

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.

[65 FR 45285, July 21, 2000, as amended at 66 FR 35900, July 10, 2001]

## PART 127—VIOLATIONS AND PENALTIES

Sec.

- 127.1 Violations.
- 127.2 Misrepresentation and omission of facts.
- 127.3 Penalties for violations.
- 127.4 Authority of U.S. Customs Service officers.
- 127.5 Authority of the Defense Investigative Service.
- 126.6 Seizure and forfeiture in attempts at illegal exports.
- 127.7 Debarment.
- 127.8 Interim suspension.
- 127.9 Applicability of orders.

127.10 Civil penalty.

127.11 Past violations.

127.12 Voluntary disclosures.

AUTHORITY: Secs. 2, 38, and 42, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 401; 22 U.S.C. 2658; 22 U.S.C. 2779a; 22 U.S.C. 2780.

SOURCE: 58 FR 39316, July 22, 1993, unless otherwise noted.

### § 127.1 Violations.

(a) It is unlawful:

(1) To export or attempt to export from the United States any defense article or technical data or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from the Office of Defense Trade Controls;

(2) To import or attempt to import any defense article whenever a license is required by this subchapter without first obtaining the required license or written approval from the Office of Defense Trade Controls;

(3) To conspire to export, import, re-export or cause to be exported, imported or reexported, any defense article or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from the Office of Defense Trade Controls; or

(4) To violate any of the terms or conditions of licenses or approvals granted pursuant to this subchapter.

(b) Any person who is granted a license or other approval under this subchapter is responsible for the acts of employees, agents, and all authorized persons to whom possession of the licensed defense article or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article or technical data abroad. All persons abroad subject to U.S. jurisdiction who obtain temporary custody of a defense article exported from the United States or produced under an agreement described in part 124 of this subchapter, and irrespective of the number of intermediate transfers, are bound by the regulations of this subchapter in the

## Department of State

## § 127.4

same manner and to the same extent as the original owner or transferer.

(c) A person with knowledge that another person is then ineligible pursuant to §§120.1(c) of this subchapter or 126.7 of this chapter, is then subject to an order of debarment, or interim suspension, may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to, and written authorization from, the Office of Defense Trade Controls:

(1) Apply for, obtain, or use any export control document as defined in §127.2(b) for such debarred, suspended, or ineligible person; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any transaction which may involve any defense article or the furnishing of any defense service for which a license or approval is required by this subchapter for export, where such debarred, suspended, or ineligible person may obtain any benefit therefrom or have any direct or indirect interest therein.

(d) No person may willfully cause, or aid, abet, counsel, demand, induce, procure or permit the commission of any act prohibited by, or the omission of any act required by 22 U.S.C. 2778, 22 U.S.C. 2779, or any regulation, license, approval, or order issued thereunder.

### § 127.2 Misrepresentation and omission of facts.

(a) It is unlawful to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or the furnishing of any defense service for which a license or approval is required by this subchapter. Any false statement, misrepresentation, or omission of material fact in an export or temporary import control document will be considered as made in a matter within the jurisdiction of a department or agency of the United States for the purposes of 18 U.S.C. 1001, 22 U.S.C. 2778 and 22 U.S.C. 2779.

(b) For the purpose of this section, *export or temporary import control documents* include the following:

(1) An application for a permanent export or a temporary import license and supporting documents.

(2) Shipper's Export Declaration.

(3) Invoice.

(4) Declaration of destination.

(5) Delivery verification.

(6) Application for temporary export.

(7) Application for registration.

(8) Purchase order.

(9) Foreign import certificate.

(10) Bill-of-lading.

(11) Airway bill.

(12) Nontransfer and use certificate.

(13) Any other document used in the regulation or control of a defense article, defense service or technical data for which a license or approval is required by this subchapter.

### § 127.3 Penalties for violations.

Any person who willfully:

(a) Violates any provision of section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779), or any undertaking specifically required by part 124 of this subchapter; or

(b) In a registration, license application or report required by section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2278 and 2779) or by any rule or regulation issued under either section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, be subject to a fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).

### § 127.4 Authority of U.S. Customs Service officers.

(a) U.S. Customs Service officers may take appropriate action to ensure observance of this subchapter as to the export or the attempted export of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft. This applies whether the export is authorized by license or by written approval issued under this subchapter.

(b) U.S. Customs Service officers have the authority to investigate, detain or seize any export or attempted export of defense articles or technical data contrary to this subchapter.