

Department of State

§ 126.6

(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 arti-

cles, 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