11 Military demolition blocks and blasting caps.
- 121.12 Military explosives.
- 121.13 Military fuel thickeners.
- 121.14 Propellants.
- 121.15 Vessels of war and special naval equipment.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

Enumeration of Articles

§ 121.1 General. The United States Munitions List.

(a) The following articles, services and related technical data are designated as defense articles and defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act (22 U.S.C. 2778 and 2794(7)). Changes in designations will be published in the Federal Register. Information and clarifications on whether specific items are defense articles and services under this subchapter may appear periodically in the Munitions Control Newsletter published by the Office of Munitions Control.

(b) *Significant Military Equipment.* An asterisk precedes certain defense articles in the following list. The asterisk means that the article is deemed to be "significant military equipment" to the extent specified in § 120.19. The asterisk is placed as a convenience to help identify such articles.

Category I—Firearms

* (a) Nonautomatic, semi-automatic and fully automatic firearms to caliber .50 inclusive, and all components and parts for such firearms. (See §§ 121.9 and 123.16-123.19.)

(b) Riflescopes manufactured to military specifications, and specifically designed or

modified components thereof; firearm silencers and suppressors, including flash suppressors.

* (c) Insurgency-counterinsurgency type firearms or other weapons having a special military application (e.g. close assault weapons systems) regardless of caliber and all components and parts thereof.

Category II—Artillery Projectors

* (a) Guns over caliber .50, howitzers, mortars, and recoilless rifles.

* (b) Military flamethrowers and projectors.
(c) Components, parts, accessories and attachments for the articles in paragraphs (a) and (b) of this category, including but not limited to mounts and carriages for these articles.

Category III—Ammunition

* (a) Ammunition for the arms in Categories I and II of this section. (See § 211.6.)

(b) Components, parts, accessories, and attachments for articles in paragraph (a) of this category, including but not limited to cartridge cases, power bags, bullets, jackets, cores, shells (excluding shotgun shells), projectiles, boosters, fuzes and components thereof, primers, and other detonating devices for such ammunition. (See § 121.0.)

(c) Ammunition belting and linking machines.

* (d) Ammunition manufacturing machines and ammunition loading machines (except handloading ones).

Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines

* (a) Rockets (including but not limited to meteorological and other sounding rockets), bombs, grenades, torpedoes, depth charges, land and naval mines, as well as launchers for such defense articles, and demolition blocks and blasting caps. (See § 121.11.)

* (b) Launch vehicles and missile and anti-missile systems including but not limited to guided, tactical and strategic missiles, launchers, and systems.

(c) Apparatus, devices, and materials for the handling, control, activation, monitoring detection, protection, discharge, or detonation of the articles in paragraphs (a) and (b) of this category. (See § 121.5.)

* (d) Missile and space vehicle powerplants.

* (e) Military explosive excavating devices.
* (f) Ablative materials fabricated or semi-fabricated from advanced composites (e.g., silica, graphite, carbon, carbon/carbon, and boron filaments) for the articles in this category that are derived directly from or specifically developed or modified for defense articles.

* (g) Non/nuclear warheads for rockets and guided missiles.

(h) All specifically designed or modified components, parts, accessories, attachments, and associated equipment for the articles in this category.

Category V—Explosives, Propellants, and Incendiary Agents

* (a) Military explosives. (See § 121.12.)

* (b) Military fuel thickeners. (See § 121.13.)

(c) Propellants for the articles in Categories III and IV of this section. (See § 121.14.)

(d) Military pyrotechnics, except pyrotechnic materials having dual military and commercial use.

(e) All compounds specifically formulated for the articles in this category.

Category VI—Vessels of War and Special Naval Equipment

(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels and service craft, experimental types of naval ships and any vessels specifically designed or modified for military purposes. (See § 121.15.)

(b) Turrets and gun mounts, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments, and accessories specifically designed or modified for combatant vessels.

(c) Mine sweeping equipment, components, parts, attachments and accessories specifically designed or modified therefor.

(d) Harbor entrance detection devices, (magnetic, pressure, and acoustic ones) and controls and components therefor.

(e) Naval nuclear propulsion plants, their land prototypes, and special facilities for their construction support, and maintenance. This includes any machinery, device, component, or equipment specifically developed, designed or modified for use in such plants or facilities. (See § 123.21.)

Category VII—Tanks and Military Vehicles

(a) Military type armed or armored vehicles, military railway trains, and vehicles specifically designed or modified to accommodate mountings for arms or other specialized military equipment or fitted with such items.

(b) Military tanks, combat engineer vehicles, bridge launching vehicles, half-tracks and gun carriers.

(c) Self-propelled guns and howitzers.

(d) Military trucks, trailers, hoists, and skids specifically designed, modified, or equipped to mount or carry weapons of Categories I, II and IV or for carrying and handling the articles in paragraphs (a) of Categories III and IV.

(e) Military recovery vehicles.

(f) Amphibious vehicles. (See § 121.4.)

(g) Engines specifically designed or modified for the vehicles in paragraphs (a), (b), (c), and (f) of this category.

(h) All specifically designed or modified components and parts, accessories, attachments, and associated equipment for the articles in this category, including but not limited to military bridging and deep water fording kits.

Category VIII—Aircraft, Spacecraft, and Associated Equipment

(a) Aircraft, including but not limited to helicopters, non-expansive balloons, drones, and lighter-than-air aircraft, which are specifically designed, modified, or equipped for military purposes. This includes but is not limited to the following military purposes: gunnery, bombing, rocket or missile launching, electronic and other surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping,

personnel dropping, airborne warning and control, and military training. (See § 121.3.)

(b) (1) Spacecraft, including manned and unmanned, active and passive satellites (except those listed in Category VIII(b)(2)).

(2) Non-military communication satellites (excluding ground stations and associated equipment not enumerated elsewhere in § 121.1).

(c) Military aircraft engines, except reciprocating engines, and spacecraft engines specifically designed or modified for the aircraft and spacecraft in paragraphs (a) and (b) of this category.

(d) Cartridge-actuated devices utilized in emergency escape of personnel and airborne equipment (including but not limited to airborne refueling equipment) specifically designed or modified for use with the aircraft, spacecraft, and engines of the types in paragraphs (a), (b), and (c) of this category.

(e) Launching and recovery equipment for the articles in paragraphs (a) and (b) of this category, if the equipment is specifically designed or modified for military use or for use with spacecraft. Fixed land-based arresting gear is not included in this category.

(f) Power supplies and energy sources specifically designed or modified for spacecraft.

(g) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (f) of this category, excluding aircraft tires and propellers used with reciprocating engines.

(h) Developmental aircraft components which have a significant military application, excluding aircraft components concerning which Federal Aviation Agency certification has been granted.

(i) Ground effect machines (GEMS) specifically designed or modified for military use, including but not limited to surface effect machines and other air cushion vehicles, and all components, parts, and accessories, attachments, and associated equipment specifically designed or modified for use with such machines.

(j) Inertial navigation systems and components designed specifically for such systems. Systems or components which are standard equipment in civil aircraft, including spare parts and spare units to be used exclusively for the maintenance of inertial navigation equipment incorporated in civil aircraft, and which are certified by the Federal Aviation Administration as being an integral part of such aircraft are subject to export regulation by the Office of Munitions Control only if the export is intended for a controlled country described in section 620(f) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2370(f)) (except Yugoslavia). The Export Administration Act of 1979, as amended (50 U.S.C. App. section 2416(c)) deals with the export of such items to non-controlled countries. All exports of technical data (regardless of destination) relating to the design, development, production or manufacture of inertial navigation equipment (regardless of accuracies) or its related parts, components, or subsystems are subject to the requirements of the regulations contained in this

subchapter. The export of technical data relating to the repair of parts, components, or subsystems of inertial navigation systems (including accelerometers and gyroscopes) which are not certified by the FAA as being an integral part of civil aircraft are subject to the requirements of this subchapter. The provisions of XI(e) and XII(c) are not applicable to such exports of technical data.

Category IX—Military Training Equipment

(a) Military training equipment including but not limited to attack trainers, radar target trainers, radar target generators, gunnery training devices, antisubmarine warfare trainers, target equipment, armament training units, operational flight trainers, air combat training systems, radar trainers, navigation trainers, and simulation devices related to defense articles.

(b) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraph (a) of this category.

Category X—Protective Personnel Equipment

(a) Body armor specifically designed, modified or equipped for military use; articles, including but not limited to clothing, designed, modified or equipped to protect against or reduce detection by radar, infrared (IR) or other sensors; military helmets equipped with communications hardware, optical sights, slewing devices or mechanisms to protect against thermal flash or lasers, excluding standard military helmets.

(b) Partial pressure suits and liquid oxygen converters used in aircraft in Category VIII(a).

(c) Protective apparel and equipment specifically designed or modified for use with the articles in paragraphs (a) through (d) in Category XIV.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the articles in paragraphs (a), (b), and (c) of this category.

Category XI—Military and Space Electronics

(a) Electronic equipment not included in Category XII of the Munitions List which is assigned a military designation or is specifically designed, modified or configured for military application. This includes but is not limited to the following:

(1) Underwater sound equipment, including but not limited to towed arrays, electronic beam forming sonar, target classification equipment, and spectrographic displays; search, acquisition, tracking, moving target indication and imaging radar systems; active and passive countermeasures and counter-countermeasures equipment; electronic fuses; identification systems; command, control and communications systems; and, regardless of designation, any experimental or developmental electronic equipment specifically designed or modified for military application, or for use with a military system and

(2) Some depth finders; underwater telephones; electro-mechanical beam forming sonars and elementary sonobuoys; radios (including transceivers); weather, navigation, and air traffic control radar systems;

navigation, guidance, object-locating equipment; displays; and telemetering equipment.

(3) Armored coaxial cable capable of RF, optical, or high voltage power transmission.

(b) Space electronics:

* (1) Electronic equipment specifically designed or modified for spacecraft and spaceflight, and

(2) Electronic equipment specifically designed or modified for use with non-military communications satellites.

* (c) Electronic systems or equipment specifically designed, modified, configured, used or intended for use in search, reconnaissance, collection, monitoring, direction-finding, display, analysis and production of information from the electromagnetic spectrum for intelligence or security purposes and electronic systems or equipment designed or modified to counteract such surveillance and monitoring.

(d) Very High Speed Integrated Circuit (VHSIC) semiconductor devices that are specifically designed for military applications and which have a high-speed signal and image processing capability with an operational parameter (gate-time-clock-frequency) or greater than 10^{11} gates X hertz for an individual semiconductor device.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use or currently used with the equipment in paragraphs (a) through (c) of this category, except for such items as are in normal commercial use.

Category XII—Fire Control, Range Finder, Optical and Guidance and Control Equipment

* (a) Fire control systems; gun and missile tracking and guidance systems; military infrared, image intensifier and other night sighting and night viewing equipment; military masers and military lasers; gun laying equipments; range, position and height finders and spotting instruments; aiming devices (electronic, gyroscopic, optic, and acoustic); bomb sights, bombing computers, military television sighting and viewing units, inertial platforms, and periscopes for the articles of this section.

* (b) Inertial and other weapons or space vehicle guidance and control systems; spacecraft guidance, control and stabilization systems; astro compasses; and star trackers.

(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (a) and (b) of this category, except for such items as are in normal commercial use.

Category XIII—Auxiliary Military Equipment

(a) Aerial cameras, space cameras, special purpose military cameras, and specialized processing equipment therefor; military photointerpretation, stereoscopic plotting, and photogrammetry equipment, and components specifically designed or modified therefore.

(b) Speech scramblers, privacy devices, cryptographic devices and software (encoding and decoding), and components specifically designed or modified therefore, ancillary equipment, and protective apparatus specifically designed or modified

for such devices, components, and equipment.

(c) Self-contained diving and underwater breathing apparatus specifically designed or modified for a military purpose and components specifically designed or modified therefore.

(d) Armor plate and structural materials (including but not limited to plate, rolled and extruded shapes, bars and forgings, castings, welding consumables, carbon/carbon and metal matrix composites) specifically designed or modified for defense articles.

(e) Concealment and deception equipment, including but not limited to special paints, decoys, and simulators and components, parts and accessories specifically designed or modified therefor.

(f) Energy conversion devices for producing electrical energy from nuclear, thermal, or solar energy, or from chemical reaction which are specifically designed or modified for military application.

(g) Chemiluminescent compounds and solid state devices specifically designed or modified for military application.

(h) Devices embodying particle beam and electromagnetic pulse technology.

(i) Metal embrittling agents.

Category XIV—Toxicological Agents and Equipment and Radiological Equipment

* (a) Chemical agents, including but not limited to lung irritants, vesicants, lachrymators, tear gases (except tear gas formulations containing 1% or less CN or CS), sternalators and irritant smoke, and nerve gases and incapacitating agents. (See § 121.7.)

* (b) Biological agents.

* (c) Equipment for dissemination, detection, and identification of, and defense against, the articles in paragraphs (a) and (b) of this category.

* (d) Nuclear radiation detection and measuring devices, manufactured to military specification.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category.

Category XV—[Reserved]

Category XVI—Nuclear Weapons Design and Test Equipment

* (a) Any article, material, equipment, or device which is specifically designed or modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices. (See § 123.21 and Department of Commerce Export Regulations, 15 CFR Part 378).

* (b) Any article, material, equipment, or device which is specifically designed or modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions, except such items as are in normal commercial use for other purposes.

Category XVII—Classified Articles Not Otherwise Enumerated

* All articles and technical data (as defined in § 120.21) relating thereto which are classified in the interests of national security

and which are not otherwise enumerated in the U.S. Munitions List.

Category XVIII—Technical Data

Technical data (as defined in § 120.21) relating to the defense articles listed in the other categories of the United States Munitions List. (See § 125.4 for exemptions; see also § 123.21.)

Category XIX—Defense Services

Defense services (as defined in § 120.8) related to the defense articles listed in the other categories of the United States Munitions List.

Category XX—Submersible Vessels, Oceanographic and Associated Equipment

* (a) Submersible vessels, manned and unmanned, designed or modified for military purposes or having independent capability to maneuver vertically or horizontally at depths below 1,000 feet or powered by nuclear propulsion plants.

* (b) Submersible vessels, manned or unmanned, designed or modified in whole or in part from technology developed by or for the U.S. Armed Forces.

(c) Any of the articles in Categories VI, IX, XI, XIII, and elsewhere in this subchapter specifically designed or modified for use with submersible vessels, and oceanographic or associated equipment assigned a military designation.

(d) Equipment, components, parts, accessories, and attachments specifically designed or modified for any of the articles in paragraphs (a) and (b) of this category.

Category XXI—Miscellaneous Articles

Any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specifically designed or modified for military purposes. The decision on whether any article may be included in this category shall be made by the Director of the Office of Munitions Control.

§ 121.2 Interpretations of the United States Munitions List.

The following interpretations (listed alphabetically) explain and amplify the terms used in § 121.1. These interpretations have the same force as if they were a part of the United States Munitions List category to which they refer.

§ 121.3 Aircraft and related articles.

In Category VIII, "aircraft" means aircraft designed, modified, or equipped for a military purpose, including aircraft described as "demilitarized." All aircraft bearing an original military designation are included in Category VIII. However, the following aircraft are not included so long as they have not been specifically equipped, re-equipped, or modified for military operations:

(a) Cargo aircraft bearing "C" designations and numbered C-45 through C-118 inclusive, C-121 through

C-125 inclusive, and C-131, using reciprocating engines only.

(b) Trainer aircraft bearing "T" designations and using reciprocating engines or turboprop engines with less than 600 horsepower (s.h.p.).

(c) Utility aircraft bearing "U" designations and using reciprocating engines only.

(d) All liaison aircraft bearing an "L" designation.

(e) All observation aircraft bearing "O" designations and using reciprocating engines.

§ 121.4 Amphibious vehicles.

An "amphibious vehicle" in Category VII(f) is an automotive vehicle or chassis which embodies all-wheel drive, is equipped to meet special military requirements, and which has sealed electrical systems or adaptation features for deep water fording.

§ 121.5 Apparatus and devices under Category IV(c).

Category IV includes but is not limited to the following: Fuzes and components for the items listed in that category, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance system equipment and parts, launching racks and projectors, pistols (exploders), igniters, fuze arming devices, intervalometers, guided missile launchers and specialized handling equipment, and hardened missile launching facilities.

§ 121.6 Cartridges and shell casings.

Cartridge and shell casings are included in Category III unless, prior to export, they have been rendered useless beyond the possibility of restoration for use as a cartridge or shell casing by means of heating, flame treatment, mangling, crushing, cutting, or popping.

§ 121.7 Chemical agents.

A chemical agent in Category XIV(a) is a substance having military application which by its ordinary and direct chemical action produces a powerful physiological effect. The term "chemical agent" includes, but is not limited to, the following chemical compounds:

- (a) Lung irritants:
- (1) Diphenylcyanoarsine (DC).
 - (2) Fluorine (but not fluorene).
 - (3) Trichloronitro methane (chloropicrin PS).
- (b) Vesicants:
- (1) B-Chlorovinylchloroarsine (Lewisite, L).
 - (2) Bis(dichloroethyl)sulphide (Mustard Gas, HD or H).
 - (3) Ethyldichloroarsine (ED).
 - (4) Methylchloroarsine (MD).

(c) Lachrymators and tear gases:

- (1) A-Bromobenzyl cyanide (BBC).
 - (2) Chloroacetophenone (CN).
 - (3) Dibromodimethyl ether.
 - (4) Dichlorodimethyl ether (CICi).
 - (5) Ethyldibromoarsine.
 - (6) Phenylcarbylamine chloride.
 - (7) Tear gas solutions (CNB and CNS).
 - (8) Tear gas orthochlorobenzalmalononitrile (CS).
- (d) Sternutators and irritant smokes:
- (1) Diphenylamine chloroarsine (Adamsite, DM).
 - (2) Diphenylchloroarsine (BA).
 - (3) Liquid pepper.
 - (e) Nerve agents, gases and aerosols. These are toxic compounds which affect the nervous system, such as:

- (1) Dimethylaminoethoxycyanophosphine oxide (GA).
- (2) Methylisopropoxyfluorophosphine oxide (GB).
- (3) Methylpinacolyloxyfluorophosphine oxide (GD).
- (f) Antiplant chemicals, such as: Butyl 2-chloro-4-fluorophenoxyacetate (LNF).

§ 121.8 End-items, components, accessories, attachments, parts, firmware, software and systems.

(a) An "end-item" is an assembled article ready for its intended use. Only ammunition, fuel or another energy source is required to place it in an operating state.

(b) A "component" is an item which is useful only when used in conjunction with an end-item. A major component includes any assembled element which forms a portion of an end-item without which the end-item is inoperable. (Example: airframes, tail sections, transmissions, tank treads, hulls, etc.) A minor component includes any assembled element of a major component.

(c) "Accessories" and "attachments" are associated equipment for any component, end-item or system, and which are not necessary for their operation, but which enhance their usefulness or effectiveness. (Examples: riflescopes, special paints, etc.)

(d) A "part" is any single unassembled element of a major or a minor component, accessory, or attachment which is not normally subject to disassembly without the destruction or the impairment of design use. (Examples: rivets, wire, bolts, etc.)

(e) Firmware and any related unique support tools (such as computers, linkers, editors, test case generators, diagnostic checkers, library of functions and system test diagnostics) specifically designed for equipment or systems covered under any category of the

United States Munitions List are considered as part of the end-item or component. "Firmware" includes but is not limited to circuits into which software has been programmed.

(f) "Software" includes but is not limited to the system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis and repair. A person who intends to export software only should, unless it is specifically enumerated in § 121.1, apply for a technical data license pursuant to Part 125 of this subchapter.

(g) A "system" is a combination of end-items, components, parts, accessories, attachments, firmware or software, specifically designed, modified or adapted to operate together to perform a specialized military function.

§ 121.9 Firearms.

(a) Category I includes revolvers, pistols, rifles, carbines, fully automatic rifles, submachine guns, machine pistols and machine guns to caliber .50, inclusive. It includes combat shotguns. It excludes other shotguns with barrels 16" or longer, BB, pellet, and muzzle loading (black powder) firearms.

(b) A "firearm" is a weapon not over .50 caliber which is designed to expel a projectile by the action of an explosive or which may be readily converted to do so.

(c) A "rifle" is a shoulder firearm which can discharge a bullet through a rifled barrel 16 inches or longer.

(d) A "carbine" is a lightweight shoulder firearm with a barrel under 16 inches in length.

(e) A "pistol" is a hand-operated firearm having a chamber integral with or permanently aligned with the bore.

(f) A "revolver" is a hand-operated firearm with a revolving cylinder containing chambers for individual cartridges.

(g) A "submachine gun", "machine pistol" or "machine gun" is a firearm originally designed to fire, or capable of being fired, fully automatically by a single pull of the trigger.

§ 121.10 Forgings, castings and machined bodies.

Articles on the United States Munitions List include articles in a partially completed state (such as forgings, castings, extrusions and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the United

States Munitions List (including components, accessories, attachments and parts as defined in § 121.8), then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of this subchapter, except for such items as are in normal commercial use.

§ 121.11 Military demolition blocks and blasting caps.

Military demolition blocks and blasting caps referred to in Category IV(a) do not include the following articles:

- (a) Electric squibs.
- (b) No. 6 and No. 8 blasting caps, including electric ones.
- (c) Delay electric blasting caps (including No. 6 and No. 8 millisecond ones).
- (d) Seismograph electric blasting caps (including SSS, Static-Master, Vibrocap SR, and SEISMO SR).
- (e) Oil well perforating devices.

§ 121.12 Military explosives.

Military explosives in Category V include, but are not limited to, the following:

- (a) Ammonium picrate.
- (b) Black powder made with potassium nitrate or sodium nitrate.
- (c) Cyclotetramethylenetetranitramine (HMX).
- (d) Cyclotrimethylenetrinitramine (RDX, Cyclonite, Hexogen or T4).
- (e) Dinitronaphthalene.
- (f) Ethylenedinitramine.
- (g) Hexanitrodiphenylamine.
- (h) Nitroglycerin.
- (i) Nitrostarch.
- (j) Pentaerythritol tetranitrate (penthrite, pentrite or PETN).
- (k) Trinitronaphthalene.
- (l) Trinitroanisol.
- (m) Trinitronaphthalene.
- (n) Trinitrophenol (picric acid).
- (o) Trinitrophenylmethylnitramine (Tetryl).
- (p) Trinitrotoluene (TNT).
- (q) Trinitroxylylene.
- (r) Ammonium perchlorate nitrocellulose (military grade).
- (s) Aluminum powder (spherical) with an average particle size of 100 micrometer diameter or less and a purity of 97% or greater.
- (t) Any combinations of the above.

§ 121.13. Military fuel thickeners.

Military fuel thickeners in Category V include compounds (e.g., octal) or mixtures of such compounds (e.g., napalm) specifically formulated for the purpose of producing materials which, when added to petroleum products, provide a gel-type incendiary material for use in bombs, projectiles, flame throwers, or other defense articles.

§ 121.14 Propellants.

Propellants in Category V include, but are not limited to, the following:

- (a) Propellant powders, including smokeless shotgun powder.
- (b) Hydrazine (including Monomethyl hydrazine and symmetrical dimethyl hydrazine, but excluding hydrazine hydrate).
- (c) Unsymmetrical dimethyl hydrazine.
- (d) Hydrogen peroxide of over 85 percent concentration.
- (e) Nitroguanidine or picrite.
- (f) Nitrocellulose with nitrogen content of over 12.20 percent.
- (g) Nitrogen tetroxide (nitrogen dioxide, dinitrogen tetroxide).
- (h) Other solid propellant compositions, including but not limited to, the following:
 - (1) Single base (nitrocellulose).
 - (2) Double base (nitrocellulose, nitroglycerin).
 - (3) Triple base (nitrocellulose, nitroglycerin, nitroguanidine).
 - (4) Composite of nitroglycerin, ammonium perchlorate, potassium perchlorate, nitronium perchlorate, guanidine (guanidinium) perchlorate, nitrogen tetroxide, ammonium nitrite or nitrocellulose with plastics, metal fuels, or rubbers added; and compounds composed only of fluorine and halogens, oxygen, or nitrogen.
 - (5) Special purpose high energy solid military fuels with a chemical base.
- (i) Other liquid propellant compositions, including but not limited to, the following:
 - (1) Monopropellants (hydrazine, hydrazine nitrate, and water);
 - (2) Bipropellants (hydrazine; fuming nitric acid HNO₃).
 - (3) Special purpose chemical base high energy liquid military fuels and oxidizers.

§ 121.15 Vessels of war and special naval equipment.

Vessels of war in Category VI include, but are not limited to, the following:

- (a) Combatant vessels:
 - (1) Warships (including nuclear-powered versions):
 - (i) Aircraft carriers (CV, CVN)
 - (ii) Battleships (BB)
 - (iii) Cruisers (CA, CG, CGN)
 - (iv) Destroyers (DD, DDG)
 - (v) Frigates (FF, FFG)
 - (vi) Submarines (SS, SSN, SSBN, SSG, SSAG)
 - (2) Other Combatant Classifications:
 - (i) Patrol Combatants (PG, PHM)
 - (ii) Amphibious Helicopter/Landing Craft Carriers (LHA, LPD, LPH)
 - (iii) Amphibious Landing Craft Carriers (LKA, LPA, LSD, LST)

- (iv) Amphibious Command Ships (LCC)
- (v) Mine Warfare Ships (MSO)
- (b) Auxiliaries:
 - (1) Mobile Logistics Support:
 - (i) Under way Replenishment (AD, AF, AFS, AO, AOE, AOR)
 - (ii) Material Support (AD, AR, AS)
 - (2) Support Ships:
 - (i) Fleet Support Ships (ARS, SSR, ATA, ATF, ATS)
 - (ii) Other Auxiliaries (AG, AGDS, AGF, AGM, AGOR, AGOS, AGS, AH, AK, AKR, AOG, AOT, AP, APB, ARC, ARL, AVM, AVT)
- (c) Combatant Craft:
 - (1) Patrol Craft:
 - (i) Coastal Patrol Combatants (PB, PCF, PCH, PTF)
 - (ii) River, Roadstead Craft (ATC, PBR)
 - (2) Amphibious Warfare Craft:
 - (i) Landing Craft (AALC, LCAC, LCM, LCPL, LCPR, LCU, LWT, SLWT)
 - (ii) Special Warfare Craft (LSSC, MSSC, SDV, SWCL, SWCM)
 - (3) Mine Warfare Craft:
 - (i) Mine Countermeasures Craft (MSB, MSD, MSI, MSM, MSR)
 - (d) Support and Service Craft:
 - (1) Tugs (YTB, YTL, YTM)
 - (2) Tankers (YO, YOG, YW)
 - (3) Lighters (YC, YCF, YCV, YF, YFN, YFNB, YFNX, YFR, YFRN, YFU, YG, YGN, YOGN, YON, YOS, YSR, YWN)
 - (4) Floating Dry Docks (AFDB, AFDL, AFDM, ARD, ARDM, YFD)
 - (5) Miscellaneous (APL, DSRV, DSV, IX, NR, YAG, YD, YDT, YFB, YFND, YEP, YFRT, YHLC, YM, YNG, YP, YPD, YR, YRB, YRBN, YRDH, YRDM, YRR, YRST, YSD)
- (e) Coast Guard Patrol and Service Vessels and Craft:
 - (1) Coast Guard Cutters (CGC, WHEC, WMEC)
 - (2) Patrol Craft (WPB)
 - (3) Icebreakers (WAGB)
 - (4) Oceanography Vessels (WAGO)
 - (5) Special Vessels (WIX)
 - (6) Buoy Tenders (WLB, WLM, WLI, WLR, WLIC)
 - (7) Tugs (WYTM, WYTL)
 - (8) Light Ships (WLV)

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

Sec.

- 122.1 Registration requirements.
- 122.2 Application for registration.
- 122.3 Refund of fee.
- 122.4 Notification of changes in information furnished by registrants.
- 122.5 Maintenance of records by registrants.
- 122.6 Submission of application.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 122.1 Registration requirements.

(a) *General.* Any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the Office of Munitions Control.

Manufacturers who do not engage in exporting must nevertheless register.

(b) *Exemptions.* Registration is not required for:

(1) Officers and employees of the United States Government acting in an official capacity.

(2) Persons whose pertinent business activity is confined to the production of unclassified technical data only.

(3) Persons all of whose manufacturing and export activities are licensed under the Atomic Energy Act of 1954, as amended.

(4) Persons who engage only in the fabrication of articles for experimental or scientific purposes, including research and development.

§ 122.2 Application for registration.

(a) *Fees.* A person who is required to register may do so for periods of from 1 to 5 years upon submission of a completed Form DSP-9, and payment of a fee as follows:

1 year.....	\$250
2 years.....	500
3 years.....	700
4 Years.....	850
5 years.....	1,000

(b) *Lapses in registration.* A registrant who fails to renew a registration after its lapse and, after an intervening period, seeks to register again must pay registration fees for any part of such intervening period during which the registrant engaged in the business of manufacturing or exporting defense articles or defense services.

§ 122.3 Refund of fee.

Fees paid in advance for future years of a multiple year registration will be refunded upon request if the registrant ceases to engage in the manufacture or export of defense articles and defense services. A request for a refund must be submitted to the Office of Munitions Control prior to the beginning of any year for which a refund is claimed

§ 122.4 Notification of changes in information furnished by registrants

A registered person must notify the Department of State of material changes in the information contained in the registration. Examples of material changes include the establishment or acquisition of a subsidiary or of a foreign affiliate, a merger, a change of location, or dealing with an additional category of defense articles or defense

services. Registrants must also inform the Office of Munitions Control thirty days in advance of any planned transfer of ownership or control of the registered corporation or entity to a foreign person. Such notice does not relieve the registrant from obtaining the approvals required under this subchapter for the export of defense articles and defense services to foreign persons.

§ 122.5 Maintenance of records by registrants.

(a) A person who is required to register must maintain records concerning the manufacture, acquisition and disposition of defense articles and the provision of defense services by the registrant. All such records must be maintained for a period of 6 years. The Director, Office of Munitions Control, may prescribe a longer or shorter period in individual cases.

(b) Records maintained under this section shall be available at all times for inspection and copying by the Director, Office of Munitions Control or a person designated by the Director, or the Commissioner of the U.S. Customs Service or a person designated by the Commissioner.

§ 122.6 Submission of application.

Department of State Form DSP-9, Registration Statement, must be submitted to the Cashier, ESC/C, Department of State, Washington, D.C. 20520, together with payment by check or money order payable to the Department of State of one of the fees prescribed in § 122.2(a). The Office of Munitions Control will return to the sender any registration statement which is incomplete or which is not accompanied by payment of a proper registration fee.

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

- Sec.
- 123.1 Requirement for export licenses.
- 123.2 Imports.
- 123.3 Temporary import (intransit) licenses
- 123.4 Temporary export licenses.
- 123.5 [Reserved]
- 123.6 Foreign trade zones and U.S. Customs bonded warehouses.
- 123.7 Exports to warehouses or distribution points outside the United States.
- 123.8 Special controls on vessels of war, military aircraft and satellites.
- 123.9 Country of ultimate destination.
- 123.10 Non-transfer and use assurances and Congressional notification.
- 123.11 Movements of aircraft and vessels of war outside the United States.
- 123.12 Shipments between U.S. possessions.
- 123.13 Domestic aircraft shipments via a foreign country.
- 123.14 Import certificate/delivery verification procedure.

- Sec
- 123.15 [Reserved]

Exemptions

- 123.16 Obsolete firearms and models.
 - 123.17 Exports of firearms and ammunition for personal use.
 - 123.18 Firearms for personal use of members of the U.S. Armed Forces and civilian employees of the U.S. Government.
 - 123.19 Minor components.
 - 123.20 Canadian and Mexican border shipments.
 - 123.21 Nuclear materials.
- Procedures**
- 123.22 Applications for licenses.
 - 123.23 Renewal and disposition of licenses.
 - 123.24 Port of exit or entry.
 - 123.25 Filing of export and intransit licenses and shipper's export declarations with district directors of customs.
 - 123.26 Shipments by mail.
 - 123.27 Temporary exports.

Authority: Section 38, Arms Export Control Act, 90 Stat 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2653.

§ 123.1 Requirement for export licenses.

(a) Any person who intends to export a defense article must obtain a license from the Office of Munitions Control prior to the export unless the export qualifies for an exemption under the provisions of this subchapter.

(b) As a condition to the issuance of a license or other approval, the Office of Munitions Control may require all pertinent documentary information regarding the proposed transaction. It may also require that the applicant be a U.S. person (as defined in § 120.23).

(c) 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 purchaser 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 are followed.

(d) Provisions for the export of classified defense articles and defense services are contained in Part 125 of this subchapter.

§ 123.2 Imports.

No defense article may be imported into the United States unless (a) it was previously exported temporarily under a license issued by the Office of Munitions Control; or (b) it constitutes a temporary import/intransit shipment licensed under § 123.3; or (c) its import is authorized by the Department of the Treasury (see 27 CFR Parts 47, 178 and 179).

§ 123.3 Temporary import (intransit) licenses.

A temporary import license (DSP-61) issued by the Office of Munitions Control is required for the intransit shipment of any unclassified defense article. This requirement applies to any temporary import into the United States of a defense article for overhaul, repair, modification, or other purposes, and the subsequent direct return of the defense article to the country from which it was sent. The Office of Munitions Control may require an appropriate bond. The temporary import license must also be used for other temporary unclassified imports, such as a temporary import of unclassified defense articles intransit to a third country. It may also be used if a defense article is imported into the United States for incorporation into another article and is then to be returned to the country of origin or transhipped to another country. (See § 125.8 for classified imports.)

§ 123.4 Temporary export licenses.

The Office of Munitions Control may issue a license for the temporary export of unclassified defense articles (DSP-73). Such licenses are valid only if (a) the article will be exported for a period of less than twenty-four months and will be returned to the United States and (b) 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 Office of Munitions Control if the article is to remain outside the United States beyond the period for which the license is valid.

§ 123.5 [Reserved]

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

Foreign trade zones and U.S. Customs 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 Customs bonded warehouse. However, an export license is required for all shipments of articles on the U.S. Munitions List from foreign trade zones and U.S. Customs bonded warehouses to foreign countries, regardless of how the articles reached the zone or warehouse.

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

A license to export defense articles to a warehouse or distribution point outside the United States for subsequent resale will normally be granted only if an agreement has been approved pursuant to § 124.14 of this subchapter.

§ 123.8 Special controls on vessels of war, military aircraft and satellites.

(a) Transferring registration or control to a foreign person of any aircraft, vessel, or satellite on the United States Munitions List is an export for purposes of this subchapter and requires a license or written approval from the Office of Munitions Control. 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 on the United States 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 Office of Munitions Control is therefore required. Such transactions may also require the prior approval of the Maritime Administration, Department of Transportation, or the Federal Aviation Administration, Department of Transportation or other agencies of the U.S. Government.

§ 123.9 Country of ultimate destination.

(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 Department of State must be obtained before reselling, diverting, transferring, transshipping, or disposing of a defense article in any country other than the country of ultimate destination 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 Office of Munitions Control or claiming an exemption under this subchapter. End-use must be confirmed and should not be assumed.

(b) The exporter shall incorporate the following statement as an integral part of the shipper's export declaration, 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. They may not be resold, diverted, transferred, transhipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

§ 123.10 Non-transfer and use assurances and Congressional notification.

(a) An application for a license (Form DSP-5) to export significant military equipment defined in § 120.19 must be accompanied by a nontransfer and use certificate (Form DSP-83) at the time of submission to the Office of Munitions Control. This form is to be executed by the foreign consignee and foreign end-user. 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.

(b) The DSP-83 may be accepted at a time other than that specified in paragraph (a) of this section if there are special reasons for doing so. A statement of such reasons must accompany the application for a license.

(c) The Office of Munitions Control may also require a DSP-83 for the export of any other defense articles or defense services.

(d) When a DSP-83 is required for an export of any defense article or defense service to a non-governmental foreign end-user, the Office of Munitions Control 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. This means that the foreign government undertakes not to authorize the reexport, resale, or other disposition of the defense articles or defense service enumerated in the application without ensuring that the prior written consent of the U.S. Government has been obtained.

(e) All exports of significant military equipment sold under a contract in the amount of \$14,000,000 or more or of defense articles and defense services sold under a contract in the amount of \$50,000,000 or more may take place only after the Office of Munitions Control notifies the exporter that thirty calendar days have elapsed since receipt by the Congress of the certification required by the Arms Export Control Act. The issuance of a license or other written approval shall serve as notification that this period has elapsed. Persons who

intend to export defense articles and services pursuant to the exemption in § 126.5 under the circumstances described in the first sentence of this subsection must notify the Office of Munitions Control by letter of the intended export and provide a DSP-83 signed by the foreign consignee and end-user. Such exports may take place after the Office of Munitions Control notifies the exporter by letter that the thirty day period has elapsed.

§ 123.11 Movements of aircraft and vessels of war outside the United States.

(a) *General.* A license issued by the Office of Munitions Control is required whenever a privately-owned aircraft or vessel of war on the United States 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 section (a) 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 § 123.4).

§ 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 district director of customs at the port of exit in the United States. The original statement must be filed at the time of exit with the district director of customs. A duplicate must be filed at the port of reentry with the district director of customs, who will duly endorse it and transmit it to the district director of customs at the port of exit. The statement will be as follows:

Statement

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. part of exit) via (foreign country) to (U.S. part of entry), which is the final destination in the United States.

Description of Equipment

Quantity: _____
 Equipment: _____
 Value: _____
 Signed: _____
 Endorsement: Customs Inspector.
 Port of Exit: _____
 Date: _____
 Signed: _____
 Endorsement: Customs Inspector.
 Port of Entry: _____
 Date: _____

§ 123.14 Import certificate/delivery verification procedure.

The United States and a number of foreign countries have agreed on procedures designed to assure that a commodity imported into their territory will not be diverted, transhipped, or reexported to another destination except in accordance with export control regulations of the importing country. This is known as the Import Certificate/Delivery Verification Procedure (IC/DV) and may be invoked with respect to defense articles.

(a) *Exports.* The Department of State may require the IC/DV procedure on proposed exports of defense articles to non-government entities in the following countries: Austria, Belgium, Denmark, France, Federal Republic of Germany, Greece, Hong Kong, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Turkey, and the United Kingdom. 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, tranship or reexport the material described therein without the prior approval of that government. After delivery of the commodities to the foreign consignee, the Department of State 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.

(b) *Triangular transactions.* When a transaction involves three or more countries which 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) stated 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. Thus, it is possible that the ultimate consignee and the country of ultimate destination will not coincide with that of the importer. All parties, including the ultimate consignee in the country of ultimate destination, must be shown on the completed Import Certificate.

§ 123.15 [Reserved]

Exemptions

§ 123.16 Obsolete firearms and models.

(a) District directors of customs may permit the export without a license of nonautomatic firearms covered by Category I(a) of § 121.1 if they were manufactured in or before 1833, as well as replicas of such firearms.

(b) District directors of customs may permit the export without a license of unclassified models or mock-ups of defense articles provided that they are nonoperable and do not reveal any technical data in excess of that which is exempted from the licensing requirements of § 125.4(b). U.S. persons who avail themselves of this exemption must provide a written certification to the district director of customs that these conditions are met. This exemption does not imply that the Office of Munitions Control will approve the export of any defense articles for which models or mock-ups have been exported pursuant to this exemption.

§ 123.17 Exports of firearms and ammunition for personal use.

(a) District directors of customs may 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 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 resale 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 articles on each return to the United States. It is also not applicable to the personnel referred to in § 123.18.

(b) District directors of customs may permit a foreign person to export without a license such firearms in Category I(a) of § 121.1 and ammunition therefor as the foreign person brought into the United States under the provisions of 27 CFR 178.115(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.)

(c) District directors of customs may 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.

§ 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.* District directors of customs may permit nonautomatic firearms in Category I(a) § 121.1 and parts therefor to leave (but not be mailed 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 consigned to the personnel 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 consigned to such personnel 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 bringing of the specific types and quantities of firearms into that country.

(b) *Ammunition.* District directors of customs may 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).

§ 123.19 Minor components.

Except as provided in § 126.1, district directors of customs are authorized to 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 \$500 wholesale in any single transaction.

§ 123.20 Canadian and Mexican border shipments.

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

§ 123.21 Nuclear materials.

(a) The provisions of this subchapter do not apply to equipment in Category VI(e) and Category XVI of § 121.1 to the extent such equipment is 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.

(b) A license for the export of any machinery, device, component, equipment, or technical data relating to equipment referred to in Category VI(e) will not be granted unless the proposed export 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 powerplant, (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.

Procedures

§ 123.22 Applications for licenses.

Applications for licenses for the export of defense articles and related technical data under this part must be made to the Office of Munitions Control as follows:

(a) Applications for licenses for permanent export must be made on Form DSP-5 (unclassified).

(b) Intransit license applications must be made on Form DSP-61 (unclassified).

(c) Temporary export license applications must be made on Form DSP-73 (unclassified).

(d) All applications involving the export or intransit shipment of classified defense articles or classified technical data must be made on Form DSP-85.

(e) The following specific procedures apply to the preparation and submission of applications:

(1) Applications for Department of State export licenses must be confined to proposed exports of defense articles and related technical data. Applications for licenses to export commodities under the regulatory jurisdiction of the Department of Commerce must be made directly to that Department.

(2) 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. Any supporting documentation concerning commodity, end-use, and specific purpose should be submitted in seven copies. Samples of properly executed applications are available from the Office of Munitions Control.

(3) Form DSP-83, duly executed, must accompany all license applications for the permanent export of significant military equipment except in the circumstances described in § 123.10(b).

(4) Applications for permanent export licenses should not be submitted until the applicant has a firm order, letter of intent or other appropriate documentation from the purchaser or consignee except in the circumstances described in § 123.1(c).

(5) A request under the provisions of section 38(e) of the Arms Export Control

Act (22 U.S.C. 2778(e)) for confidential treatment of information provided to the Department of State must be made by letter to the Office of Munitions Control.

§ 123.23 Renewal and disposition of licenses.

(a) A license is valid for a period of two years. The license expires if the defense articles described in the license are not shipped within the two-year period. 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.

§ 123.24 Port of exit or entry.

An application for a license must state the proposed port of exit from the United States. If applicable, the port of entry must also be stated. After a license is issued, the person to whom the license was issued must notify the Office of Munitions Control in writing of any proposed change of the port prior to export. A copy of such written notification must be sent to the district director of customs at the new port.

§ 123.25 Filing of export and intransit licenses and shipper's export declarations with district directors of customs.

(a) The recipient of an export license must deposit the license with the district director of customs at the port of exit designated on the license before shipping the defense article in question. (For exports by mail, see § 123.26.) After a license has been so deposited, the export may be made through the designated port. If necessary, the export may be made through another port if the exporter complies with the procedures established by the U.S. Customs Service and § 123.24. Before shipping any defense article, the exporter must also file a shipper's export declaration (Department of Commerce Form 7525-V) with the district director of customs at the port of exit.

(b) Before any export occurs, the district director of customs at the port of exit must authenticate the shipper's export declaration, and endorse the license to show the shipments actually made. The district director of customs will return a copy of each authenticated shipper's export declaration to the Office of Munitions Control. Every license will also be returned upon the completion of the authorized export or

upon the expiration date stated on the license, whichever occurs first.

(c) An exporter must also file a shipper's export declaration with district directors of customs or postmasters in those cases in which no export license is required because of an exemption in this subchapter. The exporter must certify that the export is exempt from the licensing requirements of this subchapter. This is done by writing "22 CFR (identify section) applicable" on the shipper's export declaration, and by identifying the section under which an exemption is claimed. A copy of each such declaration must be mailed immediately by the exporter to the Office of Munitions Control. This paragraph does not create an obligation to file a shipper's export declaration if (1) the export is exempt from the licensing requirements of this subchapter pursuant to § 126.4 and (2) it is not otherwise required by law or by regulations other than those contained in this subchapter.

(d) District directors of customs are authorized to 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.

§ 123.26 Shipments by mail.

An export license for defense articles being sent abroad by mail must be filed with the postmaster at the post office where the equipment is mailed. A shipper's export declaration (U.S. Department of Commerce Form 7525-V) must be filed with and be authenticated by the postmaster before the article is actually sent. The postmaster will endorse each license to show the shipments made. Every license must be returned by the postmaster to the Office of Munitions Control upon completion of the mailings or the date that the license expires, whichever occurs first.

§ 123.27 Temporary exports.

(a) If defense articles are to be sent abroad for brief periods and returned to the United States in the same condition, a license for the temporary export of defense articles must be obtained from the Department of State (Form DSP-73).

(b) Defense articles authorized for temporary export under this section may be shipped only from a port in the United States where a district director of customs is available. The license for temporary export must be presented to the district director of customs who, upon verification, will endorse the exit column on the reverse side of the license. The endorsed license for temporary export is to be retained by

the licensee. In the case of a military aircraft or vessel, 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) Upon the return to the United States of defense articles covered by a license for temporary export, the license will be endorsed in the entry column by the district director of customs. This procedure shall be followed for all exits and entries made during the period for which the license is valid. The licensee must send the used license to the Office of Munitions Control immediately upon expiration or after the final return in the case of multiple exports under the same license, whichever occurs first.

PART 124—MANUFACTURING LICENSE AGREEMENTS, TECHNICAL ASSISTANCE AGREEMENTS, 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 Office of Munitions Control.
- 124.5 Proposed agreements which are not concluded.
- 124.6 Termination of manufacturing license agreements and technical assistance agreements.

Procedures

- 124.7 Required information and clauses in proposed agreements.
- 124.8 Information required in all agreements.
- 124.9 Clauses required both in manufacturing license agreements and technical assistance agreements.
- 124.10 Additional clauses required only in manufacturing license agreements.
- 124.11 Non-transfer and use assurances.
- 124.12 Required information in letters of transmittal.

Offshore Procurement and Warehousing Agreements

- 124.13 Procurement by United States persons in foreign countries (offshore procurement).
- 124.14 Exports to warehouses or distribution points outside the United States.

Authority: Section 38, Arms Export Control Act, 80 Stat. 744 (22 U.S.C. 2778); E.O. 11953, 42 FR 4311; 22 U.S.C. 2653.

§ 124.1 Manufacturing license agreements and technical assistance agreements.

(a) *General.* The approval of the Office of Munitions Control must be obtained before the defense services

described in § 120.8(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement with the foreign person concerned to the Office of Munitions Control. Such agreements are generally characterized as either "Manufacturing license agreements" or "technical assistance agreements" as defined in § 120.14 and § 120.20, and may not enter into force without the prior written approval of the Office of Munitions Control. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with § 124.3 and § 125.4(b)(2). The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services described in § 120.8(a) (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from the licensing requirements of this subchapter pursuant to § 125.4). This requirement also applies to the training of foreign military forces, both regular and irregular, in the use of defense articles. Technical assistance agreements must be submitted in such cases. (In exceptional cases, the Office of Munitions Control, upon written request, will consider approving the provision of defense services described in § 120.8(a) by granting a license under Part 125. Also, see § 126.8 for the requirements for prior approval of proposals relating to significant military equipment.)

(b) *Amendments.* Proposed amendments, including extensions, to agreements subject to the requirements of this part must also be submitted for approval. The amendments may also not enter into force until approved by the Office of Munitions Control. Amendments which only alter delivery or performance schedules, or other minor administrative amendments which do not affect in any manner the duration of the agreement or the clauses or information which must be included in such agreements because of the requirements of this part, do not have to be submitted for approval. One copy of all such minor amendments must be submitted to the Office of Munitions Control within thirty days after they are concluded.

§ 124.2 Exemptions for training and military service.

(a) Technical assistance agreements are not required for the provision of training only in the basic operation and maintenance of defense articles lawfully

exported or authorized for export to the same recipient.

(b) Services performed as a member of the regular military forces of a foreign nation by U.S. persons who have been drafted into such forces are not deemed to be defense services for purposes of § 120.8.

§ 124.3 Exports of technical data in furtherance of an agreement.

(a) *Unclassified technical data.* District directors of customs or postal authorities may permit the export without a license of unclassified technical data if the export is in furtherance of a manufacturing license or technical assistance agreement which has been approved in writing by the Office of Munitions Control. The export is not authorized without a license if it exceeds the scope or limitations of the relevant agreement. The U.S. party to the agreement must certify that the export does not exceed the scope of the agreement and any limitations imposed pursuant to this Part. The approval of the Office of Munitions Control must be obtained for the export of any unclassified technical data which may exceed the terms of the agreement.

(b) *Classified technical data.* The export of classified information in furtherance of an approved manufacturing license or technical assistance agreement which provides for the transmittal of classified information does not require further approval from the Office of Munitions Control when:

(1) The United States party certifies to the Department of Defense transmittal authority that the classified information does not exceed the technical or product limitations in the agreement; and

(2) The United States party complies with the requirements of the Department of Defense Industrial Security Manual concerning the transmission of classified information, and any other requirements of cognizant U.S. departments or agencies.

§ 124.4 Deposit of signed agreements with the Office of Munitions Control.

The United States party to a manufacturing license or a technical assistance agreement must file one copy of the concluded agreement with the Office of Munitions Control not later than 30 days after it enters into force.

§ 124.5 Proposed agreements which are not concluded.

The United States party to any proposed manufacturing license agreement or technical assistance agreement must inform the Office of Munitions Control if a decision is made not to conclude the agreement. The

information must be provided within 60 days of the date of the decision. These requirements apply only if the approval of the Office of Munitions Control was obtained for the agreement to be concluded (with or without any provisos).

§ 124.6 Termination of manufacturing license agreements and technical assistance agreements.

The United States party to a manufacturing license or a technical assistance agreement must inform the Office of Munitions Control in writing of the impending termination of the agreement not less than 30 days prior to the expiration date of such agreement.

Procedures

§ 124.7 Required information and clauses in proposed agreements.

In order to be approved, all proposed manufacturing license agreements and technical assistance agreements must contain certain information and clauses. The information required is specified in § 124.8. The information required should be provided in terms which are as precise as possible. The clauses which must be included in both manufacturing license agreements and technical assistance agreements are stated in § 124.9. The additional clauses which must be stated in manufacturing license agreements only are specified in § 124.10. If the United States party believes that a clause or some required information is not relevant or necessary in a particular agreement, the Office of Munitions Control may authorize the omission of the information or clause. The transmittal letter accompanying the agreement (see § 124.12) must state the reasons for any proposed variation in the required information or statements.

§ 124.8 Information required in all agreements.

The following information must be included in all manufacturing license agreements and technical assistance agreements:

(a) The agreement must describe the equipment and technology involved. They should be described by military nomenclature, contract number, Federal stock number, nameplate data, or other specific information;

(b) The agreement must describe the assistance and information to be furnished and the manufacturing rights to be granted, if any;

(c) The duration of the proposed agreement must be specified; and

(d) The agreement must specifically identify the countries or areas in which manufacturing, production, processing,

sale or other form of transfer is to be licensed.

§ 124.9 Clauses required both in manufacturing license agreements and technical assistance agreements.

The following statements must be included both in manufacturing license agreements and in technical assistance agreements:

(a) "This agreement shall not enter into force, and shall not be amended or extended, without the prior written approval of the Department of State of the U.S. Government."

(b) "This agreement is subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations."

(c) "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."

(d) "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement."

(e) "The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a person in a third country or to a national of a third country except as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained."

(f) "All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."

§ 124.10 Additional clauses required only in manufacturing license agreements.

(a) *Clauses for all manufacturing license agreements.* The following clauses must be included only in manufacturing license agreements:

(1) "No export, sale, transfer, or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government. Sales or other transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is

hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained."

(2) "It is agreed that sales by licensee or its sublicensees under contracts made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others."

(3) "If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sublicensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly."

(4) "If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sublicensees with funds derived through the U.S. Government contributions, and subject to the provisions of paragraphs (a) (1) and (2) of this section, no other royalties, fees or other charges may be assessed against U.S. Government funded purchases of such article. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data."

(5) "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (*applicant or licensee*) to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. (See § 126.10(b).)

(6) "*(Licensee)* agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the licensed articles are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (*country of ultimate destination or approved sales territory*). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

(b) *Special clause for agreements relating to significant military equipment.* With respect to an agreement for the production of significant military equipment, the following additional provisions must be included in the agreement:

(1) "A completed nontransfer and use certificate (DSP-83) must be submitted by the recipient to the Department of State of the United States before any transfer under this agreement may take place."

(2) "The prior written approval of the U.S. Government must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside of the approved sales territory."

§ 124.11 Nontransfer and use assurances.

A nontransfer and use certificate (Form DSP-83) (see § 123.10) signed by the foreign party to a manufacturing license agreement or technical assistance agreement is required as a condition to the approval of any such agreement which relates to significant military equipment, classified articles or classified technical data. The Office of Munitions Control may at its option require that this certificate or a comparable undertaking be provided before approving any agreement that does not relate to significant military equipment. The Office of Munitions Control may also require as a condition to the approval of the agreement that an appropriate authority to the foreign party's government also execute the certificate, or that the foreign government concerned provide undertakings comparable to those contained in the Form DSP-83 (e.g., in a diplomatic note). Agreements involving classified articles or classified technical data must be accompanied by a nontransfer and use certificate signed by an authorized representative of the foreign government concerned. This

requirement may be waived by the Office of Munitions Control if the foreign party is a foreign government with which the United States has a General Security of Information Agreement or other foreign government security assurance.

§ 124.12 Required information in letters of transmittal.

(a) An application for the approval of a manufacturing license or technical assistance agreement with a foreign person must be accompanied by an explanatory letter. The original letter and seven copies of the letter and eight copies of the proposed agreement shall be submitted to the Office of Munitions Control. The explanatory letter shall contain:

(1) A statement giving the applicant's Munitions Control registration number.

(2) A statement identifying the licensee and the scope of the agreement.

(3) A statement identifying the U.S. Government contract under which the equipment or technical data was generated, improved, or developed and supplied to the U.S. Government, and whether the equipment or technical data was derived from any bid or other proposal to the U.S. Government.

(4) A statement giving the military security classification of the equipment or technical data.

(5) A statement identifying any patent application which discloses any of the subject matter of the equipment or technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office.

(6) A statement of the actual or estimated value of the agreement. If the value exceeds \$250,000, an additional statement must be made regarding the payment of political contributions, fees or commissions, pursuant to Part 130 of this subchapter.

(b) The following statements must be made in the letter of transmittal:

(1) "If the agreement is approved by the Department of State, such approval will not be construed by *(the applicant)* as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will *(the applicant)* construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."

(2) "The *(applicant)* will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(3) "The *(applicant)* will furnish the Department of State with one copy of the signed agreement (or amendment)

within 30 days from the date that the agreement is concluded and will inform the Department of its termination not less than 30 days prior to expiration and provide information on the continuation of any foreign rights or the flow of technical data to the foreign party. If a decision is made not to conclude the proposed agreement, the *applicant* will so inform the Department within 60 days."

Offshore Procurement and Warehousing Agreements

§ 124.13 Procurement by United States persons in foreign countries (offshore procurement).

Notwithstanding the other provisions in Part 124, the Office of Munitions Control may authorize by means of a license (DSP-5) the export of unclassified technical data to foreign persons for offshore procurement of defense articles, provided that:

(a) The contract or purchase order for offshore procurement limits delivery of the defense articles to be produced only to the person in the United States or to an agency of the U.S. Government; and

(b) The technical data of U.S. origin to be used in the foreign manufacture does not disclose the details of the design, development, production or manufacture of defense articles; and

(c) The contract or purchase order between the person in the United States and the foreign person:

(1) Limits the use of the technical data to the manufacture of the defense articles required by the contract or purchase order only; and

(2) Prohibits the disclosure of the data to any other person except duly qualified subcontractors within the same country; and

(3) Prohibits the acquisition of any rights in the data by any foreign person; and

(4) Provides that any subcontracts between foreign persons in the approved country for manufacture of equipment for delivery pursuant to the contract or purchase order contain all the limitations of this paragraph (c); and

(5) Requires the foreign person, including subcontractors, to destroy or return to the person in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of their terms; and

(6) Requires delivery of the defense articles manufactured abroad only to the person in the United States or to an agency of the U.S. Government; and

(d) The person in the United States provides the Office of Munitions Control with a copy of each contract, purchase order or subcontract for offshore procurement at the time it is accepted.

Each such contract, purchase order or subcontract must clearly identify the article to be produced and must identify the license number or exemption under which the technical data was exported; and

(e) Licenses issued pursuant to this section must be renewed upon their expiration if offshore procurement is to extend beyond the period of validity of the license.

If the technical data involved in an offshore procurement arrangement is otherwise exempt from the licensing requirements pursuant to 126.4 or 126.5, the DSP-5 referred to in the first sentence of this section is not required. However, the exporter must comply with the other requirements of this section.

§ 124.14 Exports to warehouses or distribution points outside the United States

(a) *General.* Agreements (e.g., contracts) between U.S. persons and foreign persons for the warehousing and distribution of defense articles must be approved by the Office of Munitions Control before they enter into force. Such agreements will be limited to unclassified defense articles and must contain conditions for special distribution, end-use and reporting. Licenses for exports pursuant to such agreements must be obtained prior to exports of the defense articles (see §123.7).

(b) *Required Information.* Proposed warehousing and distribution agreements (and amendments thereto) shall be submitted to the Office of Munitions Control for approval. The following information must be included in all such agreements:

(1) A precise description of the defense articles involved. This shall include when applicable the military nomenclature, the Federal stock number, nameplate data, and any control numbers under which the defense articles were developed or procured by the U.S. Government.

(2) A detailed statement of the terms and conditions under which the defense articles will be exported and distributed;

(3) The duration of the proposed agreement;

(4) Specific identification of the country or countries that comprise the distribution territory. Distribution must be specifically limited to the governments of such countries or to private entities seeking to procure defense articles pursuant to a contract with a government within the distribution territory. Consequently, any deviation from this condition must be

fully explained and justified. A nontransfer and use certificate (DSP-83) will be required to the same extent required in licensing agreements under § 124.10(b).

(c) *Required Statements.* The following statements must be included in all warehousing and distribution agreements:

(1) "This agreement shall not enter into force, and may not be amended or extended, without the prior written approval of the Department of State of U.S. Government."

(2) "This agreement is subject to all United States laws and regulations related to exports and to all administrative acts of the United States Government pursuant to such laws and regulations."

(3) "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."

(4) "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign by reason of the U.S. Government's approval of this agreement."

(5) "No export, sale, transfer, or other disposition of the defense articles covered by this agreement is authorized to any country outside the distribution territory without the prior written approval of the Office of Munitions Control of the U.S. Department of State."

(6) "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient shall be provided by (*applicant or licensee*) to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. (See § 126.10(b)).

(7) "*(Licensee)* agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the articles covered by this agreement are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (*country of ultimate destination or approved sales territory*). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

(d) *Transmittal Letters.* Requests for approval of warehousing and distribution agreements with foreign persons must be made by letter. The original letter and seven copies of the letter and seven copies of the proposed agreement shall be submitted to the Office of Munitions Control. The letter shall contain:

(1) A statement giving the applicant's Munitions Control registration number.

(2) A statement identifying the foreign party to the agreement.

(3) A statement identifying the defense articles to be distributed under the agreement.

(4) A statement identifying any U.S. Government contract under which the equipment may have been generated, improved, developed or supplied to the U.S. Government, and whether the equipment was derived from any bid or other proposal to the U.S. Government.

(5) A statement that no classified defense articles or classified technical data are involved.

(6) A statement identifying any patent application which discloses any of the subject matter of the equipment or related technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office.

(e) *Required Clauses.* The following statements must be made in the letter of transmittal:

(1) "If the agreement is approved by the Department of State, such approval will not be construed by (*applicant*) as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will (*the applicant*) construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement.

(2) "The (*applicant*) will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(3) "The (*applicant*) will furnish the Department of State with one copy of the signed agreement (or amendments thereto) within 30 days from the date that the agreement is concluded, and will inform the Department of its termination not less than 30 days prior to expiration. If a decision is made not

to conclude the proposed agreement, the (*applicant*) will so inform the Department within 60 days."

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

Sec.

- 125.1 Exports subject to this Part.
- 125.2 Exports of unclassified technical data.
- 125.3 Exports of classified technical data and classified defense articles.

Exemptions

- 125.4 Exemptions of general applicability.
- 125.5 Exemptions for plant visits.
- 125.6 Certification requirements.

Procedures

- 125.7 Exports of unclassified technical data.
- 125.8 Exports of classified technical data and classified defense articles.
- 125.9 Filing of licenses for exports of unclassified technical data.
- 125.10 Filing of licenses for exports of classified technical data and classified defense articles.

Authority: Section 33, Arms Export Control Act, 29 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2638.

§ 125.1 Exports subject to this Part.

(a) The export controls of this Part apply to the export of technical data and the export of classified defense articles. Information which is in the "public domain" (see § 120.18) is not subject to the controls of this subchapter.

(b) A license for the export of technical data and the exemptions in § 125.4 may not be used for foreign production purposes or for technical assistance unless the approval of the Department of State has been obtained. Such approval is generally provided only pursuant to the procedures specified in Part 124 of this subchapter.

(c) Technical data authorized for export may not be diverted or transferred from the country of ultimate end-use (as designated in the license or approval for export) or disclosed to a national of another country without the prior written approval of the Department of State.

(d) The export controls of this Part apply to the exports referred to in paragraph (a) of this section regardless of whether the person who intends to export the technical data produces or manufactures defense articles if the technical data is determined by the Office of Munitions Control to be subject to the controls of this subchapter.

(e) The provisions of this subchapter do not apply to technical data related to articles in Category VI(e) and Category XVI. The export of such data is controlled by the Department of Energy

and the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978.

§ 125.2 Exports of unclassified technical data.

(a) *General.* A license issued by the Department of State is required for the export of unclassified technical data unless the export is exempt from the licensing requirements of this subchapter.

(b) *Patents.* A license issued by the Department of State is required for the export of technical data whenever the data exceeds that which is used to support a domestic filing of a patent application or to support a foreign filing of a patent application whenever no domestic application has been filed. The export of technical data to support the filing and processing of patent applications in foreign countries is subject to regulations issued by the U.S. Patent and Trademark Office pursuant to 35 U.S.C. 184.

(c) *Disclosures.* Unless otherwise expressly exempted in this subchapter, a license is required for the oral, visual or documentary disclosure of technical data to foreign nationals in connection with visits by U.S. persons to foreign countries, visits by foreign persons to the United States, or otherwise. A license is required regardless of the manner in which the technical data is transmitted (e.g., in person, by telephone, correspondence, electronic means, telex, etc.). A license is required for such disclosures in connection with visits by U.S. persons to foreign diplomatic missions and consular offices.

§ 125.3 Exports of classified technical data and classified defense articles.

(a) A request for authority to export defense articles or technical data classified pursuant to Executive Order 12356 or other legal authority must be submitted to the Office of Munitions Control for approval. The application must contain full details of the proposed transaction. A nontransfer and use certificate (Form DSP-83) executed by the foreign consignee, end-user and an authorized representative of the foreign government involved will be required. This requirement may be waived by the Office of Munitions Control if the end-user is a foreign government with which the United States has a General Security of Information Agreement or other foreign government security assurance (e.g., diplomatic note).

(b) Classified technical data which is approved by the Department of State either for export or reexport after a

temporary import will be transferred or disclosed only in accordance with the requirements relating to the transmission of classified information in the Department of Defense Industrial Security Manual. Any other requirements imposed by cognizant U.S. departments and agencies must also be satisfied.

(c) The approval of the Department of State must be obtained for the export of technical data by a U.S. person to a foreign person in the U.S. or in a foreign country unless the proposed export is exempt under the provisions of this subchapter.

(d) All communications relating to a patent application covered by an invention secrecy order are to be addressed to the U.S. Patent and Trademark Office (See 37 CFR 5.11).

Exemptions

§ 125.4 Exemptions of general applicability.

(a) The following exemptions apply to exports of technical data for which no license or other approval is needed from the Office of Munitions Control. These exemptions do not apply to exports to proscribed destinations under § 126.1. Unless specifically indicated, these exemptions do not apply to classified information. Transmission of classified information must comply with the requirements of the Department of Defense Industrial Security Manual and the exporter must certify to the transmittal authority that the technical data does not exceed the technical limitation of the authorized export.

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

(1) Technical data, including classified information, to be disclosed pursuant to an official written request or directive from the U.S. Department of Defense;

(2) Technical data, including classified information, in furtherance of a manufacturing license or technical assistance agreement approved by the Department of State under Part 124 of this subchapter and which meet the requirements of § 124.3;

(3) Technical data, including classified information, in furtherance of a contract between the exporter and an agency of the U.S. Government, if the contract provides for the export of the relevant technical data and such data does not disclose the details of design, development, production, or manufacture of any defense article;

(4) Additional copies of technical data, including classified information, previously exported or authorized for export to the same recipient. Revised

copies of such technical data are also exempt if they pertain to the identical defense article, and if the revisions are solely editorial and do not add to the content of technology previously exported or authorized for export to the same recipient;

(5) Technical data in the form of operations, maintenance, and training information relating to a defense article lawfully exported or authorized for export to the same recipient. This exemption applies only to exports by the original exporter;

(6) Technical data related to firearms not in excess of caliber .50 and ammunition for such weapons, except detailed design, development, production or manufacturing information;

(7) Technical data being returned to the original source of import;

(8) Technical data directly related to classified information which has been previously exported in accordance with this Part to the same recipient, and which does not disclose the details of the design, development, production, or manufacture of any defense article;

(9) Technical data, including classified information, sent by a U.S. corporation to a U.S. person employed by that corporation overseas or to a U.S. Government agency. This exemption is subject to the limitations of § 125.1(b) and may be used only if (i) the technical data is to be used overseas solely by U.S. persons and (ii) if the U.S. person overseas is an employee of the U.S. Government or is directly employed by the U.S. corporation and not by a foreign subsidiary;

(10) Disclosures of technical data in the U.S. by U.S. institution of higher learning to foreign persons who are their bona fide and full time regular employees. This exemption is available only if (i) the employee's permanent abode throughout the period of employment is in the United States; (ii) the employee is not a national of a country to which exports are prohibited pursuant to § 126.1; and (iii) the institution informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of the Office of Munitions Control;

(11) Technical data, including classified information, for which the exporter, pursuant to an arrangement with the Department of Defense or NASA which requires such exports, has been granted an exemption in writing from the licensing provisions of this Part by the Office of Munitions Control. Such an exemption will normally be granted only if the arrangement directly

implements an international agreement to which the United States is a party and if multiple exports are contemplated. The Office of Munitions Control, in consultation with the relevant U.S. Government agencies, will determine whether the interests of the United States Government are best served by expediting exports under an arrangement through an exemption. (See also paragraph (b)(3) of this section for a related exemption.);

(12) Technical data which is specifically exempt under Part 126 of this subchapter; or

(13) Technical data approved for public release (i.e., unlimited distribution) by the U.S. Government department or agency which originated or developed the information. This exemption is applicable to information approved by the cognizant U.S. Government department or agency for public release in any form (e.g., publications, speeches, conference papers, movies, etc.). It does not require that the information be published in order to qualify for the exemption.

§ 125.5 Exemptions for plant visits.

(a) A license is not required for the oral and visual disclosure of unclassified technical data during the course of a classified plant visit by a foreign person, provided (1) the classified visit has itself been authorized pursuant to a license issued by the Office of Munitions Control; or (2) the classified visit was approved in connection with an actual or potential government-to-government program or project by a U.S. Government agency having classification jurisdiction over the classified defense article or classified technical data involved under Executive Order 12356 or other applicable Executive Order; and (3) the unclassified information to be released is directly related to the classified defense article or technical data for which approval was obtained and does not disclose the details of the design, development, production or manufacture of any other defense articles. In the case of U.S. Government approved visits, the requirements of the Defense Industrial Security Manual (Department of Defense Manual 5220.22M) must be met.

(b) The approval of the Office of Munitions Control is not required for the disclosure of oral and visual classified information to a foreign person during the course of a plant visit approved by the appropriate U.S. Government agency if (1) the requirements of the Defense Industrial Security Manual have been met, (2) the classified information is directly related to that which was approved by the U.S. Government

agency, (3) it does not exceed that for which approval was obtained, and (4) it does not disclose the details of the design, development, production or manufacture of any other defense articles.

(c) A license is not required for the documentary disclosure to a foreign person of unclassified technical data during the course of a plant visit (either classified or unclassified) approved by the Office of Munitions Control or a U.S. Government agency provided the documents do not contain technical data in excess of that approved for oral and visual disclosure. The documents must not contain technical data which could be used for design, development, production or manufacture of a defense article.

§ 125.6 Certification requirements.

To claim an exemption for the export of technical data under the provisions of § 125.4 and § 125.5, an exporter must certify that the proposed export is covered by a relevant paragraph of that section. This certification is not required if the technical data is only disclosed orally or visually. The certification referred to in this section consists of marking the package or letter containing the technical data: "22 CFR 125. (identify subsection) applicable" and identifying the specific paragraph under which the exemption is claimed. In the case of unclassified technical data, district directors of customs may require that the certification be made on a shipper's export declaration.

Procedures

§ 125.7 Exports of unclassified technical data.

(a) *General.* Unless an export is exempt from the licensing requirements of this subchapter, an application for the permanent export of unclassified technical data must be made to the Office of Munitions Control on Form DSP-5. If the technical data is to be returned to the United States, Form DSP-73 should be used instead. In the case of a visit, sufficient details of the proposed discussions must be transmitted for an adequate appraisal of the data. Seven copies of the data or the details of the discussions must be provided. Only one copy must be provided if a renewal of the license is requested.

(b) *Patents.* Requests for the filing of patent applications in a foreign country and requests for the filing of amendments, modifications or supplements to such patents must be directed to the U.S. Patent and Trademark Office in accordance with 37 CFR Part 5. If an applicant complies

with the regulations of that office, the approval of the Office of Munitions Control is required only in the circumstance described in § 125.2(b). In such cases, an application must be submitted in accordance with the provisions of paragraph (a) of this section.

§ 125.8 Exports of classified technical data and classified defense articles.

All applications for the export or temporary import of classified technical data or classified defense articles must be submitted to the Office of Munitions Control on Form DSP-85. Applications will be accepted from U.S. nationals only. An application for the export of classified technical data must be accompanied by seven copies of the data and a completed Form DSP-83 (see § 123.10). An application for the export of classified defense articles must be accompanied by seven copies of descriptive information and a completed Form DSP-83. 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 Munitions Control in accordance with the requirements of section II of the Defense Industrial Security Manual (Department of Defense Manual Number 5220.22-M).

§ 125.9 Filing of licenses for exports of unclassified technical data.

Licenses for the export of unclassified technical data must be deposited with 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 Munitions Control in accordance with the instructions contained on the reverse side of the license. 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, the person exporting the data must self-endorse the license and return it promptly to the Office of Munitions Control.

§ 125.10 Filing of licenses for exports of classified technical data and classified defense articles.

Licenses for the export of classified technical data or classified defense articles will be forwarded by the Office of Munitions Control 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 Munitions Control 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 Munitions Control upon completion of the authorized export or expiration of the license, whichever occurs first.

PART 126—GENERAL POLICIES AND PROVISIONS

Sec.

- 126.1 Prohibited shipments to or from certain countries.
- 126.2 Temporary suspension or modification of this subchapter.
- 126.3 Waiver.
- 126.4 Shipments by or for United States Government agencies.
- 126.5 Canadian exemptions.
- 126.6 Foreign military aircraft and naval vessels, and the Foreign Military Sales program.
- 126.7 Denial, revocation, suspension or amendment of licenses and agreements.
- 126.8 Proposals to foreign persons relating to significant military equipment.
- 126.9 Advisory opinions.
- 126.10 Disclosure of information to the public.
- 126.11 Relation to other provisions of law.
- 126.12 Continuation in force.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); 601, as amended, 47 Stat. 417 (31 U.S.C. 6a86); E.O. 11958 (42 FR 4311, January 18, 1977); E.O. 11322, 32 FR 119, 22 U.S.C. 2658.

§ 126.1 Prohibited shipments to or from certain countries.

(a) *General.* It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services destined for or originating in certain countries or areas. This policy also applies to exports to and imports from these countries or areas. This policy applies to Albania, Bulgaria, Cuba, Czechoslovakia, East Germany, Estonia, Hungary, Kampuchea, Latvia, Lithuania, North Korea, Outer Mongolia, Poland, Rumania, the Soviet Union and Vietnam. This policy also applies to countries or areas with respect to which the United States maintains an arms embargo or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. The exemptions provided in the regulations in this subchapter, except § 123.17 of this subchapter, do not apply with respect to exports to or originating in any of such 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.

§ 126.2 Temporary suspension or modification of this subchapter.

The Director, Office of Munitions Control, 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 Waiver.

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 Munitions Control 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 export of any defense article or technical data 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 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 Munitions Control must be obtained before defense articles exported pursuant to this exemption are permanently transferred to a foreign person (e.g., property disposal of surplus defense articles overseas) unless (i) the transfer is pursuant to a sale, lease, or loan under the Arms Export Control Act or 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.

(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 export of any defense article or technical data for end-use by a U.S. Government Agency under the following circumstances:

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

(2) The end-user 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. A written statement certifying that these requirements have been met will be presented at the time of export to the appropriate district director of customs or Department of Defense transmittal authority, and shall be provided to the Office of Munitions Control.

§ 126.5 Canadian exemptions.

(a) *General.* District directors of customs and postmasters may permit the export without a license of any unclassified defense article or any unclassified technical data to Canada for end-use in Canada or return to the United States, with the exception of the articles or technical data listed in paragraph (b) of this section.

(b) *Exceptions.* The exemptions of this section do not apply to the following articles and 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 (e).

(c) *Related requirements.* The foregoing exemption from obtaining an export license does not exempt an exporter from complying with the requirements set forth in § 123.10(e) or from filing the shipper's export declaration required by § 123.25.

(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 manufacture in Canada of defense articles, except under the provisions of § 124.13.

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

(a) *General.* A license is not required for the export of any defense article if:

- (1) The article 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
- (2) The article was delivered to representatives of such a country or organization in the United States; and
- (3) The article is to be exported from the United States on a military aircraft or naval vessel of that government or organization.

(b) *Foreign military aircraft and naval vessels.* A license is not required for the entry into the United States of military aircraft of any foreign state if no overhaul, repair, or modification of the aircraft is to be performed. Department of State approval for overflight (pursuant to the 49 U.S.C. 1508) and naval visits must, however, be obtained.

(c) *Procedures for the Foreign Military Sales program.*

(1) *General.* District directors of customs are authorized to permit the export of unclassified defense articles, defense services, and technical data without a license if they were sold by the U.S. Department of Defense to foreign governments or international organizations under the Foreign Military Sales (FMS) program of the Arms Export Control Act. This procedure may be used only if a proposed export is:

- (i) Pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (DD Form 1513); and
- (ii) Accompanied by a properly executed DSP-XX; and
- (iii) Made by the relevant foreign diplomatic mission of the purchasing country or its authorized freight forwarder, provided that the freight forwarder is registered with the Office of Munitions Control pursuant to Part 122 of this subchapter.

(2) *Filing of documents.*

(i) The original copy of completed Form DSP-XX, together with one copy of the corresponding authenticated DD Form 1513 and a shipper's export declaration, must be filed with the District director of customs at the port of exit prior to actual shipment. An executed DD Form 1513 is one which has been signed by (A) an authorized Department of Defense representative and countersigned by the Comptroller, Defense Security Assistance Agency (DSAA), and (B) by an authorized representative of the foreign government, and which has been stamped:

Implemented (*date*).

(ii) *SED.* The shipper's export declaration must be annotated as follows:

This shipment is being exported under the authority of Department of State Form DSP-XX. It covers FMS Case (*case identification*), expiration date—, 22 CFR 122.0 applicable.

(iii) *Notification to the Office of Munitions Control.* Copy number two of the completed Form DSP-XX should be removed by the exporter and sent immediately, together with a copy of the applicable authenticated DD Form 1513 and the Shipper's export declaration, to the Office of Munitions Control. Form DSP-XX shall be valid for two years from the date on which it is executed.

§ 126.7 Denial, revocation, suspension, or amendment of licenses and agreements.

(a) *Policy.* An export license or a manufacturing license agreement or a technical assistance agreement may be disapproved and a previous approval or license or exemption under this subchapter may be revoked, suspended, or amended without prior notice whenever (1) the Department of State deems such action to be in furtherance of world peace, the national security or the foreign policy of the United States; or (2) whenever the Department of State believes that 22 U.S.C. 2778 or any regulation contained in this subchapter has been violated; or (3) whenever a party to the agreement has been debarred under § 127.6 of this subchapter; or (4) whenever an order of debarment or suspension has been made applicable to an applicant, licensee, or party to an approved or proposed agreement pursuant to Part 127 of this subchapter or pursuant to 15 CFR Part 388; or (5) whenever a person who has been debarred or suspended has a significant interest in the transaction.

(b) *Notification.* The Office of Munitions Control will notify applicants or licensees or other appropriate United States persons of actions taken pursuant to paragraph (a) of this section. The reasons for the action will be stated as specifically as security and foreign policy considerations permit.

(c) *Reconsideration.* If a written request for reconsideration of an adverse decision is made within 30 days after a person has been informed of the decision, the U.S. person will be accorded an opportunity to present additional information. The case will then be reviewed by the Office of Munitions Control.

§ 126.8 Proposals to foreign persons relating to significant military equipment.

(a) *General.* The approval of the Office of Munitions Control must be

obtained before a proposal or presentation (with the exception of those listed in paragraph (g)) which has the following characteristics is made to any foreign person:

(1) The proposal or presentation is designed to constitute a basis for a decision on the part of the foreign person to either (i) purchase significant military equipment on the United States Munitions List pursuant to a contract for \$14,000,000 or more; or (ii) enter into any manufacturing license agreement or technical assistance agreement for the production or assembly of significant military equipment; and

(2) The equipment is intended for use by the armed forces of a foreign country; and

(3) The sale or agreement would involve the export from the United States of any defense article or the furnishing of any defense service, including the furnishing of technical data.

(b) *Definition of "Proposal or Presentation"* The terms "proposal or presentation is designed to constitute a basis for a decision . . . to purchase" and "enter into any agreement" mean the communication of information in sufficient detail that the person communicating that information knows or should know that it would permit an intended purchaser to decide to either acquire the particular equipment in question or to enter into the manufacturing license agreement or technical assistance agreement. For example, a presentation which describes the equipment's performance characteristics, price, and probable availability for delivery would require prior approval in any case where the three criteria specified in paragraph (a) of this section are met. By contrast the following would not require prior approval: advertising or other reporting in a publication of general circulation; preliminary discussions to ascertain market potential; or merely calling attention to the fact that a company manufactures a particular item of significant military equipment.

(c) *Statement to accompany licensing requests.*

(1) Every application for an approval of an export license to implement a sale or agreement which meets the three criteria specified in paragraph (a) of this section must be accompanied by a statement from the applicant which either:

(i) Refers to a specific approval previously granted with respect to the transaction; or

(ii) Certifies that no proposal or presentation requiring prior approval has been made.

(2) The Department of State may require a similar statement from the Foreign Military Sales contractor concerned in any case where the United States Government receives a request for a letter of offer for a sale which meets the three criteria specified in paragraph (a) of this section.

(d) *Satisfaction of requirements.* The requirement of this section for prior approval is met by any of the following:

(1) A written statement from the Office of Munitions Control approving the proposed sale or agreement or approving the making of a proposal or presentation.

(2) A license issued under § 125.2 or § 125.3 for the export of technical data relating to the proposed sale or agreement to the country concerned.

(3) A temporary export license issued under § 123.27 relating to the proposed sale or agreement for a demonstration to the armed forces of the country of export.

(4) With respect to manufacturing license agreements or technical assistance agreements, the application for export licenses pursuant to the two preceding subparagraphs must state that they are related to possible agreements of this kind.

(e) *Penalties.* In addition to other remedies and penalties prescribed by law or this subchapter, a failure to obtain the approval required by paragraph (a) of this section may be considered to be a reason for disapproval of a license, agreement or sale under the Foreign Military Sales Program of the Department of Defense.

(f) *Procedures.* A request for an approval to make a proposal or presentation with respect to significant military equipment must be by letter to the Office of Munitions Control, unless a license has been obtained pursuant to § 126.8(d). The letter must outline in detail the intended transaction, including usage of the equipment involved and the country (or countries) involved. Seven copies of the letter should be provided as well as seven copies of suitable descriptive information concerning the equipment.

(g) *Exception.* The approval of the Office of Munitions Control is not required for purposes of paragraph (a) of this section if the proposed sale is to the armed forces of a member of NATO, Australia, Japan, or New Zealand. This exemption is not available with respect to manufacturing license agreements or technical assistance agreements.

§ 126.9 Advisory opinions.

A U.S. person desiring information as to whether the Office of Munitions Control would be likely to grant a license or other approval for the export of particular defense articles or defense services to a particular country may use the Office of Munitions Control's informal "Advisory Opinions" procedure. These opinions are advisory only. They are not binding on the Department of State and are revocable. A request for an advisory opinion must be by letter. It must outline in detail the equipment, its usage, the security classification, if any, of the articles or related technical data, and the country or countries involved. An original and seven copies of the letter must be provided along with seven copies of suitable descriptive information concerning the defense article or defense service. If a request for an advisory opinion involves more than one country, the letter should address only those countries in the same geographic area.

§ 126.10 Disclosure of information to the public.

(a) *General.* Subchapter R of this Title of CFR contains regulations on the availability to the public of information and records of the Department of State. The provisions of Subchapter R apply to such disclosures by the Office of Munitions Control.

(b) *Determinations required by law.* Section 38 of the Arms Export Control Act (22 U.S.C. 2778) provides that certain information required by the Department of State in connection with the licensing process may generally not be disclosed to the public unless certain determinations relating to the national interest are made in accordance with the procedures specified by that provision. Any determinations required by section 38(e) shall be made by the Under Secretary for Security Assistance, Science, and Technology.

(c) *Information required under Part 130.* Part 130 of this subchapter contains specific provisions on the disclosure of information described in that Part.

§ 126.11 Relation to other provisions of law.

The provisions in this subchapter are in addition to, and are not in lieu of, any other provisions of law or regulations. The sale of firearms in the United States, for example, remains subject to the provisions of the Gun Control Act of 1968 and regulations administered by the Department of the Treasury. The performance of defense services on behalf of foreign governments by retired military personnel continues to require

consent pursuant to Part 3a of this Title. Persons who intend to export defense articles or furnish defense services should consequently not assume that satisfying the requirements of this subchapter relieves one of other requirements of law.

§ 126.12 Continuation in force.

All determinations, authorizations, licenses, approvals of contracts and agreements and other action issued, authorized, undertaken, or entered into by the Department of State pursuant to section 414 of the Mutual Security Act of 1954, as amended, or under the previous provisions of this subchapter, continue in full force and effect until or unless modified, revoked or superseded by the Department of State.

PART 127—VIOLATIONS AND PENALTIES

Sec.

- 127.1 Violations in general.
- 127.2 Misrepresentation and omission of facts.
- 127.3 Penalties for violations.
- 127.4 Authority of U.S. Customs Service officers.
- 127.5 Seizure and forfeiture in attempts at illegal exports.
- 127.6 Debarment.
- 127.7 Interim suspension.
- 127.8 Applicability of orders.
- 127.9 Civil penalty.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); 601, as amended, 47 Stat. 417 (31 U.S.C. 688); E.O. 11958, 42 FR 4311, 22 U.S.C. 401; 22 U.S.C. 2658.

§ 127.1 Violations in general.

(a) It is unlawful (1) to export or attempt to export from the United States any defense article or technical data or to furnish any defense service for which a license or written approval is required by this subchapter; (2) to import or attempt to import any defense article, whenever a license is required by this subchapter without first obtaining the required license or written approval from the Department of State; or (3) to violate any of the terms or conditions of licenses or approvals granted pursuant to this subchapter.

(b) Any person who is granted a license or other approval under this subchapter is responsible for the acts of employees, agents, and all authorized persons to whom possession of the licensed defense articles or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense articles or technical data abroad. All persons abroad subject to U.S. jurisdiction who obtain temporary

custody of a defense article exported from the United States or produced under an agreement described in Part 124 of this subchapter, and irrespective of the number of intermediate transfers, are bound by the regulations of this subchapter in the same manner and to the same extent as the original owner-transferor.

(c) A person with knowledge that another person is then subject to an order of debarment, or interim suspension, may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to, and written authorization of, the Office of Munitions Control:

(1) Apply for, obtain, or use any export control document as defined in § 127.2(b) for such debarred or suspended person; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward transport, finance, or otherwise service or participate in any transaction which may involve any defense article or technical data or the furnishing of any defense service for which a license or approval is required by this subchapter for export from the United States, where such debarred or suspended person may obtain any benefit therefrom or have any direct or indirect interest therein.

(d) No person may willfully cause, or aid, abet, counsel, demand, induce, procure or permit the commission of any act prohibited by, or the omission of any act required by 22 U.S.C. 2778, 22 U.S.C. 2779, or any regulation, license, approval, or order issued thereunder.

§ 127.2 Misrepresentation and omission of facts.

(a) It is unlawful to use any export or intransit control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or the furnishing of any defense service for which a license or approval is required by this subchapter. Any false statement, misrepresentation, or omission of material fact in an export or intransit control document will be considered as made in a matter within the jurisdiction of a department or agency of the United States for the purposes of 18 U.S.C. 1001, 22 U.S.C. 2778 and 22 U.S.C. 2779.

(b) For the purpose of this section, "export or intransit control documents" include the following:

(1) An application for a permanent export or an intransit license and supporting documents.

(2) Shipper's export declaration.

(3) Invoice.

(4) Declaration of destination.

(5) Delivery verification.

(6) Application for temporary export.

(7) Application for registration.

(8) Purchase order.

(9) Foreign import certificate.

(10) Bill-of-lading.

(11) Air waybill.

(12) Nontransfer and Use Certificate.

(13) Any other document used in the regulation or control of defense articles, defense services and technical data for which license or approval is required by this subchapter.

§ 127.3 Penalties for violations.

Any person who willfully:

(a) Violates any provision of section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779), or any undertaking specifically required by Part 124 of this subchapter; or

(b) In a registration, license application or report required by section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or by any rule or regulation issued under either section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, be subject to fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).

§ 127.4 Authority of U.S. Customs Service officers.

(a) U.S. Customs Service officers may take appropriate action to ensure observance of this subchapter as to the export or the attempted export of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft. This applies whether the export is authorized by license or by written approval issued under this subchapter.

(b) Upon the presentation to a customs officer of a license or written approval authorizing the export of any defense article, the customs officer may require the production of other relevant documents and information relating to the proposed export. This includes an invoice, order, packing list, shipping document, correspondence, instructions, and the documents otherwise required by the U.S. Customs Service.

§ 127.5 Seizure and forfeiture in attempts at illegal exports.

(a) An attempt to export from the United States any defense articles in violation of the provisions of this subchapter constitutes an offense punishable under section 401 of Title 22 of the United States Code. Whenever it is known or there is probable cause to believe that any defense article is intended to be or is being or has been

exported or removed from the United States in violation of law, such article and any vessel, vehicle or aircraft involved in such attempt is subject to seizure, forfeiture and disposition as provided in section 401 of Title 22 of the United States Code.

(b) Similarly, an attempt to violate any of the conditions under which a Temporary Export or Intransit License was issued pursuant to this subchapter or to violate the requirements of § 123.2 also constitutes an offense punishable under section 401 of Title 22 of the United States Code, and such article, together with any vessel, vehicle or aircraft involved in any such attempt is subject to seizure, forfeiture, and disposition as provided in section 401 of Title 22 of the United States Code.

§ 127.6 Debarment.

(a) The Director, Bureau of Politico-Military Affairs, Department of State may debar (i.e., prohibit) any person from participating directly or indirectly in the export of defense articles or technical data or in the furnishing of defense services for which a license or approval is required by this subchapter for any of the causes listed below. The following are causes for debarment:

(1) Conviction of a criminal offense as defined in § 127.3.

(2) Any violation of 22 U.S.C. 2778 or any rule or regulation issued thereunder when such a violation is of such character as to provide a reasonable basis to believe and determine that the violator cannot be relied upon to comply with the statute, rules, or regulations in the future, and when such violation is established in accordance with §§ 128.2-128.16 of this chapter.

(3) A decision by the Office of Export Administration of the International Trade Administration of the Department of Commerce to deny, suspend, or revoke export privileges to the person under 15 CFR Part 388 and the Export Administration Act of 1979, as amended, or to exclude the person from practice before the International Trade Administration under 15 CFR 390.2 and under the Export Administration Act of 1979, as amended, whenever the facts provide a reasonable basis for concluding that the person cannot be relied upon to comply in the future with 22 U.S.C. 2778 or with the rules or regulations issued thereunder.

(b) A person who has been debarred for more than 12 months may petition the Hearing Commissioner to vacate or modify the order of debarment. The petition must be filed with the Hearing Commissioner, and a copy simultaneously filed with the Office of

Munitions Control. At his or her discretion, the Hearing Commissioner may require the submission of evidence and arguments, oral or written or both. The Hearing Commissioner, after considering the petition and any evidence and arguments with respect thereto, shall at the earliest practicable date submit a report and recommendations to the Director, Bureau of Politico-Military Affairs, Department of State. The Director may issue an appropriate order disposing of the petition and the moving party will be informed.

§ 127.7 Interim suspension.

(a) The Director of the Office of Munitions Control is authorized to order the interim suspension of any person when the Director believes that grounds for debarment (as defined in § 127.6) exist and where and to the extent the Director finds that the interim suspension is reasonably necessary to protect world peace or the security or foreign policy of the United States, pending the final disposition of debarment proceedings. The interim suspension orders prohibit that person from participating directly or indirectly in the export of any defense article for which a license or approval is required by this subchapter. The suspended person shall be sent a charging letter as provided in § 128.3 of this subchapter. A copy of the interim suspension order will be served upon that person in the same manner as provided in § 128.3. The interim suspension order may be made effective immediately, without prior notice or hearing. The order will briefly recite the relevant facts, state the grounds for issuance of the order, and describe the nature and duration of the interim suspension. No person may be suspended for a period exceeding 60 days unless proceedings under §§ 128.2 through 128.16 of this subchapter or criminal proceedings are initiated before the expiration of that period.

(b) A motion or petition to vacate or modify an interim suspension order may be filed at any time with the Hearing Commissioner. A copy shall be filed with the Office of Munitions Control. An oral hearing, if requested, will be held before the Hearing Commissioner at the earliest practicable date. The Hearing Commissioner, after considering the assembled record, will submit a report and recommendations to the Director, Bureau of Politico-Military Affairs, Department of State. The Director will issue an appropriate order disposing of the motion or petition and will promptly inform the respondent accordingly.

(c) Except for the particular application or license which is itself the

basis of any investigation or proceeding, no license application filed by any person may be returned without action, held without action, or rejected, solely because such person is under investigation, or because proceedings against that person are pending, other than in accordance with the terms of an interim suspension order issued under § 127.7(a).

§ 127.8 Applicability of orders.

For the purpose of preventing evasion, orders of the Director, Bureau of Politico-Military Affairs, debarring a person under § 127.6 and orders of the Director, Office of Munitions Control, suspending a person under § 127.7 may be made applicable to any other person who may then or thereafter (during the term of the order) be related to the debarred person by affiliation, ownership, control, position of responsibility, or other commercial connection. Appropriate notice and opportunity to respond to charges will be given.

§ 127.9 Civil penalty.

(a) The Director, Bureau of Politico-Military Affairs, Department of State is authorized to impose a civil penalty in an amount not to exceed that authorized by 50 U.S.C. Appendix 2410(c) for each violation of 22 U.S.C. 2778, or any regulation, order, license or approval issued thereunder. This civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.

(b) The Office of Munitions Control may make the payment of a civil penalty under this section a prior condition for the issuance, restoration, or continuing validity of any export license.

PART 128—ADMINISTRATIVE PROCEDURES

Sec.

- 128.1 Exclusion of functions from the Administrative Procedure Act.
- 128.2 Presiding Official.
- 128.3 Institution of administrative proceedings.
- 128.4 Default.
- 128.5 Answer and demand for oral hearing.
- 128.6 Discovery.
- 128.7 Prehearing conference.
- 128.8 Hearings.
- 128.9 Proceedings before and report of Presiding Official.
- 128.10 Disposition of proceedings.
- 128.11 Consent agreements.
- 128.12 Rehearings.
- 128.13 Appeals.
- 128.14 Confidentiality of proceedings.
- 128.15 Orders containing probationary periods.
- 128.16 Extension of time.
- 128.17 Availability of orders.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); 601, as amended, 47 Stat. 417 (31 U.S.C. 606); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658; E.O. 12291, 46 FR 1981.

§ 128.1 Exclusion of functions from the Administrative Procedure Act.

The functions conferred by section 38 of the Arms Export Control Act are excluded from 5 U.S.C. 553 and 554.

§ 128.2 Presiding Official.

The Presiding Official referred to in this Part is the Presiding Official of the International Trade Administration of the Department of Commerce, as provided in 15 CFR 388.2. The Presiding Official is authorized to exercise the powers and perform the duties provided for in §§ 127.6, 127.7 and 128.3 through 128.16.

§ 128.3 Institution of administrative proceedings.

(a) *Charging letters.* The Director, Office of Munitions Control, with the concurrence of the Office of the Legal Adviser, Department of State, may initiate debarment proceedings in accordance with § 127.6 of this subchapter or civil penalties in accordance with 127.9 of this subchapter. Administrative proceedings shall be initiated by means of a charging letter. The charging letter will state the essential facts constituting the alleged violation and refer to the regulatory or other provisions involved. It will give notice that if the respondent is found to have committed the alleged violation, he or she may be prohibited from participating in the export of any defense article or technical data or in the furnishing of any defense service, for which a license or approval is required by this subchapter, or that civil penalties may be imposed. The charging letter will require the respondent to answer the charges within 30 days, as provided in § 128.5(a), and indicate that a failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he or she is entitled to an oral hearing if a written demand for one is filed with the answer or within 7 days after service of the answer. The respondent will also be informed that he or she may, if so desired, be represented by counsel of his or her choosing. Charging letters may be amended from time to time, upon reasonable notice.

(b) *Service.* A charging letter is served upon a respondent:

- (1) If the respondent is a resident of the United States, when it is mailed postage pre-paid in a wrapper addressed to the respondent at his or

her last known address; or when left with the respondent or the agent or employee of the respondent; or when left at the respondent's dwelling with some person of suitable age and discretion then residing herein; or

(2) If the respondent is a non-resident of the United States, when served upon the respondent by any of the foregoing means. If such methods of service are not practicable or appropriate, the charging letter may be tendered for service on the respondent to an official of the government of the country wherein the respondent resides, provided that there is an agreement or understanding between the United States Government and the government of the country wherein the respondent resides permitting this action.

§ 128.4 Default.

(a) *Failure to answer.* If the respondent fails to answer the charging letter, the respondent may be held in default. The case shall then be referred to the Presiding Official for consideration in a manner as the Presiding Official may consider appropriate. Any order issued shall have the same effect as an order issued following the disposition of contested charges.

(b) *Petition to set aside defaults.* Upon showing good cause, any respondent against whom a default order has been issued may apply to set aside the default and vacate the order entered thereon. The petition shall be submitted in duplicate to the Director, Bureau of Politico-Military Affairs, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520. The Director will refer the petition to the Presiding Official for consideration and a recommendation. The Presiding Official will consider the application and may order a hearing and require the respondent to submit further evidence in support of his or her petition. The filing of a petition to set aside a default does not in any manner affect an order entered upon default and such order continues in full force and effect unless a further order is made modifying or terminating it.

§ 128.5 Answer and demand for oral hearing.

(a) *When to answer.* The respondent is required to answer the charging letter within 30 days after service.

(b) *Contents of answer.* An answer must be responsive to the charging letter. It must fully set forth the nature of the respondent's defense or defenses. In the answer, the respondent must admit or deny specifically each separate allegation of the charging letter, unless

the respondent is without knowledge, in which case the respondent's answer shall so state and the statement shall operate as a denial. Failure to deny or controvert any particular allegation will be deemed an admission thereof. The answer may set forth such additional or new matter as the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in an answer shall be deemed waived. Evidence offered thereon by the respondent at a hearing may be refused except upon good cause being shown. If the respondent does not demand an oral hearing, he or she shall transmit, within 7 days after the service of his or her answer, original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue. If any such materials are in a language other than English, translations into English shall be submitted at the same time.

(c) *Submission of answer.* The answer, written demand for oral hearing (if any) and supporting evidence required by § 128.5(b) shall be in duplicate and mailed or delivered to the Office of EAR Administrative Proceedings, United States Department of Commerce, Room 3810, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. A copy shall be simultaneously mailed or delivered to the Director, Office of Munitions Control, Department of State, Washington, D.C. 20520.

§ 128.6 Discovery.

(a) *Discovery by the respondent.* The respondent, through the Presiding Official, may request from the Office of Munitions Control any relevant information, not privileged, that may be necessary or helpful in preparing a defense. The Office of Munitions Control may supply summaries in place of original documents and may withhold information from discovery if the interests of national security so require, or if necessary to comply with any statute, executive order or regulation requiring that the information not be disclosed. The respondent may request the Presiding Officer to request any relevant information, books, records, or other evidence, from any other person or government agency so long as the request is reasonable in scope and not unduly burdensome.

(b) *Discovery by the Office of Munitions Control.* The Office of Munitions Control or the Presiding Official may request from the respondent admissions of facts, answers

to interrogatories, the production of books, records, or other relevant evidence, so long as the request is relevant and material, reasonable in scope, and not unduly burdensome.

(c) *Subpoenas.* At the request of any party, the Presiding Official may issue subpoenas, returnable before him, requiring the attendance of witnesses and the production of books, records, and other documentary or physical evidence determined by the Presiding Official to be relevant and material to the proceedings, reasonable in scope, and not unduly burdensome.

(d) *Enforcement of discovery rights.* If the Office of Munitions Control fails to provide the respondent with information in its possession which is not otherwise available and which is necessary to the respondent's defense, the Presiding Official may dismiss the charges on her or his own motion or on a motion of the respondent. If the respondent fails to respond with reasonable diligence to the requests for discovery by the Office of Munitions Control or the Presiding Official, on her or his own motion or motion of the Office of Munitions Control, and upon such notice to the respondent as the Presiding Official may direct, may strike respondent's answer and declare the respondent in default, or make any other ruling which the Presiding Official deems necessary and just under the circumstances. If a third party fails to respond to the request for information, the Presiding Official shall consider whether the evidence sought is necessary to a fair hearing, and if it is so necessary that a fair hearing may not be held without it, the Presiding Official shall dismiss the charges.

§ 128.7 Prehearing conference.

(a) The Presiding Official may, upon his own motion or upon motion of any party, request the parties or their counsel to a prehearing conference to consider (1) simplification of issues; (2) the necessity or desirability of amendments to pleadings; (3) obtaining stipulations of fact and of documents to avoid unnecessary proof; or (4) such other matter as may expedite the disposition of the proceeding. The Presiding Official will prepare a summary of the action agreed upon or taken at the conference, and will incorporate therein any written stipulations or agreements made by the parties. The conference proceedings may be recorded magnetically or taken by a reporter and transcribed, and filed with the Presiding Official.

(b) If a conference is impracticable, the Presiding Official may request the parties to correspond with him or her to

achieve the purposes of a conference. The Presiding Official shall prepare a summary of action taken as in the case of a conference.

§ 128.8 Hearings.

(a) A respondent who had not filed a timely written answer is not entitled to a hearing, and the case may be considered by the Presiding Official as provided in § 128.4(a). If an answer is filed, but no oral hearing demanded, the Presiding Official may proceed to consider the case upon the written pleadings and evidence available. The Presiding Official may provide for the making of the record in such manner as the Presiding Official deems appropriate. If respondent answers and demands an oral hearing, the Presiding Official, upon due notice, shall set the case for hearing, unless a respondent has raised in his answer no issues of material fact to be determined. If respondent fails to appear at a scheduled hearing, the hearing nevertheless may proceed in respondent's absence. The respondent's failure to appear will not affect the validity of the hearing or any proceedings or action thereafter.

(b) Hearings will be conducted by the Presiding Official in a fair and impartial manner. The rules of evidence prevailing in courts of law do not apply, but all evidentiary material relevant and material to the inquiry will be received and given appropriate weight. Diligent effort shall be made to declassify or to secure unclassified summaries or extracts of classified materials, when not contrary to any statute or security regulation. The Presiding Official will compare an unclassified summary or extract with the related classified materials. If he finds that the summary or extract is supported by the classified materials and omits only so much as remains classified, he may admit the unclassified summary or extract as part of the record, to the extent that such summary or extract is relevant and material. The respondent may submit evidence in explanation or contradiction thereof. The respondent is not entitled to inspect classified materials.

(c) The Presiding Official may administer oaths and affirmations. Respondent may be represented by counsel. Unless otherwise agreed by the parties and the Presiding Official, the proceeding will be taken by a reporter or by magnetic recording, transcribed, and filed with the Presiding Official. Respondent may examine the transcript and may obtain a copy upon payment of proper costs.

§ 128.9 Proceedings before and report of Presiding Official.

(a) The Presiding Official may conform any part of the proceedings before him or her to the Federal Rules of Civil Procedure. The record may be made available in any other administrative or other proceeding involving the same respondent.

(b) The Presiding Official, after considering the record, will prepare a written report. The report will include findings of fact, findings of law, a finding whether a law or regulation has been violated, and the Presiding Official's recommendations. It shall be transmitted to the Director, Bureau of Politico-Military Affairs, Department of State.

§ 128.10 Disposition of proceedings.

Where the evidence is not sufficient to support the charges, the Director, Office of Munitions Control or the Presiding Official will dismiss the charges. Where the Presiding Official finds that a violation has been committed, the Presiding Official's recommendation shall be advisory only. The Director, Bureau of Politico-Military Affairs will review the record, consider the report of the Presiding Official, and make an appropriate disposition of the case. The Director may issue an order debarring the respondent from participating in the export of defense articles or technical data or the furnishing of defense services as provided in § 127.6 of this subchapter, impose a civil penalty as provided in § 127.9 of this chapter or take such other action as the Presiding Official deems appropriate. Any debarment order will be effective for the period of time specified therein and may contain such additional terms and conditions as are deemed appropriate. A copy of the order together with a copy of the Presiding Official's report will be served upon the respondent.

§ 128.11 Consent agreements.

(a) The Office of Munitions Control and the respondent may, by agreement, submit to the Presiding Official a proposal for the issuance of a consent order. The Presiding Official will review the facts of the case and the proposal and may conduct conferences with the parties and may require the presentation of evidence in the case. If the Presiding Official does not approve the proposal, the Presiding Official will notify the parties and the case will proceed as though no consent proposal had been made. If the proposal is approved, the Presiding Official will report the facts of the case along with recommendations to the Director, Bureau of Politico-Military Affairs. If the Director does not approve

the proposal, the case will proceed as though no consent proposal had been made. If the Director approves the proposal, an appropriate order may be issued.

(b) Cases may also be settled prior to service of a charging letter. In such an event, a proposed charging letter shall be prepared, and a consent agreement and order shall be submitted for the approval and signature of the Director, Bureau of Politico-Military Affairs, and no action by the Presiding Official shall be required. Cases which are settled may not be reopened or appealed.

§ 128.12 Rehearings.

The Presiding Official may grant a rehearing or reopen a proceeding at any time for the purpose of hearing any relevant and material evidence which was not known or obtainable at the time of the original hearing. A report for rehearing or reopening must contain a summary of such evidence, and must explain the reasons why it could not have been presented at the original hearing. The Presiding Official will inform the parties of any further hearing, and will conduct such hearing and submit a report and recommendations in the same manner as provided for the original proceeding (described in § 128.10).

§ 128.13 Appeals.

(a) *Filing of appeals.* An appeal must be in writing, and be addressed to and filed with the Under Secretary of State for Security Assistance, Science and Technology, Department of State, Washington, D.C. 20520. An appeal from a final order denying export privileges or imposing civil penalties must be filed within 30 days after receipt of a copy of the order. If the Under Secretary cannot for any reason act on the appeal, he or she may designate another Department of State official to receive and act on the appeal.

(b) *Grounds and conditions for appeal.* The respondent may appeal from a debarment or from the imposition of a civil penalty (except the imposition of civil penalties pursuant to a consent order pursuant to § 128.11) upon the ground: (1) That the findings of a violation are not supported by any substantial evidence; (2) that a prejudicial error of law was committed; or (3) that the provisions of the order are arbitrary, capricious, or an abuse of discretion. The appeal must specify upon which of these grounds the appeal is based and must indicate from which provisions of the order the appeal is taken. An appeal from an order issued upon default will not be entertained if

the respondent has failed to seek relief as provided in § 128.4(b).

(c) *Matters considered on appeal.* An appeal will be considered upon the basis of the assembled record. This record consists of (but is not limited to) the charging letter, the respondent's answer, the transcript or magnetic recording of the hearing before the Presiding Official, the report of the Presiding Official, the order of the Director, Bureau of Politico-Military Affairs, and any other relevant documents involved in the proceedings before the Presiding Official. The Under Secretary for Security Assistance, Science and Technology may direct a rehearing and reopening before the Presiding Official if he or she finds that the record is insufficient or that new evidence is relevant and material to the issues and was not known and was not available to the respondent at the time of the original hearings.

(d) *Effect of appeals.* The taking of an appeal will not stay the operation of any order.

(e) *Preparation of appeals.*

(1) General requirements. An appeal shall be in letter form. The appeal and accompanying material should be filed in duplicate, unless otherwise indicated, and a copy simultaneously mailed or delivered to the Director, Office of Munitions Control, Department of State, Washington, D.C. 20520.

(2) Oral presentation. The Under Secretary for Security Assistance, Science and Technology may grant the appellant an opportunity for oral argument and will set the time and place for oral argument and will notify the parties, ordinarily at least 10 days before the date set.

(f) *Decisions.* All appeals will be considered and decided within a reasonable time after they are filed. An appeal may be granted or denied in whole or in part, or dismissed at the request of the appellant. The decision of the Under Secretary for Security Assistance, Science and Technology will be final.

§ 128.14 Confidentiality of proceedings.

Proceedings under this Part are confidential. The documents referred to in § 128.17 are not, however, deemed to be confidential. Reports of the Presiding Official and copies of transcripts or recordings of hearings will be available to parties and, to the extent of their own testimony, to witnesses. All records are available to any U.S. Government agency showing a proper interest therein.

§ 128.15 Orders containing probationary periods.

(a) *Revocation of probationary periods.* A debarment or interim suspension order may set a probationary period during which the order may be held in abeyance for all or part of the debarment or suspension period, subject to the conditions stated therein. The Director, Office of Munitions Control, may apply, without notice to any person to be affected thereby, to the Presiding Official for an order revoking probation when it appears that the conditions of the probation have been breached. The facts in support of the application will be presented to the Presiding Official, who will report thereon and make a recommendation to the Director, Bureau of Politico-Military Affairs. The latter will make a determination whether to revoke probation and will issue an appropriate order.

(b) *Hearing.*

(1) Objections upon notice. Any person affected by an application upon notice to revoke probation, within the time specified in the notice, may file objections with the Presiding Official.

(2) Objections to order without notice. Any person adversely affected by an order revoking probation, without notice may request that the order be set aside by filing his objections thereto with the Presiding Official. The request will not stay the effective date of the order or revocation.

(3) Requirements for filing objections. Objections filed with the Presiding Official must be submitted in writing and in duplicate. A copy must be simultaneously submitted to the Office of Munitions Control. Denials and admissions, as well as any mitigating circumstances, which the person affected intends to present must be set forth in or accompany the letter of objection and must be supported by evidence. A request for an oral hearing may be made at the time of filing objections.

(4) Determination. The application and objections thereto will be referred to the Presiding Official. An oral hearing, if requested, will be conducted at an early convenient date, unless the objections filed raise no issues of material fact to be determined. The Presiding Official will report the facts and make a recommendation to the Director, Bureau of Politico-Military Affairs, who will determine whether the application should be granted or denied and will issue an appropriate order. A copy of the order and of the Presiding Official's report will be furnished to any person affected thereby.

(c) *Effect of revocation on other actions.* The revocation of a probationary period will not preclude any other action concerning a further violation, even where revocation is based on the further violation.

§ 128.16 Extension of time.

The Presiding Official, for good cause shown, may extend the time within which to prepare and submit an answer to a charging letter or to perform any other act required by Part 128 of this subchapter.

§ 128.17 Availability of orders.

All charging letters, debarment orders, orders imposing civil penalties, probationary periods, and interim suspension orders are available for public inspection in the Public Reading Room of the Department of State.

PART 129—[RESERVED]

PART 130—POLITICAL CONTRIBUTIONS, FEES, AND COMMISSIONS

Sec.

130.1 Purpose.

Definitions

130.2 Applicant.

130.3 Armed forces.

130.4 Defense articles and defense services.

130.5 Fee or commission.

130.6 Political contribution.

130.7 Supplier.

130.8 Vendor.

Procedures

130.9 Obligation to furnish information to the Office of Munitions Control.

130.10 Information to be furnished by applicant or supplier to the Office of Munitions Control.

130.11 Supplementary reports.

130.12 Information to be furnished by vendor to applicant or supplier.

130.13 Information to be furnished to applicant, supplier or vendor by a recipient of a fee or commission.

130.14 Recordkeeping.

130.15 Confidential business information.

130.16 Other reporting requirements.

130.17 Utilization of and access to reports and records.

Authority: Sec. 39, Arms Export Control Act, 89 Stat. 767 (22 U.S.C. 2779); EO 11953, 42 FR 4311; 22 U.S.C. 2353.

§ 130.1 Purpose.

Section 39(a) of the Arms Export Control Act (22 U.S.C. 2779) provides that the Secretary of State shall prescribe regulations with respect to reporting on certain payments relating to sales of defense articles and defense services. The provisions of this Part implement this requirement. Definitions

which apply to this Part are contained in §§ 130.2 through 130.8.

Definitions

§ 130.2 Applicant.

"Applicant" means any person who applies to the Office of Munitions Control for any license or approval required under this subchapter for the export of defense articles or defense services valued in an amount of \$250,000 or more which are being sold commercially to or for the use of the armed forces of a foreign country or international organization. This term also includes a person to whom the required license or approval has been given.

§ 130.3 Armed forces.

"Armed forces" means the army, navy, marine, air force, or coast guard, as well as the national guard and national police, of a foreign country. This term also includes any military unit or military personnel organized under or assigned to an international organization.

§ 130.4 Defense articles and defense services.

"Defense articles" and "defense services" have the meaning given those terms in paragraphs (3), (4) and (7) of section 47 of the Arms Export Control Act (22 U.S.C. 2794 (3), (4), (7)). When used with reference to commercial sales, the definitions in § 120.7 and 120.8 apply.

§ 130.5 Fee or commission.

(a) "Fee or commission" means, except as provided in paragraph (a)(1) of this section, any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:

(1) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with an applicant, a supplier or a vendor; and

(2) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization.

(b) The term "fee or commission" does not include:

(1) A political contribution or a payment excluded by § 130.6 from the definition of political contribution;

(2) A normal salary (excluding contingent compensation) established at an annual rate and paid to a regular

employee of an applicant, supplier or vendor;

(3) General advertising or promotional expenses not directed to any particular sale or purchaser; or

(4) Payments made, or offered or agreed to be made, solely for the purchase by an applicant, supplier or vendor of specific goods or technical, operational or advisory services, which payments are not disproportionate in amount with the value of the specific goods or services actually furnished.

§ 130.6 Political contribution.

"Political contribution" means any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:

(a) To or for the benefit of, or at the direction of, any foreign candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; and

(b) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.

§ 130.7 Supplier.

"Supplier" means any person who enters into a contract with the Department of Defense for the sale of defense articles or defense services valued in an amount of \$250,000 or more under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

§ 130.8 Vendor.

"Vendor" means any distributor or manufacturer who, directly or indirectly, furnishes to an applicant or supplier defense articles valued in an amount of \$250,000 or more which are end-items or major components as defined in § 121.8. It also means any person who, directly or indirectly, furnishes to an applicant or supplier defense articles or services valued in an amount of \$250,000 or more when such articles or services are to be delivered (or incorporated in defense articles or defense services to be delivered) to or for the use of the armed forces of a foreign country or international organization under:

(a) A sale requiring a license or approval from the Office of Munitions Control under this subchapter; or

(b) A sale pursuant to a contract with the Department of Defense under

section 22 of the Arms Export Control Act (22 U.S.C. 2762).

Procedures

§ 130.9 Obligation to furnish information to the Office of Munitions Control.

(a)(1) Each applicant must inform the Office of Munitions Control as to whether applicant or its vendors have paid, or offered or agreed to pay, in respect of any sale for which a license or approval is requested:

(i) Political contributions in an aggregate amount of \$5,000 or more, or

(ii) Fees or commissions in an aggregate amount of \$100,000 or more. If so, applicant must furnish to the Office of Munitions Control the information specified in § 130.10. The furnishing of such information or an explanation satisfactory to the Director of the Office of Munitions Control as to why all the information cannot be furnished at that time is a condition precedent to the granting of the relevant license or approval.

(2) The requirements of this paragraph do not apply in the case of an application with respect to a sale for which all the information specified in § 130.10 which is required by this section to be reported shall already have been furnished.

(b) Each supplier must inform the Office of Munitions Control as to whether the supplier or its vendors have paid, or offered or agreed to pay, in respect of any sale:

(1) Political contributions in an aggregate amount of \$5,000 or more, or

(2) Fees or commissions in an aggregate amount of \$100,000 or more.

If so, supplier must furnish to the Office of Munitions Control the information specified in § 130.10. The information required to be furnished pursuant to this paragraph must be so furnished no later than 30 days after the contract award to such supplier, or such earlier date as may be specified by the Department of Defense. For purposes of this paragraph, a contract award includes a purchase order, exercise of an option, or other procurement action requiring a supplier to furnish defense articles or defense services to the Department of Defense for the purposes of section 22 of the Arms Export Control Act (22 U.S.C. 2762).

(c) In determining whether an applicant or its vendors, or a supplier or its vendors, as the case may be, have paid, or offered or agreed to pay, political contributions in an aggregate amount of \$5,000 or more in respect of any sale so as to require a report under this section, there must be included in

the computation of such aggregate amount any political contributions in respect of the sale which are paid by or on behalf of, or at the direction of, any person to whom the applicant, supplier or vendor has paid, or offered or agreed to pay, a fee or commission in respect of the sale. Any such political contributions are deemed for purposes of this part to be political contributions by the applicant, supplier or vendor who paid or offered or agreed to pay the fee or commission.

(d) Any applicant or supplier which has informed the Office of Munitions Control under this section that neither it nor its vendors have paid, or offered or agreed to pay, political contributions or fees or commissions in an aggregate amount requiring the information specified in § 130.10 to be furnished, must subsequently furnish such information within 30 days after learning that it or its vendors had paid, or offered or agreed to pay, political contributions or fees or commissions in respect of a sale in an aggregate amount which, if known to applicant or supplier at the time of its previous communication with the Office of Munitions Control, would have required the furnishing of information under § 130.10 at that time. Any report furnished under this paragraph must, in addition to the information specified in § 130.10 include a detailed statement of the reasons why applicant or supplier did not furnish the information at the time specified in paragraph (a) or paragraph (b) of this section, as applicable.

§ 130.10 Information to be furnished by applicant or supplier to the Office of Munitions Control.

(a) Every person required under § 130.9 to furnish information specified in this section in respect to any sale must furnish to the Office of Munitions Control:

- (1) The total contract price of the sale to the foreign purchaser;
- (2) The name, nationality, address and principal place of business of the applicant or supplier, as the case may be, and, if applicable, the employer and title;
- (3) The name, nationality, address and principal place of business, and if applicable, employer and title of each foreign purchaser, including the ultimate end-user involved in the sale;
- (4) Except as provided in paragraph (c) of this section, a statement setting forth with respect to such sale:
 - (i) The amount of each political contribution paid, or offered or agreed to be paid, or the amount of each fee or

commission paid, or offered or agreed to be paid;

(ii) The date or dates on which each reported amount was paid, or offered or agreed to be paid;

(iii) The recipient of each such amount paid, or intended recipient if not yet paid;

(iv) The person who paid, or offered or agreed to pay such amount; and

(v) The aggregate amounts of political contributions and of fees or commission, respectively, which shall have been reported.

(b) In responding to paragraph (a)(4) of this section, the statement must:

(1) With respect to each payment reported, state whether such payment was in cash or in kind. If in kind, it must include a description and valuation thereof. Where precise amounts are not available because a payment has not yet been made, an estimate of the amount offered or agreed to be paid must be provided;

(2) With respect to each recipient, state:

(i) Its name;

(ii) Its nationality;

(iii) Its address and principal place of business;

(iv) Its employer and title; and

(v) Its relationship, if any, to applicant, supplier, or vendor, and to any foreign purchaser or end-user.

(c) In submitting a report required by § 130.9, the detailed information specified in paragraphs (a)(4) and (b) of this section need not be included if the payments do not exceed.

(1) \$2,500 in the case of political contributions; and

(2) \$50,000 in the case of fees or commissions. In lieu of reporting detailed information with respect to such payments, the aggregate amount thereof must be reported, identified as miscellaneous political contributions or miscellaneous fees or commissions, as the case may be.

(d) Every person required to furnish the information specified in paragraphs (a) and (b) of this section must respond fully to each subdivision of those paragraphs and, where the correct response is "none" or "not applicable," must so state.

§ 130.11 Supplementary reports.

(a) Every applicant or supplier who is required under § 130.9 to furnish the information specified in § 130.10 must submit a supplementary report in connection with each sale in respect of which applicant or supplier has previously been required to furnish information if:

(1) Any political contributions aggregating \$2,500 or more or fees or

commissions aggregating \$50,000 or more not previously reported or paid, or offered or agreed to be paid by applicant or supplier or any vendor;

(2) Subsequent developments cause the information initially reported to be no longer accurate or complete (as in the case where a payment actually made is substantially different in amount from a previously reported estimate of an amount offered or agreed to be paid); or

(3) Additional details are requested by the Office of Munitions Control with respect to any miscellaneous payments reported under § 130.10(c).

(b) Supplementary reports must be sent to the Office of Munitions Control within 30 days after the payment, offer or agreement reported thereon or, when requested by the Office of Munitions Control, within 30 days after such request, and must include:

(1) Any information specified in § 130.10 required or requested to be reported and which was not previously reported; and

(2) The Munitions Control license number, if any, and the Department of Defense contract number, if any, related to the sale.

§ 130.12 Information to be furnished by vendor to applicant or supplier.

(a) In order to determine whether it is obliged under § 130.9 to furnish the information specified in § 130.10 with respect to a sale, every applicant or supplier must obtain from each vendor, from or through whom the applicant acquired defense articles or defense services forming the whole or a part of the sale, a full disclosure by the vendor of all political contributions or fees or commission paid, by vendor with respect to such sale. Such disclosure must include responses to all the information pertaining to vendor required to enable applicant or supplier, as the case may be, to comply fully with §§ 130.9 and 130.10. If so required, they must include the information furnished by each vendor in providing the information specified.

(b) Any vendor which has been requested by an applicant or supplier to furnish an initial statement under paragraph (a) of this section must, except as provided in paragraph (c), furnish such statement in a timely manner and not later than 20 days after receipt of such request.

(c) If the vendor believes that furnishing information to an applicant or supplier in a requested statement would unreasonably risk injury to the vendor's commercial interests, the vendor may furnish in lieu of the statement an abbreviated statement disclosing only

the aggregate amount of all political contributions and the aggregate amount of all fees or commissions which have been paid, or offered or agreed to be paid, by the vendor with respect to the sale. Any abbreviated statement furnished to an applicant or supplier under this paragraph must be accompanied by a certification that the requested information has been reported by the vendor directly to the Office of Munitions Control. The vendor must simultaneously report fully to the Office of Munitions Control all information which the vendor would otherwise have been required to report to the applicant or supplier under this section. Each such report must clearly identify the sale with respect to which the reported information pertains.

(d)(1) If upon the 25th day after the date of its request to vendor, an applicant or supplier has not received from the vendor the initial statement required by paragraph (a) of this section, the applicant or supplier must submit to the Office of Munitions Control a signed statement attesting to:

(i) The manner and extent of applicant's or supplier's attempt to obtain from the vendor the initial statement required under paragraph (a) of this section;

(ii) Vendor's failure to comply with this section; and

(iii) The amount of time which has elapsed between the date of applicant's or supplier's request and the date of the signed statement;

(2) The failure of a vendor to comply with this section does not relieve any applicant or supplier otherwise required by § 130.9 to submit a report to the Office of Munitions Control from submitting such a report.

§ 130.13 Information to be furnished to applicant, supplier or vendor by a recipient of a fee or commission.

(a) Every applicant or supplier, and each vendor thereof;

(1) In order to determine whether it is obliged under §§ 130.9 or 130.12 to furnish information specified in § 130.10 with respect to a sale; and

(2) Prior to furnishing such information, must obtain from each person, if any, to whom it has paid, or offered or agreed to pay, a fee or commission in respect of such sale, a timely statement containing a full disclosure by such a person of all political contributions paid, or offered or agreed to be paid, by it or on its behalf, or at its direction, in respect of such sale. Such disclosure must include responses to all the information required to enable the applicant, supplier or vendor, as the case may be, to comply fully with §§ 130.9, 130.10, and 130.12.

(b) In obtaining information under paragraph (a) of this section, the applicant, supplier or vendor, as the case may be, must also require each person to whom a fee or commission is paid, or offered or agreed to be paid, to furnish from time to time such reports of its political contributions as may be necessary to enable the applicant, supplier or vendor, as the case may be, to comply fully with §§ 130.9, 130.10, 130.11, and 130.12.

(c) The applicant, supplier or vendor, as the case may be, must include any political contributions paid, or offered or agreed to be paid, by or on behalf of, or at the direction of, any person to whom it has paid, or offered or agreed to pay a fee or commission in determining whether applicant, supplier or vendor is required by §§ 130.9, 130.11, and 130.12 to furnish information specified in § 130.10.

§ 130.14 Recordkeeping.

Each applicant, supplier and vendor must maintain a record of any information it was required to furnish or obtain under this Part and all records upon which its reports are based for a period of not less than six years following the date of the report to which they pertain.

§ 130.15 Confidential business information.

(a) Any person who is required to furnish information under this Part may identify any information furnished hereunder which the person considers to be confidential business information. No

person, including any applicant or supplier, shall publish, divulge, disclose, or make known in any manner, any information so identified by a vendor or other person unless authorized by law or regulation.

(b) For purposes of this section, "confidential business information" means commercial or financial information which by law is entitled to protection from disclosure. (See, e.g., 5 U.S.C. 552(b) (3) and (4); 18 U.S.C. 1905; 22 U.S.C. 2778(e); Rule 26(c)(7), Federal Rules of Civil Procedure).

§ 130.16 Other reporting requirements.

The submission of reports under this Part does not relieve any person of any requirements to furnish information to any federal, state, or municipal agency, department or other instrumentality as required by law, regulation or contract.

§ 130.17 Utilization of and access to reports and records

(a) All information reported and records maintained under this Part will be made available, upon request, for utilization by standing committees of the Congress and subcommittees thereof, and by United States Government agencies, in accordance with section 39(d) of the Arms Export Control Act (22 U.S.C. 2779(d)), and reports based upon such information will be submitted to Congress in accordance with sections 36(a)(8) and 36(b)(1) of that Act (22 U.S.C. 2776(a)(8) and (b)(1)).

(b) All confidential business information provided pursuant to this Part shall be protected against disclosure to the extent provided by law.

(c) Nothing in this section shall preclude the furnishing of information to foreign governments for law enforcement or regulatory purposes under international arrangements between the United States and any foreign government.

Dated: November 20, 1984.

George P. Shultz,
The Secretary of State.

[FR Doc. 84-31706 Filed 12-5-84; 8:45 am]
BILLING CODE 4710-25-M