§ 123.9 Country of ultimate destination and approval of reexports or retransfers.

(a) The country designated as the country of ultimate destination on an application for an export license, or in 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, retransfering, 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 this subchapter that explicitly authorizes the resell, transfer, reexport, retransfer, transshipment, or disposition of a defense article without such approval. 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 be transferred, transshipped on a non-continuous voyage, 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, without the prior written approval of the U.S. Department of State."

(c) Any U.S. person or foreign person requesting written approval from the Directorate of Defense Trade Controls for the reexport, retransfer, other disposition, 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
§ 123.10 Non-transfer and use assurances.

(a) A nontransfer and use certificate (Form DSP–83) is required for the export of significant military equipment and classified articles, including classified technical data. A license will not be issued until a completed Form DSP–83 has been received by the Directorate of Defense Trade Controls. This form is to be executed by the foreign consignee, foreign end-user, and the applicant. The certificate stipulates that, except as specifically authorized by prior written approval of the Department of State, the foreign consignee and foreign end-user will not reexport, resell or otherwise dispose of the significant military equipment enumerated in the application outside the country named as the location of the foreign end-use or to any other person.

(b) The Directorate of Defense Trade Controls may also require a DSP–83 for the export of any other defense articles, including technical data, or defense services.

(c) When a DSP–83 is required for an export of any defense article or defense