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PART 126—GENERAL POLICIES AND PROVISIONS

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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, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Afghanistan, Armenia, Azerbaijan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, Tajikistan, Ukraine, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g. Burma, China, the Federal Republic of Yugoslavia (Serbia and Montenegro), Haiti, Liberia, Rwanda, Somalia, Sudan and Zaire) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Comprehensive arms embargoes are normally the subject of a State Department notice published in the FEDERAL REGISTER. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries or areas. With regard to § 123.27 the exemption does not apply with respect to articles originating in or for export to countries prohibited by a United Nations Security Council Resolution or to which the export (or for which the issuance of a license for the export) would be prohibited by a U.S. statute (e.g. by Section 40 of the Arms Export Control Act, 22 U.S.C. 2780, to countries that have been determined to have repeatedly provided support for acts of international terrorism, i.e., Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria).

(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 act of international terrorism are contrary to the foreign policy of the United States and are thus subject to the policy specified in paragraph (a) of this section and the requirements of section 40 of the Arms Export Control Act (22 U.S.C. 2780) and the Omnibus

Diplomatic Security and Anti-Terrorism Act of 1986 (22 U.S.C. 4801, note). The countries in this category are: Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. The same countries are identified pursuant to section 6(j) of the Export Administration Act, as amended (50 U.S.C. App. 2405(j)).

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

(f) *Angola.* Consistent with U.N. Security Council Resolution 864 of September 15, 1993, an arms embargo exists with respect to UNITA. Accordingly, exports subject to this subchapter are prohibited in accordance with Security Council Resolution 864, Executive Order 12865 of September 29, 1993, and the UNITA (Angola) Sanctions Regulations issued by the Office of Foreign Assets Control, Department of the Treasury, on December 10, 1993 (58 FR 64904).

[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]

§ 126.2 Temporary suspension or modification of this subchapter.

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

§ 126.3 Exceptions.

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

§ 126.4 Shipments by or for United States Government agencies.

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

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

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

other administrative provisions or by any statute.

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

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

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

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

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

§ 126.5 Canadian exemptions.

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

(b) The exemption provided in paragraph (a) of this section does not apply to the following ITAR part 121, § 121.1 defense articles, defense services, or related technical data:

(1) Category I—Firearms;

(2) Category III ammunition for the firearms in Category I;

(3) Category IV (a), (b), (c), (d), (f) and (g)—Launch Vehicles, Guided Missiles, Ballistic Missiles and Rockets. (This does not include bombs, grenades, torpedoes, depth charges, land and naval mines in IV (a); components, parts, accessories and attachments in IV(h); and related technical data for these items covered by part 125 of this subchapter.)

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

(5) Naval nuclear propulsion equipment listed in Category VI(e);

(6) Aircraft Listed in Category VIII(a));

(7) Category XIII (b) (e.g. military information security systems, cyptrographic devices, software, and components) and XIII (j) (e.g. stealth);

(8) Toxicological Agents and Equipment and Radiological Equipment listed in Category XIV(a) through (d);

(9) Spacecraft, Remote Sensing Satellites, and Military Communications Satellites listed in Category XV(a), (b), and (c);

(10) Nuclear Weapons Design and Test Equipment listed in Category XVI;

(11) All Classified Articles, Technical Data and Defense Services, including Category XVII;

(12) Submersible and oceanographic vessels and related articles listed in Category XX(a) through (d);

(13) All USML items and related technical data on the Missile Technology Control Regime (MTCR) Annex.

(c) Defense articles, defense services, or related technical data for use by a foreign national other than a Canadian citizen.

(d) Any defense service covered by part 124 of this subchapter.

(e) Any export involving defenses articles and defense services for which congressional notification is required in accordance with § 123.15 and 124.11 of this subchapter.

(f) *Related requirements.* The exemption provided in this section from requiring a license for export does not exempt the exporter from the following:

(1) Registration as an exporter as required by the Arms Export Control Act and part 122 of this subchapter;

(2) The exporter, or any party to the transaction must be eligible as described in § 120.1 (c) and (d) of this subchapter;

(3) The requirement for filing a Shippers' Export Declaration or notification letter required by § 123.22 of this subchapter;

(4) Written documentation that the defense article is:

(i) For end-use in Canada by a Canadian citizen, and

(ii) For use by non-Canadians, in Canada, or export from Canada to another foreign destination, requires prior written approval of the US Government;

(5) Obtaining a completed DSP–83 for all significant military equipment;

(6) Maintenance of records as required by § 122.5 of this subchapter.

NOTE: It is the responsibility of the exporter of record to determine in writing the Canadian end-use and end-user. In any instance when such written documentation is not available, this exemption may not be used. Further, in any instance when the exporter has knowledge that the defense article exempt from licensing is being exported for use by a non-Canadian citizen or for export to another foreign destination, other than the United States, an export license must be obtained prior to the transfer to Canada. The request should state the ultimate foreign end-user and end-use with Canada as an intermediate destination. The role of the Canadian parties should be defined. Should an instance exist when a defense article or related technical data was properly exported, either using a license or an exemption, and there is a reason to change either the end-use or the end-user, the requirements of § 123.9 of this subchapter apply.

[64 FR 17534, Apr. 12, 1999]

§ 126.5 Canadian exemptions.

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

(b) *Exceptions.* The exemptions of this section do not apply to the following defense articles, defense services, or related technical data:

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

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

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

(4) Naval nuclear propulsion equipment listed in Category VI(e);

(5) Aircraft listed in Category VIII(a);

(6) Submersible and oceanographic vessels and related articles listed in Category XX (a) through (d).

(7) Defense articles, defense services, or related technical data for use by a foreign national other than a Canadian.

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

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

[59 FR 29951, June 10, 1994]

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

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

(1)(i) The article or technical data to be exported was sold, leased, or loaned

by the Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended, and

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

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

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

(c) *Procedures for the Foreign Military Sales Program.* (1) District Directors of Customs are authorized to permit the export and temporary import of classified and unclassified defense articles, defense services and technical data without a license if the articles or technical data were sold, leased or loaned 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–94, or in the case of a classified shipment, an approved Letter of Offer and Acceptance; 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 Defense Trade Controls pursuant to part 122 of this subchapter, and, if classified defense articles or technical data are involved, has the requisite U.S. Government security clearance and a transportation plan has been approved as in § 126.6(a)(1), above and the defense articles or technical data are shipped in compliance with the Department of Defense Industrial Security Manual.

(2) Filing and documents.

(i) The original copy of completed Form DSP–94, 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.

(ii) SED or Outbound Manifest. The Shipper's Export Declaration or, if authorized, the outbound manifest, must be annotated as follows:

This shipment is being exported under the authority of Department of State Form DSP–94. It covers FMS Case (case identification), expiration date _____. 22 CFR 126.6 applicable. The U.S. Government point of contact is _____, telephone number _____.

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

(a) *Policy.* Licenses or approvals shall be denied or revoked whenever required by any statute of the United States (see §§ 127.6 and 127.10 of this subchapter). Any application for an export license or other approval under this subchapter may be disapproved, and any license or other approval or exemption granted 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 is otherwise advisable; or

(2) The Department of State believes that 22 U.S.C. 2778, any regulation contained in this subchapter, or the terms

of any U.S. Government export authorization (including the terms of a manufacturing license or technical assistance agreement, or export authorization granted pursuant to the Export Administration Act, as amended) has been violated by any party to the export or other person having significant interest in the transaction; or

(3) An applicant is the subject of an indictment for a violation of any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(4) An applicant or any party to the export or the agreement has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(5) An applicant is ineligible to contract with, or to receive a license or other authorization to import defense articles or defense services from, any agency of the U.S. Government; or

(6) An applicant, any party to the export or agreement, any source or manufacturer of the defense article or defense service or any person who has a significant interest in the transaction has been debarred, suspended, or otherwise is ineligible to receive an export license or other authorization from any agency of the U.S. government (e.g., pursuant to debarment by the Department of Commerce under 15 CFR part 388 or by the Department of State under part 127 or 128 of this subchapter); or

(7) An applicant has failed to include any of the information or documentation expressly required to support a license application or other request for approval under this subchapter or as required in the instructions in the applicable Department of State form; or

(8) An applicant is subject to sanctions under other relevant U.S. laws (e.g., the Missile Technology Controls title of the National Defense Authorization Act for FY 1991 (Pub. L. 101–510); the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Pub. L. 102–182); or the Iran-Iraq Arms Non-Proliferation Act of 1992 (Pub. L. 102–484)).

(b) *Notification.* The Office of Defense Trade Controls 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 Defense Trade Controls.

(d) *Reconsideration of certain applications.* Applications for licenses or other requests for approval denied for repeated failure to provide information or documentation expressly required will normally not be reconsidered during the thirty day period following denial. They will be reconsidered after this period only after a final decision is made on whether the applicant will be subject to an administrative penalty imposed pursuant to this subchapter. Any request for reconsideration shall be accompanied by a letter explaining the steps that have been taken to correct the failure and to ensure compliance with the requirements of this subchapter.

(e) *Special definition.* For purposes of this section, the term *party to the export* means:

(1) The chief executive officer, president, vice-presidents, other senior officers and officials (e.g., comptroller, treasurer, general counsel) and any member of the board of directors of the applicant;

(2) The freight forwarders or designated exporting agent of the applicant; and

(3) Any consignee or end-user of any item to be exported.

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

(a) Certain proposals to foreign persons for the sale or manufacture abroad of significant military equipment require either the prior approval of, or prior notification to, the Office of Defense Trade Controls.

(1) Sale of significant military equipment: Prior approval requirement. The approval of the Office of Defense Trade

Controls is required before a U.S. person may make a proposal or presentation designed to constitute a basis for a decision on the part of any foreign person to purchase significant military equipment on the U.S. Munitions List whenever all the following conditions are met:

(i) The value of the significant military equipment to be sold is $14,000,000 or more; and

(ii) The equipment is intended for use by the armed forces of any foreign country other than a member of the North Atlantic Treaty Organization, Australia, New Zealand, or Japan; and

(iii) The sale would involve the export from the United States of any defense article or the furnishing abroad of any defense service including technical data; and

(iv) The identical significant military equipment has not been previously licensed for permanent export or approved for sale under the Foreign Military Sales Program of the Department of Defense, to any foreign country.

(2) Sale of significant military equipment: Prior notification requirement. The Office Defense Trade Controls must be notified in writing at least thirty days in advance of any proposal or presentation concerning the sale of significant military equipment whenever the conditions specified in paragraphs (a)(1) (i) through (iii) of this section are met and the identical equipment has been previously licensed for permanent export or approved for sale under the FMS Program to any foreign country.

(3) Manufacture abroad of significant military equipment: Prior approval requirement. The approval of the Office of Defense Trade Controls is required before a U.S. person may make a proposal or presentation designed to constitute a basis for a decision on the part of any foreign person to enter into any manufacturing license agreement or technical assistance agreement for the production or assembly of significant military equipment, regardless of dollar value, in any foreign country, whenever:

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

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

(b) *Definition of proposal or presentation.* The terms proposal or presentation (designed to constitute a basis for a decision to purchase and to 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 either to 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 notification or approval, as appropriate, where the conditions specified in paragraph (a) of this section are met. By contrast, the following would not require prior notification or 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) *Satisfaction of requirements.* (1) The requirement of this section for prior approval is met by any of the following:

(i) A written statement from the Office of Defense Trade Controls approving the proposed sale or agreement or approving the making of a proposal or presentation.

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

(iii) A temporary export license issued under §123.5 of this subchapter relating to the proposed sale or agreement for a demonstration to the armed forces of the country of export.

(iv) 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.

(2) The requirement of this section for prior notification is met by informing the Office of Defense Trade Controls by letter at least 30 days before making the proposal or presentation. The letter must comply with the procedures set forth in paragraph (d) of this section and must identify the relevant license, approval, or FMS case by which the identical equipment had previously been authorized for permanent export or sale. The Office of Defense Trade Controls will provide written acknowledgement of such prior notification to confirm compliance with this requirement and the commencement of the 30-day notification period.

(d) *Procedures.* Unless a license has been obtained pursuant to §126.8(c)(1)(ii) or (iii), a request for prior approval to make a proposal or presentation with respect to significant military equipment, or a 30-day prior notification regarding the sale of such equipment, must be made by letter to the Office of Defense Trade Controls. 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.

(e) *Statement to accompany licensing requests.* (1) Every application for an export license or other approval to implement a sale or agreement which meets the criteria specified in paragraph (a) of this section must be accompanied by a statement from the applicant which either:

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

(ii) Certifies that no proposal or presentation requiring prior notification or 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 criteria specified in paragraph (a) of this section.

(f) *Penalties.* In addition to other remedies and penalties prescribed by law or this subchapter, a failure to satisfy the prior approval or prior notification requirements of this section may be considered to be a reason for disapproval of a license, agreement or sale under the FMS program.

(g) *License for technical data.* Nothing in this section constitutes or is to be construed as an exemption from the licensing requirement for the export of technical data that is embodied in any proposal or presentation made to any foreign persons.

§126.9 Advisory opinions.

Any person desiring information as to whether the Office of Defense Trade Controls would be likely to grant a license or other approval for the export of a particular defense article or defense service to a particular country may request an advisory opinion from the Office of Defense Trade Controls. These opinions are not binding on the Department of State and are revocable. A request for an advisory opinion must be made in writing and 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.

§126.10 Disclosure of information.

(a) *Freedom of Information.* Subchapter R of this title 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 Defense Trade Controls.

(b) *Determinations required by law.* Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778) provides by reference to certain procedures of the Export Administrative Act 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 in that provision, except that the names of the countries and the types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless the President determines that release of such information would be contrary to the national interest. Determinations required by section 38(e) shall be made by the Assistant Secretary for Political-Military Affairs.

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

(d) *National Interest Determinations.* In accordance with section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)), the Secretary of State has determined that the following disclosures are in the national interest of the United States:

(1) Furnishing information to foreign governments for law enforcement or regulatory purposes; and

(2) Furnishing information to foreign governments and other agencies of the U.S. Government in the context of multilateral or bilateral export regimes (e.g., the Missile Technology Control Regime, the Australia Group, and CoCoM).

[58 FR 39312, July 22, 1993, as amended at 62 FR 67276, Dec. 24, 1997]

§ 126.11 Relations 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.

§ 126.13 Required information.

(a) All applications for licenses (DSP–5, DSP–61, DSP–73, and DSP–85), all requests for approval of agreements and amendments thereto under part 124 of this subchapter, all requests for other written authorizations, and all 30-day prior notifications of sales of significant military equipment under § 126.8(c) must include a letter signed by a responsible official empowered by the applicant and addressed to the Director, Office of Defense Trade Controls, stating whether:

(1) The applicant or the chief executive officer, president, vice-presidents, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is the subject of an indictment for or has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter since the effective date of the Arms Export Control Act, Public Law 94–329, 90 Stat. 729 (June 30, 1976);

(2) The applicant or the chief executive officer, president, vice-presidents, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government;

(3) To the best of the applicant's knowledge, any party to the export as defined in § 126.7(e) has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter since the effective date of the Arms Export Control Act, Public Law 94–329, 90 Stat. 729 (June 30, 1976), or is ineligible to contract with, or to

receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. government; and

(4) The natural person signing the application, notification or other request for approval (including the statement required by this subsection) is a citizen or national of the United States, has been lawfully admitted to the United States for permanent residence (and maintains such a residence) under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a), section 101(a)20, 60 Stat. 163), or is an official of a foreign government entity in the United States.

(b) In addition, all applications for licenses must include, on the application or an addendum sheet, the complete names and addresses of all U.S. consignors and freight forwarders, and all foreign consignees and foreign intermediate consignees involved in the transaction. If there are multiple consignors, consignees or freight forwarders, and all the required information cannot be included on the application form, an addendum sheet and seven copies containing this information must be provided. The addendum sheet must be marked at the top as follows: ''Attachment to Department of State License From (insert DSP–5, 61, 73, or 85, as appropriate) for Export of (insert commodity) valued at (insert U.S. dollar amount) to (insert country of ultimate destination).'' The Office of Defense Trade Controls will impress one copy of the addendum sheet with the Department of State seal and return it to the applicant with each license. The sealed addendum sheet must remain attached to the license as an integral part thereof. District Directors of Customs and Department of Defense transmittal authorities will permit only those U.S. consignors or freight forwarders listed on the license or sealed addendum sheet to make shipments under the license, and only to those foreign consignees named on the documents. Applicants should list all freight forwarders who may be involved with shipments under the license to ensure that the list is complete and to avoid the need for amendments to the list after the license has been approved. If there are unusual or extraordinary circumstances that preclude the specific identification of all the U.S. consignors and freight forwarders and all foreign consignees, the applicant must provide a letter of explanation with each application.

(c) In cases when foreign nationals are employed at or assigned to security-cleared facilities, provision by the applicant of a Technology Control Plan (available from the Defense Investigative Service) will facilitate processing.

PART 127—VIOLATIONS AND PENALTIES

Sec.

127.1 Violations.
127.2 Misrepresentation and omission of facts.
127.3 Penalties for violations.
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127.12 Voluntary disclosures.

AUTHORITY: Secs. 2, 38, and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 401; 22 U.S.C. 2658; 22 U.S.C. 2779a; 22 U.S.C. 2780.

SOURCE: 58 FR 39316, July 22, 1993, unless otherwise noted.

§ 127.1 Violations.

(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 without first obtaining the required license or written approval from the Office of Defense Trade Controls;

(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 Office of Defense Trade Controls;