

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, provided that the additional monetary value does not make the total value of the license or other approval for the export of any major defense equipment sold under a contract reach \$14,000,000 or more, and provided that the additional monetary value does not make defense articles or defense services sold under a contract reach the amount of \$50,000,000 or more.

§ 123.24 Shipments by mail.

A Shipper's Export Declaration must be authenticated before an article is actually sent abroad by mail (see § 123.22(d)). The postmaster or exporter will endorse each license to show the shipments made. Every license must be returned by the exporter to the Office of Defense Trade Controls upon completion of the mailings.

§ 123.25 Amendments to licenses.

(a) The Office of Defense Trade Controls may approve an amendment to a license for permanent export, temporary export and temporary import of unclassified defense articles. A suggested format is available from the Office of Defense Trade Controls.

(b) The following types of amendments to a license that will be considered: Addition of U.S. freight forwarder or U.S. consignor; change due to an obvious typographical error; change in source of commodity; and change of foreign intermediate consignee if that party is only transporting the equipment and will not process (e.g., integrate, modify) the equipment. For changes in U.S. dollar value see § 123.23.

(c) The following types of amendments to a license will not be approved: Additional quantity, changes in commodity, country of ultimate destination, end-use or end-user, foreign consignee and/or extension of duration. The foreign intermediate consignee may only be amended if that party is acting as freight forwarder and the export does not involve technical data. A new license is required for these changes. Any new license submission must reflect only the unshipped balance of quantity and dollar value.

§ 123.26 Recordkeeping requirement for exemptions.

When an exemption is claimed for the export of unclassified technical data, the exporter must maintain a record of each such export. The business record should include the following information: A description of the unclassified technical data, the name of the recipient end-user, the date and time of the export, and the method of transmission.

§ 123.27 Temporary export for personal use of Category XIII(b)(1) cryptographic products.

(a) District Directors of Customs may permit a U.S. citizen or a U.S. person who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) to temporarily export from the United States without a license not more than one each of any unclassified Category XIII(b)(1) cryptographic hardware product and not more than a single copy of each type of unclassified Category XIII(b)(1) cryptographic software product provided that:

(1) The software product(s) are to be used only on a simultaneously temporarily exported Category XIII(b)(1) hardware product or a simultaneously exported item on the Commerce Control List (CCL); and

(2) The cryptographic products covered by Category XIII(b)(1) are not destined for export to a destination listed in § 126.1 of the ITAR (22 CFR 126.1) which is 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—currently Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria); and

(3)(i) The encryption products remain in the possession of the exporting person or the possession of another U.S. citizen or lawful permanent resident traveling with him/her, are for their exclusive use and not for copying, demonstration, marketing, sale, re-export or transfer of ownership or control. The export of cryptographic products

identified in Category XIII(b)(1) in any other circumstances, for example, those in which a person contemplates sales, marketing, or demonstration must be licensed in accordance with policies and procedures established in this subchapter.

(ii) *Special definition.* For purposes of paragraph (a)(3)(i) of this section, a product is considered to be in the possession of the exporter if:

(A) The exporter takes normal precautions to ensure the security of the product by locking the product in a hotel room, safe, or other comparably secure location; and

(B) While in transit, the exporter keeps the product in his/her carry-on luggage or locked in baggage accompanying the exporter which has been checked with the carrier; and

(4) At the time of export from the U.S. and import into the U.S., the cryptographic products are with the individual's accompanying baggage or effects. They may not be exported or imported in unaccompanied baggage, mailed or transmitted by any other means (e.g., electronically); and, the cryptographic products must be returned to the U.S. at the completion of the stay abroad; and

(5) The exporter, upon request of a U.S. Customs officer, will submit the products to inspection at the time of export and/or import.

(b) Use of this exemption requires the exporter, in lieu of filing a Shippers' Export Declaration, to maintain, for a period of 5 years from the date of each temporary export, a record of that temporary export and the subsequent import. Included in this record must be a self certification that the individual complied with the conditions of paragraph (a) of this section and a self certification that he/she has no reason to believe that any of the temporarily exported cryptographic products were stolen, lost, copied, sold or otherwise compromised or transferred while abroad. The record should include the following information: A description of the unclassified cryptographic products; the countries entered, including the dates of entry and exit for each foreign country; and, the dates of temporary export from and subsequent import into the United States.

(c) In any instance where a product exported under this exemption is stolen, lost, copied, sold or otherwise compromised or transferred while abroad, the exporting person must, within 10 days of his/her return to the United States, report the incident to the Department of State, Office of Defense Trade Controls, Washington, DC 20520-0602. Also, any person who knows or has reason to know that cryptographic products exported under this exemption are being transferred, exported, or used for any other activity which must be licensed or otherwise authorized in writing by the Department of State, should immediately inform the Department of State, Office of Defense Trade Controls, Washington DC 20520-0602.

[61FR 6112, Feb. 16, 1996]

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT 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 Defense Trade Controls.
- 124.5 Proposed agreements that are not concluded.
- 124.6 Termination of manufacturing license agreements and technical assistance agreements.
- 124.7 Information required in all manufacturing license agreements and technical assistance agreements.
- 124.8 Clauses required both in manufacturing license agreements and technical assistance agreements.
- 124.9 Additional clauses required only in manufacturing license agreements.
- 124.10 Nontransfer and use assurances.
- 124.11 Certification to Congress for agreements.
- 124.12 Required information in letters of transmittal.
- 124.13 Procurement by United States persons in foreign countries (offshore procurement).
- 124.14 Exports to warehouses or distribution points outside the United States.
- 124.15 Special Export Controls for Defense Articles and Defense Services Controlled under Category XV: Space Systems and Space Launches.