

the purpose of this subchapter. An export license is therefore not required for shipment between the United States and a foreign trade zone or a Customs bonded warehouse. In the case of classified defense articles, the provisions of the Department of Defense Industrial Security Manual will apply. An export license is required for all shipments of articles on the U.S. Munitions List from foreign trade zones and U.S. Customs bonded warehouses to foreign countries, regardless of how the articles reached the zone or warehouse.

§ 123.7 Exports to warehouses or distribution points outside the United States.

Unless the exemption under § 123.16(b)(1) is used, a license is required to export defense articles to a warehouse or distribution point outside the United States for subsequent resale and will normally be granted only if an agreement has been approved pursuant to § 124.14 of this subchapter.

§ 123.8 Special controls on vessels, aircraft and satellites covered by the U.S. Munitions List.

(a) Transferring registration or control to a foreign person of any aircraft, vessel, or satellite on the U.S. Munitions List is an export for purposes of this subchapter and requires a license or written approval from the Office of Defense Trade Controls. This requirement applies whether the aircraft, vessel, or satellite is physically located in the United States or abroad.

(b) The registration in a foreign country of any aircraft, vessel or satellite covered by the U.S. Munitions List which is not registered in the United States but which is located in the United States constitutes an export. A license or written approval from the Office of Defense Trade Controls is therefore required. Such transactions may also require the prior approval of the Maritime Administration, the Federal Aviation Administration or other agencies of the U.S. Government.

§ 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 on a Shipper's Export Declaration where an exemption is claimed under this subchapter, must be the country of ultimate end-use. The written approval of the Office of Defense Trade Controls must be obtained before reselling, transferring, transshipping, or disposing of a defense article to any end user, end use or destination other than as stated on the export license, or on the Shipper's Export Declaration in cases where an exemption is claimed under this subchapter. Exporters must ascertain the specific end-user and end-use prior to submitting an application to the Office of Defense Trade Controls or claiming an exemption under this subchapter.

(b) The exporter shall incorporate the following statement as an integral part of the bill of lading, and the invoice whenever defense articles on the U.S. Munitions List are to be exported:

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 in any other country, 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) A U.S. person or a foreign person requesting approval for the reexport or retransfer, or change in end-use, of a defense article shall submit a written request which shall be subject to all the documentation required for a permanent export license (see § 123.1) and shall contain the following:

(1) The license number under which the defense article was previously authorized for export from the United States;

(2) A precise description, quantity and value of the defense article;

(3) A description of the new end-use; and

(4) Identification of the new end-user.

(d) The written approval of the Office of Defense Trade Controls must be obtained before reselling, transferring, transshipping on a non-continuous voyage, or disposing of a defense article in any country other than the country of

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ultimate destination, or anyone other than the authorized end-user, as stated on the Shipper's Export Declaration in cases where an exemption is claimed under this subchapter.

(e) Reexports or retransfers of U.S.-origin components incorporated into a foreign defense article to a government of a NATO country, or the governments of Australia or Japan, are authorized without the prior written approval of the Office of Defense Trade Controls, provided:

(1) The U.S.-origin components were previously authorized for export from the United States, either by a license or an exemption;

(2) The U.S.-origin components are not significant military equipment, the items are not major defense equipment sold under a contract in the amount of \$14,000,000 (\$14 million) or more; the articles are not defense articles or defense services sold under a contract in the amount of \$50,000,000 (\$50 million) or more; and are not identified in part 121 of this subchapter as Missile Technology Control Regime (MTCR) items; and

(3) The person reexporting the defense article must provide written notification to the Office of Defense Trade Controls of the retransfer not later than 30 days following the reexport. The notification must state the articles being reexported and the recipient government.

(4) In certain cases, the Director, Office of Defense Trade Controls, may place retransfer restrictions on a license prohibiting use of this exemption.

§ 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 Office 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 for-

eign 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 Office of Defense Trade Controls may also require a DSP-83 for the export of any other defense articles or defense services.

(c) When a DSP-83 is required for an export of any defense article or defense service to a non-governmental foreign end-user, the Office of Defense Trade Controls may require as a condition of issuing the license that the appropriate authority of the government of the country of ultimate destination also execute the certificate.

§ 123.11 Movements of vessels and aircraft covered by the U.S. Munitions List outside the United States.

(a) A license issued by the Office of Defense Trade Controls is required whenever a privately-owned aircraft or vessel on the U.S. Munitions List makes a voyage outside the United States.

(b) Exemption. An export license is not required when a vessel or aircraft referred to in paragraph (a) of this section departs from the United States and does not enter the territorial waters or airspace of a foreign country if no defense articles are carried as cargo. Such a vessel or aircraft may not enter the territorial waters or airspace of a foreign country before returning to the United States, or carry as cargo any defense article, without a temporary export license (Form DSP-73) from the Department of State. (See § 123.5.)

§ 123.12 Shipments between U.S. possessions.

An export license is not required for the shipment of defense articles between the United States, the Commonwealth of Puerto Rico, and U.S. possessions. A license is required, however, for the export of defense articles from these areas to foreign countries.

§ 123.13 Domestic aircraft shipments via a foreign country.

A license is not required for the shipment by air of a defense article from one location in the United States to