

22 C.F.R. §123.9 Country of ultimate destination and approval of reexports, retransfers and transshipments.

(a) The country designated as the country of ultimate destination on an application for an export license, or on an Electronic Export Information filing where an exemption is claimed under this subchapter, must be the country of ultimate end-use. The written approval of the Directorate of Defense Trade Controls must be obtained before reselling, transferring, reexporting, retransferring, transshipping, or disposing of a defense article to any end user, end use or destination other than as stated on the export license, or in the Electronic Export Information filing in cases where an exemption is claimed under this subchapter, except in accordance with the provisions of an exemption under the subchapter that explicitly authorizes the resell, transfer, reexport, retransfer, transshipment, or disposition of a defense article without such approval (see, e.g., subparagraphs (d) for certain transshipments and (e) for certain reexports and retransfers to NATO and certain governmental end users)). Exporters must determine the specific end-user, end-use, and destination prior to submitting an application to the Directorate of Defense Trade Controls or claiming an exemption under this subchapter.

Note to paragraph (a): In making the aforementioned determination, a person is expected to review all readily available information, including information readily available to the public generally as well as information readily available from other parties to the transaction.

(b) The exporter shall incorporate the following statement as an integral part of the bill of lading, airway bill, or other shipping documents, and the invoice whenever defense articles are to be exported or transferred pursuant to a license, other written approval, or an exemption under this subchapter, other than the exemptions contained in §126.16 and §126.17 of this subchapter. (**Note:** for exports made pursuant to §126.16 or §126.17 of this subchapter, see §126.16(j)(5) or §126.17(j)(5)):

These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end-user]. They may not transit or transship proscribed countries listed in §126.1(a), or be reexported, retransferred, transshipped, diverted, or otherwise be disposed of to any other country or end-user, either in their original form or after being incorporated into other end-items, except as authorized under the U.S. International Traffic in Arms Regulations (22 CFR, Parts 120-130).

(c) Any U.S. person or a foreign person requesting written approval from the Directorate of Defense Trade Controls for the reexport, retransfer, other disposition, (see subparagraph (d) for transshipments) or change in end-use, end-user or destination of a defense article initially exported or transferred pursuant to a license or other written approval, or an exemption under this subchapter, must submit all the documentation required for a permanent export license (see § 123.1 of this subchapter) and shall also submit the following:

(1) The license number, written authorization, or exemption under which the defense article or defense service was previously authorized for export from the United States (**Note:** For exports under exemptions at §126.16 or §126.17 of this subchapter, the original end-use, program, project or operation under which the item was exported must be identified);

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

(3) A description and identification of the new end user, end-use and destination; and

(4) With regard to any request for such approval relating to a defense article or defense service initially exported pursuant to an exemption contained in § 126.16 or § 126.17 of this subchapter, written request for the prior approval of the transaction from the Directorate of Defense Trade Controls must be submitted: By the original U.S. exporter, provided a written request is received from a member of the Australian Community, as identified in § 126.16 of this subchapter, or the United Kingdom Community, as identified in § 126.17 of this subchapter (where such a written request includes a written certification from the member of the Australian Community or the United Kingdom Community providing the information set forth in § 126.17 of this subchapter); or by a member of the Australian Community or the United Kingdom Community, where such request provides the information set forth in this section. All persons must continue to comply with statutory and regulatory requirements outside of this subchapter concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 CFR parts 447, 478, and 479, which are unaffected by the Defense Trade Cooperation Treaty between the United States and the United Kingdom and continue to apply fully to defense articles and defense services subject to either of the aforementioned treaties and the exemptions contained in § 126.17 of this subchapter.

(d) Transshipments of defense articles exported, reexported or retransferred pursuant to a license, other written approval, or an exemption under this subchapter are authorized without the prior written approval of the Directorate of Defense Trade Controls, provided that:

(1) defense articles do not enter into the commerce of the third country or are not otherwise disposed of in any unauthorized manner;

(2) The defense articles do not transit or enter the territory of a country listed in §126.1(a);

(3) The defense articles are not transported by a proscribed carrier identified in 126.1(b); and

(4) The defense articles remain under the effective control of an authorized participant in the transaction or under the control or supervision of the government of the third country while present in the third country.

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

(1) The U.S.-origin components were previously authorized for export from the United States, either by a license, written authorization or an exemption other than those described in either §126.16 or §126.17 of this subchapter;

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

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

(4) The original license or other approval of the Directorate of Defense Trade Controls did not include retransfer or reexport restrictions prohibiting use of this exemption.

22. C.F.R. 120.xx Transshipment.

“Transshipment” means the physical transit of a defense article through the territory of a third country, without entering the commerce of the third country, en route to an authorized end-user in the authorized country of ultimate destination. Transshipments include, such actions as, in-bond transfers, temporary stops for refueling, consolidating or deconsolidating cargo or transferring cargo from one means of conveyance to another en route to the ultimate destination.

22 C.F.R. §123.11 Movements of Vessels, Aircraft and Vehicles Covered by the U.S. Munitions List Outside the United States

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

(b) *Exemption.*

(1) An export license is not required when an aircraft, vessel or vehicle referred to in paragraph (a) of this section departs from the United States and travels through any mode into international territory or physically enters the territory of a third country but does not enter the commerce or is not otherwise disposed of in any unauthorized manner before returning to the United States.

22.C.F.R. §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.

22 C.F.R. §123.13 Domestic aircraft, vessel or vehicle shipments via a foreign country.

A license is not required for the shipment by any mode of transport of a defense article from one location in the United States to another location in the United States via a foreign country if the following conditions are met:

- (1) The defense article remains under the effective control of an authorized participant in the transaction or under the control or supervision of the government of the foreign country (e.g., customs control via storage in bonded warehouse) while present in the third country en route to the U.S. ultimate destination;
- (2) The defense article does not enter the commerce of the foreign country while en route to the ultimate destination in the United States and is not otherwise disposed of in any unauthorized manner; and
- (3) The defense article does not enter the territorial boundaries of a country listed in §126.1(a) of this subchapter while en route to the ultimate destination in the United States.