

**Department of State**

**§ 123.14**

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 another location in the United States via a foreign country. The pilot of the aircraft must, however, file a written statement with the District Director of Customs at the port of exit in the United States. The original statement must be filed at the time of exit with the District Director of Customs. A duplicate must be filed at the port of re-entry with the District Director of Customs, who will duly endorse it and transmit it to the District Director of Customs at the port of exit. The statement will be as follows:

**DOMESTIC SHIPMENT VIA A FOREIGN COUNTRY OF ARTICLES ON THE U.S. MUNITIONS LIST**

Under penalty according to Federal law, the undersigned certifies and warrants that all the information in this document is true and correct, and that the equipment listed below is being shipped from (U.S. port of exit) via (foreign country) to (U.S. port of entry), which is the final destination in the United States.

*Description of Equipment*

Quantity: \_\_\_\_\_

Equipment: \_\_\_\_\_  
Value: \_\_\_\_\_  
Signed: \_\_\_\_\_

Endorsement: Customs Inspector.

Port of Exit \_\_\_\_\_  
Date: \_\_\_\_\_  
Signed: \_\_\_\_\_

Endorsement: Customs Inspector.

Port of Entry: \_\_\_\_\_  
Date: \_\_\_\_\_

**§ 123.14 Import certificate/delivery verification procedure.**

(a) The Import Certificate/Delivery Verification Procedure is designed to assure that a commodity imported into the territory of those countries participating in IC/DV procedures will not be diverted, transshipped, or reexported to another destination except in accordance with export control regulations of the importing country.

(b) *Exports.* The Office of Defense Trade Controls may require the IC/DV procedure on proposed exports of defense articles to non-government entities in those countries participating in IC/DV procedures. In such cases, U.S. exporters must submit both an export license application (the completed Form DSP-5) and the original Import Certificate, which must be provided and authenticated by the government of the importing country. This document verifies that the foreign importer complied with the import regulations of the government of the importing country and that the importer declared the intention not to divert, transship or reexport the material described therein without the prior approval of that government. After delivery of the commodities to the foreign consignee, the Department of State may also require U.S. exporters to furnish Delivery Verification documentation from the government of the importing country. This documentation verifies that the delivery was in accordance with the terms of the approved export license. Both the Import Certificate and the Delivery Verification must be furnished to the U.S. exporter by the foreign importer.

(c) *Triangular transactions.* When a transaction involves three or more countries that have adopted the IC/DV procedure, the governments of these countries may stamp a triangular symbol on the Import Certificate. This

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symbol is usually placed on the Import Certificate when the applicant for the Import Certificate (the importer) states either (1) that there is uncertainty whether the items covered by the Import Certificate will be imported into the country issuing the Import Certificate; (2) that he or she knows that the items will not be imported into the country issuing the Import Certificate; or (3) that, if the items are to be imported into the country issuing the Import Certificate, they will subsequently be reexported to another destination. All parties, including the ultimate consignee in the country of ultimate destination, must be shown on the completed Import Certificate.

### § 123.15 Congressional notification for licenses.

(a) All exports of major defense equipment, as defined in §120.8 of this subchapter, sold under a contract in the amount of \$14,000,000 or more, or exports of defense articles and defense services sold under a contract in the amount of \$50,000,000 or more, may take place only after the Office of Defense Trade Controls notifies the exporter through issuance of a license or other approval that Congress has not enacted a joint resolution prohibiting the export and:

(1) In the case of a license for an export to the North Atlantic Treaty Organization, any member country of that Organization, or Australia, Japan or New Zealand, 15 calendar days have elapsed since receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1); or

(2) In the case of a license for an export to any other destination, 30 calendar days have elapsed since receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1).

(b) Persons who intend to export defense articles and defense services pursuant to any exemption in this subchapter under the circumstances described in the first sentence of paragraph (a) of this section must notify the Office of Defense Trade Controls by letter of the intended export and, prior to transmittal to Congress, provide a signed contract and a DSP-83 signed by

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the applicant, the foreign consignee and end-user.

[62 FR 67275, Dec. 24, 1997, as amended at 64 FR 17533, Apr. 12, 1999]

### § 123.16 Exemptions of general applicability.

(a) The following exemptions apply to exports of unclassified defense articles for which no approval is needed from the Office of Defense Trade Controls. These exemptions do not apply to: Proscribed destinations under §126.1 of this subchapter; exports for which Congressional notification is required (see §123.15 of this subchapter); MTCR articles; Significant Military Equipment (SME); and may not be used by persons who are generally ineligible as described in §120.1(c) of this subchapter. All shipments of defense articles, including those to and from Canada, require a Shipper's Export Declaration (SED) or notification letter. If the export of a defense article is exempt from licensing, the SED must cite the exemption. Refer to §123.22 for Shipper's Export Declaration and letter notification requirements.

(b) The following exports are exempt from the licensing requirements of this subchapter.

(1) District Directors of Customs shall permit the export without a license of defense hardware being exported in furtherance of a manufacturing license agreement, technical assistance agreement, distribution agreement or an arrangement for distribution of items identified in Category XIII(b)(1), approved in accordance with Part 124, provided that:

(i) The defense hardware to be exported supports the activity and is identified by item, quantity and value in the agreement or arrangement; and

(ii) Any provisos or limitations placed on the authorized agreement or arrangement are adhered to; and

(iii) The exporter certifies on the Shipper's Export Declaration that the export is exempt from the licensing requirements of this subchapter. This is done by writing, "22 CFR 123.16(b)(1) and the agreement or arrangement (identify/state number) applicable"; and