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(2) Prohibits the disclosure of the data to any other person except subcontractors within the same country; and

(3) Prohibits the acquisition of any rights in the data by any foreign person; and

(4) Provides that any subcontracts between foreign persons in the approved country for manufacture of equipment for delivery pursuant to the contract or purchase order contain all the limitations of this paragraph (c); and

(5) Requires the foreign person, including subcontractors, to destroy or return to the person in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of their terms; and

(6) Requires delivery of the defense articles manufactured abroad only to the person in the United States or to an agency of the U.S. Government; and

(d) The person in the United States provides the Office of Defense Trade Controls with a copy of each contract, purchase order or subcontract for offshore procurement at the time it is accepted. Each such contract, purchase order or subcontract must clearly identify the article to be produced and must identify the license number or exemption under which the technical data was exported; and

(e) Licenses issued pursuant to this section must be renewed upon their expiration if offshore procurement is to be extended beyond the period of validity of the original approved license. In all instances a license for offshore procurement must state as the purpose "Offshore procurement in accordance with the conditions established in the ITAR, including § 124.13. No other use will be made of the technical data." If the technical data involved in an offshore procurement arrangement is otherwise exempt from the licensing requirements of this subchapter (e.g. § 126.4), the DSP-5 referred to in the first sentence of this section is not required. However, the exporter must comply with the other requirements of this section and provide a written certification to the Office of Defense Trade Controls annually of the offshore procurement activity and cite the ex-

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emption under which the technical data was exported. The exemptions under § 125.4 of this subchapter may not be used to establish offshore procurement arrangements.

[58 FR 39305, July 22, 1993, as amended at 64 FR 17534, Apr. 12, 1999]

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

(a) Agreements (e.g., contracts) between U.S. persons and foreign persons for the warehousing and distribution of defense articles must be approved by the Office of Defense Trade Controls before they enter into force. Such agreements will be limited to unclassified defense articles and must contain conditions for special distribution, end-use and reporting. Licenses for exports pursuant to such agreements must be obtained prior to exports of the defense articles unless an exemption under § 123.16(b)(1) of this subchapter is applicable.

(b) *Required Information.* Proposed warehousing and distribution agreements (and amendments thereto) shall be submitted to the Office of Defense Trade Controls for approval. The following information must be included in all such agreements:

(1) A description of the defense articles involved including test and support equipment covered by the U.S. Munitions List. This shall include when applicable the military nomenclature, the Federal stock number, nameplate data, and any control numbers under which the defense articles were developed or procured by the U.S. Government. Only those defense articles specifically listed in the agreement will be eligible for export under the exemption in § 123.16(b)(1) of this subchapter.

(2) A detailed statement of the terms and conditions under which the defense articles will be exported and distributed;

(3) The duration of the proposed agreement;

(4) Specific identification of the country or countries that comprise the distribution territory. Distribution

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must be specifically limited to the governments of such countries or to private entities seeking to procure defense articles pursuant to a contract with a government within the distribution territory or to other eligible entities as specified by the Office of Defense Trade Controls. Consequently, any deviation from this condition must be fully explained and justified. A non-transfer and use certificate (DSP-83) will be required to the same extent required in licensing agreements under §124.9(b).

(c) *Required statements.* The following statements must be included in all warehousing and distribution agreements:

(1) "This agreement shall not enter into force, and may not be amended or extended, without the prior written approval of the Department of State of U.S. Government."

(2) "This agreement is subject to all United States laws and regulations related to exports and to all administrative acts of the United States Government pursuant to such laws and regulations."

(3) "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."

(4) "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign by reason of the U.S. Government's approval of this agreement."

(5) "No export, sale, transfer, or other disposition of the defense articles covered by this agreement is authorized to any country outside the distribution territory without the prior written approval of the Office of Defense Trade Controls of the U.S. Department of State."

(6) "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient shall be provided by (applicant or licensee) to the Depart-

ment of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. (See §126.10(b) of this subchapter.)

(7) (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the articles covered by this agreement are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

(8) "All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."

(9) Additional clause. Unless the articles covered by the agreement are in fact intended to be distributed to private persons or entities (e.g., sporting firearms for commercial resale, cryptographic devices and software for financial and business applications), the following clause must be included in all warehousing and distribution agreements: "Sales or other transfers of the licensed article shall be limited to governments of the countries in the distribution territory and to private entities seeking to procure the licensed article pursuant to a contract with a government within the distribution territory, unless the prior written approval of the U.S. Department of State is obtained."

(d) *Special clauses for agreements relating to significant military equipment.* With respect to agreements for the warehousing and distribution of significant military equipment, the following additional provisions must be included in the agreement:

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(1) A completed nontransfer and use certificate (DSP-83) must be executed by the foreign end-user and submitted to the U.S. Department of State before any transfer may take place.

(2) The prior written approval of the U.S. Department of State must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside the approved distribution territory.

(e) *Transmittal Letters.* Requests for approval of warehousing and distribution agreements with foreign persons must be made by letter. The original letter and seven copies of the letter and seven copies of the proposed agreement shall be submitted to the Office of Defense Trade Controls. The letter shall contain:

(1) A statement giving the applicant's Defense Trade Controls registration number.

(2) A statement identifying the foreign party to the agreement.

(3) A statement identifying the defense articles to be distributed under the agreement.

(4) A statement identifying any U.S. Government contract under which the equipment may have been generated, improved, developed or supplied to the U.S. Government, and whether the equipment was derived from any bid or other proposal to the U.S. Government.

(5) A statement that no classified defense articles or classified technical data are involved.

(6) A statement identifying any patent application which discloses any of the subject matter of the equipment or related technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office.

(f) *Required clauses.* The following statements must be made in the letter of transmittal:

(1) "If the agreement is approved by the Department of State, such approval will not be construed by (applicant) as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will (the applicant) construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."

(2) "The (applicant) will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(3) "(Applicant) will furnish the Department of State with one copy of the signed agreement (or amendment thereto) within 30 days from the date that the agreement is concluded, and will inform the Department of its termination not less than 30 days prior to expiration. If a decision is made not to conclude the proposed agreement, (applicant) will so inform the Department within 60 days."

§ 124.15 Special Export Controls for Defense Articles and Defense Services Controlled under Category XV: Space Systems and Space Launches.

(a) The export of any satellite or related item (see § 121.1, Category XV(a) and (e)) or any defense service controlled by this subchapter associated with the launch in, or by nationals of, a country that is not a member of the North Atlantic Treaty Organization or a major non-NATO ally of the United States always requires special exports controls, in addition to other export controls required by this subchapter, as follows:

(1) All licenses and other requests for approval require a technology transfer control plan (TTCP) approved by the Department of Defense and an encryption technology control plan approved by the National Security Agency. Drafts reflecting advance discussions with both agencies must accompany submission of the license application or proposed technical assistance agreement, and the letter of transmittal required in § 124.12 must identify the U.S. Government officials familiar with the preparation of the draft TTCPs. The TTCP must require any U.S. person or entity involved in the export to notify the Department of Defense in advance of all meetings and interactions with any foreign person or entity that is a party to the export and require such U.S. person or entity to certify that it has complied with this notification requirement within 30 days after launch.

(2) The U.S. person must make arrangements with the Department of Defense for monitoring. The costs of