

§ 123.20 Nuclear related controls.

(a) The provisions of this subchapter do not apply to articles, technical data, or services in Category VI, Category XV, Category XVI, or Category XX of §121.1 of this subchapter to the extent that exports of such articles, technical data, or services are controlled by the Department of Energy or the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as amended, or is a government transfer authorized pursuant to these Acts. For Department of Commerce controls, *see* 15 CFR 742.3 and 744.2, administered pursuant to Section 309(c) of the Nuclear Non-Proliferation Act of 1978, as amended (42 U.S.C. 2139a(c)), and 15 CFR 744.5, which are not subject to this subchapter.

(b) The transfer of materials, including special nuclear materials, nuclear parts of nuclear weapons, or other non-nuclear parts of nuclear weapons systems involving Restricted Data or of assistance involving any person directly or indirectly engaging in the production or use thereof is prohibited except as authorized by the Atomic Energy Act of 1954, as amended. The transfer of Restricted Data or such assistance is prohibited except as authorized by the Atomic Energy Act of 1954, as amended. The technical data or defense services relating to nuclear weapons, nuclear weapons systems or related defense purposes (and such data or services relating to applications of atomic energy for peaceful purposes, or related research and development) may constitute Restricted Data or such assistance, subject to the foregoing prohibition.

(c) A license for the export of a defense article, technical data, or the furnishing of a defense service relating to defense articles referred to in Category VI(e) or Category XX(b)(1) of §121.1 of this subchapter will not be granted unless the defense article, technical data, or defense service comes within the scope of an existing Agreement for Cooperation for Mutual Defense Purposes concluded pursuant to the Atomic Energy Act of 1954, as amended, with the government of the country to which the defense article, technical data, or

defense service is to be exported. Licenses may be granted in the absence of such an agreement only:

(1) If the proposed export involves an article which is identical to that in use in an unclassified civilian nuclear power plant,

(2) If the proposed export has no relationship to naval nuclear propulsion, and

(3) If it is not for use in a naval propulsion plant.

[67 FR 58988, Sept. 19, 2002, as amended at 78 FR 40933, July 8, 2013; 79 FR 47, Jan. 2, 2014; 79 FR 36393, June 27, 2014; 79 FR 66609, Nov. 10, 2014]

§ 123.21 Duration, renewal, and disposition of licenses.

(a) A license is valid for four years. The license expires when the total value or quantity authorized has been shipped or when the date of expiration has been reached, whichever occurs first. Defense articles to be shipped thereafter require a new application and license. The new application should refer to the expired license. It should not include references to any defense articles other than those of the unshipped balance of the expired license.

(b) Unused, expired, suspended, or revoked licenses must be handled in accordance with §123.22(c) of this subchapter.

[58 FR 39299, July 22, 1993, as amended at 76 FR 68312, Nov. 4, 2011]

§ 123.22 Filing, retention, and return of export licenses and filing of export information.

(a) Any export, as defined in this subchapter, of a defense article controlled by this subchapter, to include defense articles transiting the United States, requires the electronic reporting of export information. The reporting of the export information shall be to the U.S. Customs and Border Protection using its electronic system(s), or directly to the Directorate of Defense Trade Controls (DDTC), as appropriate. Before the export of any hardware, via a license or other authorization, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must

electronically submit export information to U.S. Customs and Border Protection, unless electronic reporting is unavailable, in which case U.S. Customs and Border Protection will issue instructions (*see* paragraph (b) of this section). In addition to electronically providing the export information to U.S. Customs and Border Protection before export, all mandatory supporting documentation (e.g., attachments, certifications, proof of filing in U.S. Customs and Border Protection's system(s) such as the Internal Transaction Number (ITN)) must be submitted electronically, unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions.

(1) If necessary, an export may be made through a port other than the one designated on the license if the exporter complies with the procedures established by U.S. Customs and Border Protection.

(2) When a defense article is temporarily exported from the United States and subsequently moved from one destination authorized on a license to another destination authorized on the same or another temporary license, the applicant, or an agent acting on the applicant's behalf, must ensure that U.S. Customs and Border Protection decrements both temporary licenses to show the exit and entry of the hardware.

(b) *Filing and reporting of export information*—(1) *Filing of export information with the U.S. Customs and Border Protection.* Before exporting any hardware controlled by this subchapter using a license or exemption, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically file the export information with U.S. Customs and Border Protection in accordance with the following timelines:

(i) *Air or truck shipments.* The export information must be electronically filed at least 8 hours prior to departure.

(ii) *Sea or rail Shipments.* The export information must be electronically filed at least 24 hours prior to departure.

(2) *Emergency shipments of hardware that cannot meet the pre-departure filing requirements.* U.S. Customs and Border Protection may permit an emergency export of hardware by truck or air by a U.S. registered person when the exporter is unable to comply with the Electronic Export Information (EEI) filing timeline in paragraph (b)(1)(i) of this section. The applicant, or an agent acting on the applicant's behalf, must provide documentation required by the U.S. Customs and Border Protection and this subchapter. The documentation provided to U.S. Customs and Border Protection must include the Internal Transaction Number (ITN) for the shipment and must be accompanied by an explanation for urgency. The export filing via U.S. Customs and Border Protection's electronic system(s) must be made at least two hours prior to any departure by air from the United States. When shipping via ground, the filing in U.S. Customs and Border Protection's electronic system(s) must be made when the exporter provides the articles to the carrier or at least one hour prior to departure from the United States, when the permanent export of the hardware has been authorized for export:

(i) In accordance with §126.4 of this subchapter, or

(ii) On a valid license, and the ultimate recipient and ultimate end-user identified on the license is a foreign government.

(3) *Reporting of export information on technical data and defense service.* When an export is being made using a DDTC authorization (e.g., technical data license, agreement or a technical data exemption provided in this subchapter), the DDTC registered exporter will retain the license or other approval and provide the export information electronically to DDTC as follows:

(i) *Technical data license.* Prior to the permanent export of technical data licensed using a Form DSP-5, the applicant shall electronically provide export information using the system for direct electronic reporting to DDTC of export information and self validate the original of the license. When the initial export of all the technical data authorized on the license has been made, the

license must be returned to DDTC. Exports of copies of the licensed technical data should be made in accordance with existing exemptions in this subchapter. Should an exemption not apply, the applicant may request a new license.

(ii) *Manufacturing license and technical assistance agreements.* Prior to the initial export of any technical data and defense services authorized in an agreement the U.S. agreement holder must electronically inform DDTC that exports have begun. In accordance with this subchapter, all subsequent exports of technical data and services are not required to be filed electronically with DDTC except when the export is done using a U.S. Port. Records of all subsequent exports of technical data shall be maintained by the exporter in accordance with this subchapter and shall be made immediately available to DDTC upon request. Exports of technical data in furtherance of an agreement using a U.S. Port shall be made in accordance with § 125.4 of this subchapter and made in accordance with the procedures in paragraph (b)(3)(iii) of this section.

(iii) *Technical data and defense service exemptions.* In any instance when technical data is exported using an exemption in this subchapter (e.g., §§ 125.4(b)(2), 125.4(b)(4), 126.5) from a U.S. port, the exporter must provide the export data electronically to DDTC. A copy of the electronic notification to DDTC must accompany the technical data shipment and be made available to the U.S. Customs and Border Protection upon request.

NOTE TO PARAGRAPH (b)(3)(iii): Future changes to the electronic reporting procedure will be amended by publication of a rule in the FEDERAL REGISTER. Exporters are reminded to continue maintaining records of all export transactions, including exemption shipments, in accordance with this subchapter.

(c) *Return of licenses.* Licenses issued by the Directorate of Defense Trade Controls are subject to return requirements as follows:

(1) A license issued electronically by DDTC and electronically decremented by U.S. Customs and Border Protection through its electronic system(s) is not required to be returned to DDTC. A copy of the license must be maintained

by the applicant in accordance with § 122.5 of this subchapter.

(2) Licenses issued by DDTC but not decremented by U.S. Customs and Border Protection through its electronic system(s) (e.g., oral or visual technical data releases) must be returned by the applicant, or the government agency with which the license was filed, to DDTC upon expiration, to include when the total authorized value or quantity has been shipped. A copy of the license must be maintained by the applicant in accordance with § 122.5 of this subchapter.

(3) A license issued by DDTC but not used by the applicant does not need to be returned to DDTC, even when expired.

(4) A license revoked by DDTC is considered expired and must be handled in accordance with paragraphs (c)(1) and (c)(2) of this section.

[68 FR 61101, Oct. 27, 2003, as amended at 70 FR 50962, Aug. 29, 2005; 76 FR 68312, Nov. 4, 2011; 77 FR 16599, Mar. 21, 2012; 82 FR 18, Jan. 3, 2017]

§ 123.23 Monetary value of shipments.

Port Directors of U.S. Customs and Border Protection shall permit the shipment of defense articles 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.

[70 FR 50963, Aug. 29, 2005]

§ 123.24 Shipments by U.S. Postal Service.

(a) The export of any defense hardware using a license or exemption in this subchapter by the U.S. Postal Service must be filed with U.S. Customs and Border Protection using its electronic system(s) and the license must be filed with U.S. Customs and Border Protection before any hardware is actually sent abroad by mail. The