

AUTHORITY: Sec. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311, 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105-261.

SOURCE: 58 FR 39305, July 22, 1993, unless otherwise noted.

§ 124.1 Manufacturing license agreements and technical assistance agreements.

(a) The approval of the Office of Defense Trade Controls must be obtained before the defense services described in § 120.9(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement to the Office of Defense Trade Controls. Such agreements are generally characterized as either Manufacturing license agreements, technical assistance agreements, distribution agreements or off-shore procurement agreements, and may not enter into force without the prior written approval of the Office of Defense Trade Controls. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with §§ 124.3 and 125.4(b)(2) of this subchapter. The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services described in § 120.9(a) of this subchapter (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from the licensing requirements of this subchapter pursuant to § 125.4 of this subchapter). This requirement also applies to the training of any foreign military forces, regular and irregular, in the use of defense articles. Technical assistance agreements must be submitted in such cases. In exceptional cases, The Office of Defense Trade Controls, upon written request, will consider approving the provision of defense services described in § 120.9(a) of this subchapter by granting a license under part 125 of this subchapter. Also, see § 126.8 of this subchapter for the requirements for prior approval of proposals relating to significant military equipment.

(b) *Classified Articles.* Copies of approved agreements involving the release of classified defense articles will be forwarded by the Office of Defense

Trade Controls to the Defense Investigative Service of the Department of Defense.

(c) *Amendments.* Changes to the scope of approved agreements, including modifications, upgrades, or extensions must be submitted for approval. The amendments may not enter into force until approved by the Office of Defense Trade Controls.

(d) *Minor Amendments.* Amendments which only alter delivery or performance schedules, or other minor administrative amendments which do not affect in any manner the duration of the agreement or the clauses or information which must be included in such agreements because of the requirements of this part, do not have to be submitted for approval. One copy of all such minor amendments must be submitted to the Office of Defense Trade Controls within thirty days after they are concluded.

§ 124.2 Exemptions for training and military service.

(a) Technical assistance agreements are not required for the provision of training in the basic operation and maintenance of defense articles lawfully exported or authorized for export to the same recipient. This does not include training in intermediate and depot level maintenance.

(b) Services performed as a member of the regular military forces of a foreign nation by U.S. persons who have been drafted into such forces are not deemed to be defense services for purposes of § 120.9 of this subchapter.

§ 124.3 Exports of technical data in furtherance of an agreement.

(a) *Unclassified technical data.* District Directors of Customs or postal authorities shall permit the export without a license of unclassified technical data if the export is in furtherance of a manufacturing license or technical assistance agreement which has been approved in writing by the Office of Defense Trade Controls and the technical data being exported does not exceed the scope or limitations of the relevant agreement. The U.S. party to the agreement must certify on the Shippers Export Declaration that the export does not exceed the scope of the

agreement and any limitations imposed pursuant to this part. The approval of the Office of Defense Trade Controls must be obtained for the export of any unclassified technical data which may exceed the terms of the agreement.

(b) *Classified technical data.* The export of classified information in furtherance of an approved manufacturing license or technical assistance agreement which provides for the transmittal of classified information does not require further approval from the Office of Defense Trade Controls when:

(1) The United States party certifies to the Department of Defense transmittal authority that the classified information does not exceed the technical or product limitations in the agreement; and

(2) The U.S. party complies with the requirements of the Department of Defense Industrial Security Manual concerning the transmission of classified information and any other requirements of cognizant U.S. departments or agencies.

§ 124.4 Deposit of signed agreements with the Office of Defense Trade Controls.

(a) The United States party to a manufacturing license or a technical assistance agreement must file one copy of the concluded agreement with the Office of Defense Trade Controls not later than 30 days after it enters into force. If the agreement is not concluded within one year of the date of approval, the Office of Defense Trade Controls must be notified in writing and be kept informed of the status of the agreement until the requirements of this paragraph or the requirements of § 124.5 are satisfied.

(b) In the case of concluded agreements involving coproduction or licensed production outside of the United States of defense articles of United States origin, a written statement must accompany filing of the concluded agreement with the Office of Defense Trade Controls, which shall include:

(1) The identity of the foreign countries, international organization, or foreign firms involved;

(2) A description and the estimated value of the articles authorized to be produced, and an estimate of the quantity of the articles authorized to be produced;

(3) A description of any restrictions on third-party transfers of the foreign-manufactured articles; and

(4) If any such agreement does not provide for United States access to and verification of quantities of articles produced overseas and their disposition in the foreign country, a description of alternative measures and controls to ensure compliance with restrictions in the agreement on production quantities and third-party transfers.

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§ 124.5 Proposed agreements that are not concluded.

The United States party to any proposed manufacturing license agreement or technical assistance agreement must inform the Office of Defense Trade Controls if a decision is made not to conclude the agreement. The information must be provided within 60 days of the date of the decision. These requirements apply only if the approval of the Office of Defense Trade Controls was obtained for the agreement to be concluded (with or without any provisos).

§ 124.6 Termination of manufacturing license agreements and technical assistance agreements.

The U. S. party to a manufacturing license or a technical assistance agreement must inform the Office of Defense Trade Controls in writing of the impending termination of the agreement not less than 30 days prior to the expiration date of such agreement.

§ 124.7 Information required in all manufacturing license agreements and technical assistance agreements.

The following information must be included in all proposed manufacturing license agreements and technical assistance agreements. The information should be provided in terms which are as precise as possible. If the applicant believes that a clause or that required information is not relevant or necessary, the applicant may request the