

§ 125.7

a relevant section of this subchapter, to include the paragraph and applicable subparagraph. Certifications consist of clearly marking the package or letter containing the technical data “22 CFR [insert ITAR exemption] applicable.” This certification must be made in written form and retained in the exporter’s files for a period of 5 years (see § 123.22 of this subchapter).

(b) For exports that are oral, visual, or electronic the exporter must also complete a written certification as indicated in paragraph (a) of this section and retain it for a period of 5 years.

[68 FR 61102, Oct. 27, 2003]

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

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

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

§ 125.8 [Reserved]

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

Licenses and other authorizations for the export of classified technical data or classified defense articles will be forwarded by the Office of Defense Trade Controls to the Defense Investigative Service of the Department of Defense in accordance with the provisions of the Department of Defense Industrial Security Manual. The Office of Defense Trade Controls will forward a copy of the license to the applicant for

22 CFR Ch. I (4-1-04 Edition)

the applicant’s information. The Defense Investigative Service will return the endorsed license to the Office of Defense Trade Controls upon completion of the authorized export or expiration of the license, whichever occurs first.

PART 126—GENERAL POLICIES AND PROVISIONS

Sec.

- 126.1 Prohibited exports and sales to certain countries.
- 126.2 Temporary suspension or modification of this subchapter.
- 126.3 Exceptions.
- 126.4 Shipments by or for United States Government agencies.
- 126.5 Canadian exemptions.
- 126.6 Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program.
- 126.7 Denial, revocation, suspension or amendment of licenses and other approvals.
- 126.8 Proposals to foreign persons relating to significant military equipment.
- 126.9 Advisory opinions and related authorizations.
- 126.10 Disclosure of information.
- 126.11 Relation to other provisions of law.
- 126.12 Continuation in force.
- 126.13 Required information.
- 126.14 Special comprehensive export authorizations for NATO, Australia, and Japan.

AUTHORITY: Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

SOURCE: 58 FR 39312, July 22, 1993, unless otherwise noted.

§ 126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Belarus, Cuba, Iran, Libya, North Korea, Syria and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g., Burma, China, Haiti, Liberia, Somalia, and Sudan) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of

the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a State Department notice published in the FEDERAL REGISTER. The exemptions provided in the regulations in this subchapter, except §123.17 of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries, areas, or persons in this §126.1.

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

(c) *Exports and sales prohibited by United Nations Security Council embargoes.* Whenever the United Nations Security Council mandates an arms embargo, all transactions which are prohibited by the embargo and which involve U.S. persons anywhere, or any person in the United States, and defense articles and services of a type enumerated on the United States Munitions List (22 CFR part 121), irrespective of origin, are prohibited under the ITAR for the duration of the embargo, unless the Department of State publishes a notice in the FEDERAL REGISTER specifying different measures. This would include, but is not limited to, transactions involving trade by U.S. persons who are located inside or outside of the United States in defense articles and services of U.S. or foreign origin which are located inside or outside of the United States.

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

(e) *Proposed sales.* No sale or transfer and no proposal to sell or transfer any

defense articles, defense services or technical data subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of the Office of Defense Trade Controls. However, in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny licenses and approvals in such cases. Any person who knows or has reason to know of such a proposed or actual sale, or transfer, of such articles, services or data must immediately inform the Office of Defense Trade Controls.

(f) *Iraq.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Iraq except for any nonlethal military equipment or lethal military equipment for use in support of a reconstituted (or interim) Iraqi military or police force required by the Coalition Provisional Authority in accordance with section 1504 of Public Law 108-11, Emergency Wartime Supplemental Appropriations Act, 2003.

(g) *Afghanistan.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Afghanistan except for the Government of Afghanistan (currently the Afghan Interim Authority) and the International Security Assistance Force, which will be reviewed on a case-by-case basis. In addition, lists of persons subject to a broad prohibition, including an arms embargo, due to their affiliation with the Taliban, Usama bin Laden, Al-Qaida or those associated with them will continue to be published from time to time.

(h) *Rwanda.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Rwanda except for the Government of Rwanda, which will be reviewed on a case-by-case basis. UN Security Council Resolution 1011 (1995) lifted the embargo

§ 126.2

22 CFR Ch. I (4-1-04 Edition)

only with respect to the Government of Rwanda.

(i) *Democratic Republic of the Congo.* It is the policy of the United States to deny licenses, other approvals, exports or imports of defense articles and defense services destined for or originating in the Democratic Republic of the Congo except for non-lethal equipment and training (lethal and non-lethal) to the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), and the transitional National Unity Government of the Democratic Republic of the Congo, and the integrated Congolese national army and police forces, and humanitarian or protective use, and related assistance and training as notified in advance to the UN. An arms embargo exists with respect to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive Agreement, in the Democratic Republic of the Congo.

[58 FR 39312, July 22, 1993, as amended at 59 FR 15625, Apr. 4, 1994; 59 FR 42158, Aug. 17, 1994; 61 FR 6113, Feb. 16, 1996; 61 FR 36625, July 12, 1996; 61 FR 41499, Aug. 9, 1996; 62 FR 37133, July 11, 1997; 67 FR 1075, Jan. 9, 2002; 67 FR 15101, Mar. 29, 2002; 67 FR 44352, July 2, 2002; 68 FR 44614, July 30, 2003; 68 FR 65634, Nov. 21, 2003; 69 FR 7350, Feb. 17, 2004]

§ 126.2 Temporary suspension or modification of this subchapter.

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

§ 126.3 Exceptions.

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

§ 126.4 Shipments by or for United States Government agencies.

(a) A license is not required for the temporary import, or temporary export, of any defense article, including technical data or the performance of a

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

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

(b) This section does not authorize any department or agency of the U.S. Government to make any export which is otherwise prohibited by virtue of other administrative provisions or by any statute.

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

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