

assessment of the benefits, opportunities and other relevant considerations presented by such prospective arrangements. U.S exporters seeking such authorization must provide detailed information concerning the arrangement, joint venture, merger or acquisition, including any planned exports of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

(b) *Provisions and Requirements for Comprehensive Authorizations.*

Requests for the special comprehensive authorizations set forth in paragraph (a) of this section should be by letter addressed to the Office of Defense Trade Control. With regard to a commercial major program or project authorization, or technical data supporting a teaming arrangement, merger, joint venture or acquisition, registered U.S. exporters may consult the Director of the Office of Defense Trade Controls about eligibility for and obtaining available comprehensive authorizations set forth in paragraph (a) of this section or pursuant to § 126.9(b).

(1) Requests for consideration of all such authorizations should be formulated to correspond to one of the authorizations set out in paragraph (a) of this section, and should include:

- (i) A description of the proposed program or project, including where appropriate a comprehensive description of all phases or stages; and
- (ii) Its value; and
- (iii) Types of exports needed in support of the program or project; and
- (iv) Projected duration of same, within permissible limits; and
- (v) Description of the exporter's plan for record keeping and auditing of all phases of the program or project; and
- (vi) In the case of authorizations for exports in support of government to government cooperative projects, identification of the cooperative project.

(2) Amendments to the requested authorization may be requested in writing as appropriate, and should include a detailed description of the aspects of the activities being proposed for amendment.

(3) The comprehensive authorizations set forth in paragraph (a) of this section may be made valid for the duration of the major commercial program or project, or cooperative project, not to exceed 10 years.

(4) Included among the criteria required for such authorizations are those set out in Part 124, *e.g.*, §§ 124.7, 124.8 and 124.9, as well as §§ 125.4 (technical data exported in furtherance of an agreement) and 123.16 (hardware being included in an agreement).

Provisions required will also take into account the congressional notification requirements in §§ 123.15 and 124.11 of the ITAR. Specifically, comprehensive congressional notifications corresponding to the comprehensive parameters for the major program or project or cooperative project should be possible, with additional notifications such as those required by law for changes in value or other significant modifications.

(5) All authorizations will be consistent with all other applicable requirements of the ITAR, including requirements for non-transfer and use assurances (see §§ 123.10 and 124.10), congressional notifications (*e.g.*, §§ 123.15 and 124.11), and other documentation (*e.g.*, §§ 123.9 and 126.13).

(6) Special auditing and reporting requirements will also be required for these authorizations. Exporters using special authorizations are required to establish an electronic system for keeping records of all defense articles, defense services and technical data exported and comply with all applicable requirements for submitting shipping or export information within the allotted time.

Dated: July 14, 2000.

**Pamela L. Frazier,**

*Acting Assistant Secretary, Bureau of Political-Military Affairs, Department of State.*

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## DEPARTMENT OF STATE

### Bureau of Political-Military Affairs

#### 22 CFR Part 126

#### [Public Notice 3366]

#### **Amendment to the International Traffic in Arms Regulation: FMS LOA Authorized Defense Services**

**AGENCY:** Bureau of Political-Military Affairs, Department of State.

**ACTION:** Final rule.

**SUMMARY:** The International Traffic In Arms Regulations (ITAR), § 126.6, Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program is being amended to clarify the use of the exemption when providing defense services authorized by the Foreign Military Sales (FMS) Program.

**EFFECTIVE DATE:** September 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Rose Biancianiello, Deputy Director,

Licensing, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State ATTN: Regulatory Change, Section 126.6 FMS Defense Service at (202) 663-2862 or FAX (202) 261-8264.

**SUPPLEMENTARY INFORMATION:** Section 126.6 currently provides for the export of defense services when authorized by the Foreign Military Sales (FMS) Program without a license or other approval. However, companies, lacking clear guidance often sought approval of the Office of Defense Trade Controls which delayed the provision of the service or frequently also entailed seeking assurances that the foreign government believed it had already provided to the USG. Thus, this amendment to § 126.6 which clarifies the exemption on the basis of specific criteria will assist registered defense firms by making it clear when to use the exemption to provide defense services authorized by the Department of Defense in an LOA.

This amendment involves a foreign affairs function of the United States and therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the Nation, USG or any State, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Order Nos. 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, FMS LOA Authorized Defense Services, 13th Floor, Room H1304, 2401 E Street, N.W., Washington, D.C. 20037. Such persons must be so registered with the Department of State's Office of Defense Trade Controls (ODTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act.

**List of Subjects in 22 CFR Part 126**

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter 1, subchapter M, part 126 is amended as follows:

**PART 126—GENERAL POLICIES AND PROVISIONS**

1. The authority citation for Part 126 continues to read as follows:

**Authority:** Secs. 2, 38, 40, 42, and 71, Pub.L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Com., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.E. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

2. Section 126.6 is revised to read as follows:

**§ 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) 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

(2) The article or technical data is delivered to representatives of such a country or organization in the United States; and

(3) 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 Political-Military Affairs, Office of International Security Operations.

(c) *Foreign Military Sales Program.* A license from the Office of Defense Trade Controls is not required if the defense article or technical data or a defense service to be transferred was sold, leased or loaned by the Department of Defense to a foreign country or international organization under the Foreign Military Sales (FMS) Program of the Arms Export Control Act pursuant to an Letter of Offer and Acceptance (LOA) authorizing such transfer which meets the criteria stated below:

(1) Transfers of the defense articles, technical data or defense services using this exemption may take place only during the period which the FMS Letter of Offer and Acceptance (LOA) and implementing USG FMS contracts and subcontracts are in effect and serve as authorization for the transfers hereunder in lieu of a license. After the USG FMS contracts and subcontracts have expired and the LOA no longer serves as such authorization, any further provision of defense articles, technical data or defense services shall not be covered by this section and shall instead be subject to other authorization requirements of this subchapter; and

(2) The defense article, technical data or defense service to be transferred are specifically identified in an executed LOA, in furtherance of the Foreign Military Sales Program signed by an authorized Department of Defense Representative and an authorized representative of the foreign government, and

(3) The transfer of the defense article and related technical data is effected during the duration of the relevant Letter of Offer and Acceptance (LOA), similarly a defense service is to be provided only during the duration of the USG FMS contract or subcontract and not to exceed the specified duration of the LOA, and

(4) The transfer is not to a country identified in § 126.1 of this subchapter, and

(5) The U.S. person responsible for the transfer maintains records of all transfers in accordance with Part 122 of this subchapter, and

(6) For transfers of defense articles and technical data,

(i) The transfer is 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

(ii) At the time of shipment, the District Director of Customs is provided an original and properly executed DSP-94 accompanied by a copy of the LOA and any other documents required by U.S. Customs in carrying out their responsibilities. The Shippers Export Declaration or, if authorized, the outbound manifest, must be annotated "This shipment is being exported under the authority of Department of State Form DSP-94. It covers FMS Case [insert case identification], expiration [insert date]. 22 CFR 126.6 applicable. The U.S. Government point of contact is \_\_\_\_\_, telephone number \_\_\_\_\_," and

(iii) If, classified hardware and related technical data are involved the transfer must have the requisite USG security clearance and transportation plan and be shipped in accordance with the Department of Defense National Industrial Security Program Operating Manual, or

(7) For transfers of defense services:

(i) A contract or subcontract between the U.S. person(s) responsible for providing the defense service and the USG exists that:

(A) Specifically defines the scope of the defense service to be transferred;

(B) Identifies the FMS case identifier,

(C) Identifies the foreign recipients of the defense service

(D) Identifies any other U.S. or foreign parties that may be involved and their roles/responsibilities, to the extent known when the contract is executed,

(E) Provides a specified period of duration in which the defense service may be performed, and

(ii) The U.S. person(s) identified in the contract maintain a registration with the Office of Defense Trade Controls for the entire time that the defense service is being provided. In any instance when the U.S. registered person(s) identified in the contract employs a subcontractor, the subcontractor may only use this exemption when registered with DTC, and when such subcontract meets the above stated requirements, and

(iii) In instances when the defense service involves the transfer of classified technical data, the U.S. person transferring the defense service must have the appropriate USG security clearance and a transportation plan, if appropriate, in compliance with the Department of Defense National Industrial Security Program Operating Manual, and

(iv) The U.S. person responsible for the transfer reports the initial transfer, citing this section of the ITAR, the FMS case identifier, contract and subcontract number, the foreign country, and the duration of the service being provided to the Office of Defense Trade Controls using DTC's Direct Shipment Verification Program.

Dated: July 14, 2000.

**Pamela L. Frazier,**

*Assistant Secretary (Acting), Bureau of Political-Military Affairs, U.S. Department of State.*

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