

country from which it was shipped or for shipment to another foreign destination. Permanent imports are regulated by the Department of the Treasury (see 27 CFR parts 47, 178 and 179).

§ 120.19 Reexport or retransfer.

Reexport or *retransfer* means the transfer of defense articles or defense services to an end use, end user or destination not previously authorized.

§ 120.20 License.

License means a document bearing the word license issued by the Director, Office of Defense Trade Controls or his authorized designee which permits the export or temporary import of a specific defense article or defense service controlled by this subchapter.

§ 120.21 Manufacturing license agreement.

An agreement (e.g., contract) whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates:

- (a) The export of technical data (as defined in § 120.10) or defense articles or the performance of a defense service; or
- (b) The use by the foreign person of technical data or defense articles previously exported by the U.S. person. (See part 124 of this subchapter).

§ 120.22 Technical assistance agreement.

An agreement (e.g., contract) for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included under this section, provided production rights or manufacturing know-how are not conveyed. Should such rights be transferred, § 120.21 is applicable. (See part 124 of this subchapter).

§ 120.23 Distribution agreement.

An agreement (e.g., a contract) to establish a warehouse or distribution point abroad for defense articles exported from the United States for subsequent distribution to entities in an approved sales territory (see part 124 of this subchapter).

§ 120.24 Port Directors.

Port Directors of U.S. Customs and Border Protection means the U.S. Customs and Border Protection Port Directors at the U.S. Customs and Border Protection Ports of Entry (other than the port of New York, New York where their title is the Area Directors).

[70 FR 50959, Aug. 29, 2005]

§ 120.25 Empowered Official.

(a) *Empowered Official* means a U.S. person who:

- (1) Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and
 - (2) Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and
 - (3) Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and
 - (4) Has the independent authority to:
 - (i) Enquire into any aspect of a proposed export or temporary import by the applicant, and
 - (ii) Verify the legality of the transaction and the accuracy of the information to be submitted; and
 - (iii) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.
- (b) [Reserved]

§ 120.26 Presiding Official.

Presiding Official means a person authorized by the U.S. Government to conduct hearings in administrative proceedings.

§ 120.27 U.S. criminal statutes.

- (a) For purposes of this subchapter, the phrase *U.S. criminal statutes* means:
 - (1) Section 38 of the Arms Export Control Act (22 U.S.C. 2778);
 - (2) Section 11 of the Export Administration Act of 1979 (50 U.S.C. app. 2410);

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(3) Sections 793, 794, or 798 of title 18, United States Code (relating to espionage involving defense or classified information);

(4) Section 16 of the Trading with the Enemy Act (50 U.S.C. app. 16);

(5) Section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. 1705);

(6) Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd-2);

(7) Chapter 105 of title 18, United States Code (relating to sabotage);

(8) Section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(b));

(9) Sections 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276);

(10) Section 601 of the National Security Act of 1947 (relating to intelligence identities protection; 50 U.S.C. 421);

(11) Section 603(b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5113(b) and (c)); and

(12) Section 371 of title 18, United States Code (when it involves conspiracy to violate any of the above statutes).

(b) [Reserved]

§ 120.28 Listing of forms referred to in this subchapter.

The forms referred to in this subchapter are available from the following government agencies:

(a) Department of State, Bureau of Politico-Military Affairs, Office of Defense Trade Controls, Washington, DC. 20522-0602.

(1) Application/License for permanent export of unclassified defense articles and related technical data (Form DSP-5).

(2) Application for registration (Form DSP-9).

(3) Application/License for temporary import of unclassified defense articles (Form DSP-61).

(4) Application/License for temporary export of unclassified defense articles (Form DSP-73).

(5) Non-transfer and use certificate (Form DSP-83).

(6) Application/License for permanent/temporary export or temporary import of classified defense articles and related classified technical data (Form DSP-85).

(7) Authority to Export Defense Articles and Defense Services sold under the Foreign Military Sales program (Form DSP-94).

(b) Department of Commerce, Bureau of Industry and Security:

(1) International Import Certificate (Form BIS-645P/ATF-4522/DSP-53).

(2) Shipper's Export Declaration (Form No. 7525-V).

(3) Department of Defense, Defense Security Assistance Agency: Letter of Offer and Acceptance (DD Form 1513).

[58 FR 39283, July 22, 1993, as amended at 68 FR 61100, Oct. 27, 2003]

§ 120.29 Missile Technology Control Regime.

(a) For purposes of this subchapter, *Missile Technology Control Regime (MTCR)* means the policy statement between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

(b) The term *MTCR Annex* means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

(c) *List of all items on the MTCR Annex*. Section 71(a) of the Arms Export Control Act (22 U.S.C. § 2797) refers to the establishment as part of the U.S. Munitions List of a list of all items on the MTCR Annex, the export of which is not controlled under section 6(l) of the Export Administration Act of 1979 (50 U.S.C. app. 2405(l)), as amended. In accordance with this provision, the list of MTCR Annex items shall constitute all items on the U.S. Munitions List in § 121.16 of this subchapter.

§ 120.30 The Automated Export System (AES).

The Automated Export System (AES) is the Department of Commerce, Bureau of Census, electronic filing of export information. The AES shall serve as the primary system for collection of export data for the Department of