

109175

BY THE COMPTROLLER GENERAL

# Report To The Congress

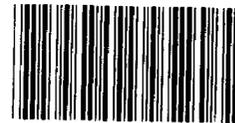
OF THE UNITED STATES

99#

## U.S. Munitions Export Controls Need Improvement

The U.S. munitions export control system is seriously weakened by lack of an export inspection program which is essential to assure export compliance with regulations and licenses.

This report recommends ways to improve munitions export controls and provide assurance that such exports conform to law and authorized munitions export licenses.



109175

005051

ID-78-62  
APRIL 25, 1979





COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-172255

To the President of the Senate and the  
Speaker of the House of Representatives

This report identifies weaknesses in current munitions export controls and recommends ways to improve the controls and provide reasonable assurance that such exports are in conformance with law and with authorized munitions export licenses.

Copies of this report are being sent to the heads of executive agencies which participate in munitions export controls and to the Director, Office of Management and Budget.

*James R. Stacks*  
Comptroller General  
of the United States



D I G E S T

The U.S. munitions export control system is not working as it should, and cannot be depended upon to ensure that munitions are not exported without a license or that shipments made under license conform to the license terms. Controls over commercial munitions exports are less effective because munitions export shipments are not inspected for compliance with the law, regulations, or export license terms.

( Responsibility for export controls is divided between the Commerce Department, the State Department's Office of Munitions Control, (omc) and the U.S. Customs Service. Coordination between the three agencies is not sufficient to assure compliance by munitions exporters. As a result of a 1972 decision by the Department of Commerce to withdraw its export commodities from the export inspection program then operated by the Customs Service, Customs stopped inspecting export shipments of all types. Commerce now spot checks exports of commodities under its jurisdiction, but is not responsible for munitions exports and does not look for munitions violations. The State Department, which has primary responsibility for munitions export controls, has not taken steps since 1972 to compensate for the lack of inspections.

The Office of Munitions Control is aware of the need to balance responsiveness to both industry and government and appears to be doing an effective job of reviewing license applications. Some improvements could be made, however, including increasing the use of

--U.S. Embassies in checking the validity of information concerning end use of items proposed to be exported, and

ID-78-62

--automation in monitoring the progress of applications through the review process and to further reduce response time to license applications.

{ Controls over munitions exports are further weakened by errors the Customs Service makes in controlling export licenses and validating shipper's export declarations.) These errors reduce the effectiveness of shipping document control as a means of preventing and detecting improper exports, and cause inaccuracies in management information data of the Office of Munitions Control.

{ The errors by Customs and deficiencies in *OMC* Office of Munitions Control data processing procedures have made the Office's reports to the Congress on munitions exports inaccurate. } GAO estimated that the Office's data base from which the reports are made contains discrepancies in export values for about 50 percent of the approximately 40,000 licenses that the Office approved during fiscal years 1976 and 1977.

The possible causes of these discrepancies are numerous, but the basic reason they remain unresolved is the Office's almost total lack of quality control procedures in its data processing. It does not follow up on even the most obvious discrepancies routinely revealed by its computer program.

#### RECOMMENDATIONS

To strengthen compliance assurance and to avoid potentially duplicative programs:

--The Secretary of State should arrange with the Secretary of Commerce, and the Director, Office of Management and Budget, to incorporate physical inspections for munitions export control into the Commerce Department's own export compliance program with appropriate budget and personnel increases for Commerce, thus having a single manager for all nonagricultural export inspections.  
(See p. 36.)

- omc*
- The Director of the Office of Munitions Control should report on deficiencies and violations uncovered in these inspections in the Munitions Control Newsletter as a means of both educating exporters and enlarging the deterrent value of the inspection program through increased visibility. (See p. 37.)
  - The Secretary of State should, with the Commissioner of Customs and the Secretary of Commerce, establish procedures to make sure that (1) Customs and Commerce personnel inform the Office of all noted violations of munitions export regulations and (2) proper penalties are levied in all such cases. (See p. 38.)

Further, the Secretary of State should:

- Consider eliminating the current system of requiring validation of shipper's export declarations and license control by Customs. The many errors being made by Customs may be negating any control benefits.
- Use U.S. Embassies more frequently in checking on proposed end use of items on license applications, *and*
- Make greater use of automated management data in controlling the license application review process. (

The State Department generally agreed with these recommendations. While State officials did not agree that eliminating the shipper's export declaration validation procedure was a good idea, they did agree to analyze the situation further before deciding between eliminating or improving the existing system. (See p. 41.)

Commerce objected to assuming munition export inspections, primarily because of insufficient funds and trained personnel for the added responsibility. Customs agreed that munitions export control is less than satisfactory because of inadequate manpower and a lack of

guidelines, but argued that establishing a separate inspection force in Commerce would be counterproductive and not cost effective. Customs said the most efficient solution would be to provide Customs with sufficient staffing to perform the inspections. (See p. 42.)

GAO recognizes that whichever agency does the job will require adequate numbers of properly trained and supervised personnel and sufficient funds. GAO believes that either system--a strengthened Commerce compliance system, or beefing up Customs to handle export inspections--properly designed, implemented, and managed, could do the job, but it would be more efficient to have only one agency inspecting nonagricultural exports.

C o n t e n t s

		<u>Page</u>
DIGEST		i
CHAPTER		
1	THE U.S. MUNITIONS EXPORT CONTROL SYSTEM	1
	The basic system	1
	The licensing process	1
	Document control	2
	Enforcement	3
	Reporting and oversight	4
	Scope of review	5
2	LACK OF PHYSICAL INSPECTIONS WEAKENS MUNITIONS CONTROLS	6
	Munitions exports not inspected	6
	Export inspection responsibility divided	7
	Test inspections made for GAO	9
	Other means of enforcement	11
	Conclusion	14
3	THE LICENSE APPROVAL PROCESS NEEDS IMPROVEMENT	15
	OMC's role in the approval process	15
	OMC's workload	16
	Input from other agencies	17
	Timeliness of application review	19
	Preshipment and postshipment end use checks	20
4	DOCUMENT CONTROL ERRORS FURTHER WEAKEN MUNITIONS CONTROLS	22
	Errors by the Customs Service	22
	Errors by licensees	23
	Customs minimizes export control	23
	Customs export control staff needs guidance	25
	Violators of regulations not penalized	25
5	OMC'S DATA PROCESSING NEEDS IMPROVEMENT	27
	Data base accuracy is questionable	27
	Obvious errors	28
	Hidden errors	28
	Sampling conclusion	28

## CHAPTER

Page

	OMC's reports to the Congress have been inaccurate	29
	Untimely reporting	29
	Causes of errors	30
	Expired licenses not accounted for	30
	Returned licenses not checked against data base	31
	Known discrepancies not corrected	32
	Inadequate SED processing	33
	Processed data not verified	34
	OMC management information system is inadequate	34
6	CONCLUSIONS AND RECOMMENDATIONS	36
	Recommendations	36
	To strengthen compliance assurance and avoid poten- tially duplicative programs	36
	To improve export document control	38
	To improve the license approval process and OMC's information system	39
	To improve reporting to the Congress	40
	Follow up	40
	Agency comments	41
APPENDIX		
I	Specific examples of errors in document processing and control	49
II	U.S. commercial arms exports	59
III	Comparative levels--FMS sales, deliveries, and commercial exports	60
IV	International traffic in arms regulations-- The U.S. Munitions List	61
V	Sample registration application	108
VI	Sample shipper's export license	109
VII	Sample shipper's export declaration	111

ABBREVIATIONS

GAO	General Accounting Office
ITAR	International Traffic in Arms Regulations
NRC	Nuclear Regulatory Commission
OMC	Office of Munitions Control
SED	Shipper's Export Declaration



## CHAPTER 1

### THE U.S. MUNITIONS EXPORT CONTROL SYSTEM

Responsibility for administering export controls over items on the U.S. Munitions List, as set forth in section 38 of the Arms Export Control Act, as amended (22 U.S.C. 2778), was delegated by the President to the Secretary of State, while responsibility for export controls over most other types of goods, as described in the Export Administration Act and other related laws, was delegated to the Secretary of Commerce. The most notable exception to this basic State/Commerce division is the role of the Nuclear Regulatory Commission (NRC) (formerly part of the Atomic Energy Commission) in authorizing and licensing exports of nuclear materials. (See GAO report ID-76-60, Sept. 14, 1976).

#### THE BASIC SYSTEM

The Arms Export Control Act authorizes the President to regulate the import and export of "defense articles and defense services" and states that the items so designated by the President shall constitute the U.S. Munitions List. Except as specifically provided in regulations, the act prohibits private export of these items except under specific license from the Office of Munitions Control (OMC), Department of State, and requires persons who manufacture, import or export these items to register with the agency charged with administering the act. For manufacturers and exporters, that agency is the Office of Munitions Control. Importers must register with the Treasury Department.

The Munitions List is published in the International Traffic in Arms Regulations (ITAR) (22 C.F.R. pts. 121-130), which also prescribes the requirements concerning registration and issuance of export licenses by the Office of Munitions Control.

#### The licensing process

Would-be exporters are required to submit their application for an export license to OMC. OMC seeks opinions and recommendations, where appropriate, from the Department of Defense, the National Aeronautics and Space Administration, the Energy Research and Development Administration, and the Federal Aviation Administration; from the Arms Control and Disarmament Agency if the application falls within a category in which it has expressed an interest; and from the geographic bureaus, the Assistant Secretary for Human Rights and Humanitarian Affairs, the Security Assistance and Sales

Office, and the Bureau of Economic and Business Affairs within the Department of State for guidance in deciding whether to approve or disapprove applications. If OMC approves the request, it mails the license to the applicant. If OMC disapproves the request, it mails the canceled application with a letter explaining briefly the reasons for denial to the applicant.

The Department of Commerce's Office of Export Administration administers the export controls of most commercially available commodities and technical data not on the Munitions List by a licensing system similar to OMC's. Commerce issues two general kinds of export licenses: a "general license" and a "validated license." A general license is a broad authorization which permits certain exports under specified conditions. An exporter shipping under a general license does not need to file an application for a license, and consequently no license document is issued by Commerce. A validated license consists of a formal document issued to exporters by Commerce based on their applications. It authorizes exports of commodities or technical data within the specific limitations of the license document, as does a license issued by OMC.

#### Document control

Once OMC has granted an exporter a license to export a specific item on the Munitions List, the second major phase of the export control process--that of assuring that the exporter complies with the terms of the license and all pertinent laws--begins. Each export license is very specific. It names and describes the article or information authorized, specific quantity authorized, value, exporter, ultimate user or recipient, any intermediary consignees, and the probable port of exit from the United States. The following deviations from the license terms are permitted: (1) the amount exported may be accomplished in any number of incremental shipments until the total amount authorized is reached, (2) the value exported may exceed the license amount by 10 percent, and (3) other ports of exit may be used but OMC and the District Director of Customs at the new port must be notified of a port change before the shipment is made.

Section 123.53 of the ITAR requires the exporter to file the license with the District Director of Customs at the port to be used. Before the exporter actually makes shipment, he must file a Shipper's Export Declaration (SED) (Commerce Form 7525-V) with the District Director and have

it validated (compared to the license by Customs for conformance with the license terms and stamped or marked by Customs as being approved). Customs gives a copy of the SED to the exporter or agent for delivery to the carrier of the exported goods. After export, the carrier returns the SED to Customs which forwards a copy to the Bureau of Census for entry in the national trade accounts. Customs sends another copy to OMC and retains a copy for its own records. The ITAR also requires Customs to enter the shipment quantity and value from each SED on the back of the license and to return each license to OMC upon its expiration or completion of shipments, whichever comes first. Licenses are valid for one year from date of issuance.

Since the carrier (airline, steamship line, or whatever) returns its copy of the validated SED to Customs with a copy of its cargo manifest for that particular flight or sailing, Customs clerks can examine the manifests and SEDs for conformance to law and regulations of various types.

Similar procedures are prescribed for postmasters for items sent through the mail under export license.

All unused licenses are to be returned to OMC by their recipients upon expiration.

### Enforcement

Part 127.05(a) of the ITAR states that "District Directors of Customs are authorized to take appropriate action to insure observance of this subchapter as to the exportation, or the attempted exportation, of arms, ammunition, and implements of war, and technical data relating thereto, whether authorized by license or written approval issued under this subchapter, including but not limited to inspection of loading or unloading of carriers."

Part 127.01 of the ITAR states that "It is unlawful to export or attempt to export from the United States any article or technical data for which a license or approval is required by this subchapter without first obtaining the required license or written approval from the Department of State." Part 127.02(a) provides that "It is unlawful to use any export or intransit control document containing a false statement or misrepresenting or omitting a material

fact for the purpose of exporting any article or technical data for which license approval is required \* \* \* ." 1/

Section 38 of the Arms Export Control Act, as amended, provides that any person who willfully violates any provision of the section or any regulation issued under the section shall, upon conviction, be subject to a fine of not more than \$100,000 or imprisonment of not more than 2 years, or both. Any vessel, vehicle, or aircraft involved in an attempted illegal export of a Munitions List article is subject to seizure, forfeiture, and disposition as provided in section 401 of title 22 of the United States Code.

#### REPORTING AND OVERSIGHT

Over the years, the Congress has required a number of reports from the executive branch in order to acquire greater oversight of arms export volume and activities. Most of these reports deal primarily with Foreign Military Sales, Military Assistance, and other forms of government-to-government transfers, but many include requirements for reporting private arms exports.

Section 657 of the Foreign Assistance Act of 1961, as amended, requires an annual report (the 657 Report) to the Congress from the President not later than March 31 of each year for the prior fiscal year on foreign assistance and military sales and assistance, including the aggregate dollar value and quantity of defense articles and services exported to each foreign country and international organization, by category, and including commercial sales licensed under the Arms Export Control Act.

Section 36(a) of the Arms Export Control Act, as amended, requires an unclassified report from the President to the Speaker of the House of Representatives and to the Chairman of the Senate Committee on Foreign Relations, not more than 30 days after the end of each quarter, listing for each foreign country and international organization

---

1/According to Section 127.02(b), ITAR, export control documents include applications for export or intransit license and supporting documents; shipper's export declarations; invoices; declarations of destination; delivery verifications; applications for temporary export license and registration; purchase orders; foreign import certificates; bills of lading; airway bills; consignee-purchaser transaction statements; Nth country control statements.

(1) foreign military sales letters of offer for any major defense equipment for \$1 million or more, (2) all letters of offer accepted during the fiscal year in which the report is submitted, together with the total value of all defense articles and services sold during that fiscal year, (3) the cumulative dollar amounts, by foreign country and international organization, of sales credit agreements and guaranty agreements, and (4) all licenses and approvals for export during the fiscal year of commercially sold major defense equipment, by category, sold for \$1 million or more, together with the total value of all defense articles and defense services so licensed.

Section 36(c) of the Arms Export Control Act, as amended, requires that, when an export license application is received for major defense equipment sold under contract of \$7 million or more or for defense articles or services sold under contract for \$25 million or more, the President shall send to the Speaker of the House of Representatives and to the Chairman of the Senate Committee on Foreign Relations, not less than 30 days before issuing the license, an unclassified numbered certification specifying the foreign country or international organization to which export will be made and the dollar amount and description of the items.

#### SCOPE OF REVIEW

The purpose of this review was to (1) evaluate the effectiveness of U.S. Government controls over commercial munitions exports and (2) test the accuracy of such export data being reported to the Congress.

We examined Department of State and Department of Defense procedures in reviewing applications to export Munitions List items, tested the accuracy of the State Department's data base from which reports to the Congress are drawn, and reviewed export control processing procedures of the U.S. Customs Service at both seaports and airports in Boston, New York, Los Angeles, and San Francisco.

We also used information concerning Department of Commerce procedures and controls developed by a parallel GAO review of Commerce export controls.

We did not examine munitions export controls pertaining to coproduction agreements or manufacturing licenses for foreign production of U.S. items.

## CHAPTER 2

### LACK OF PHYSICAL INSPECTIONS

#### WEAKENS MUNITIONS CONTROLS

Controls over commercial munitions exports are weakened because export shipments are not inspected. The Government, therefore, does not have adequate assurance of exporter compliance with the law, regulations, or export license terms.

Responsibility for export controls over industrial items and data is divided between the Commerce and State Departments, with certain aspects of enforcement and compliance assurance being delegated to the U.S. Customs Service. We believe there is insufficient coordination between these three agencies to assure compliance by munitions exporters.

Although Commerce has its own compliance unit to spot check export shipments for exporter compliance with Commerce regulations and licenses, it does not examine shipments moving under a State Department license, nor does it check for shipments that do not have State Department licenses but should have. State has continued to rely on the Customs Service to inspect export shipments under State's licenses. The Customs Service, however, pleading a shortage of funds and resources, does not make these inspections.

To assess the difficulties as well as benefits of a physical inspection program, we asked Customs to make some inspections of both munitions and nonmunitions shipments in seaports and airports in four major U.S. cities. These inspections revealed that unlicensed shipments were being attempted, and OMC regulations for handling export documents were not consistently followed.

Making inspections on a limited and surprise basis would have two primary benefits. A small but well-publicized inspection program could serve as a deterrent to deliberate violation of munitions export laws. In addition, it would reveal unintentional violations caused by misunderstanding or ignorance of the regulations.

#### MUNITIONS EXPORTS NOT INSPECTED

Excluding agricultural commodities, at least two U.S. agencies have authority to inspect export shipments for export declaration accuracy and conformance to export license requirements--the U.S. Customs Service, which has

been delegated authority for inspecting items being shipped under State Department licenses (munitions) and Nuclear Regulatory Commission licenses (nuclear materials), and the Department of Commerce, which has jurisdiction over most other nonagricultural exports, including controlled items of strategic importance to U.S. national security.

At the present time, neither of these agencies inspects munitions shipments for compliance with export licenses.

According to Customs officials at all levels, the Customs Service makes virtually no inspections of export cargo of any kind because of insufficient funds and staff to provide adequate coverage of Customs' primary responsibility--import control. To perform export inspections, resources would have to be diverted from import control, and Customs officials do not feel they can afford to do that.

The Commerce Department, which does make limited inspections of export shipments of commodities under its jurisdiction, is not responsible for munitions control and does not instruct its inspectors to look for illegal munitions shipments. Thus, under present export control practices, requests for a license to export Munitions List items are carefully scrutinized and evaluated, but actual shipments of these items are rarely examined. In other words, legal exportation of munitions by obtaining a license is difficult, but illegal exportation without a license is relatively easy.

#### EXPORT INSPECTION RESPONSIBILITY DIVIDED

Until July 1972, the Customs Service inspected exports of all types of nonagricultural commodities on a cost reimbursable basis for the agency with regulatory responsibility. Following receipt of a 1971 consultant's report, which cited many deficiencies in Customs' export control work, the Commerce Department overhauled its compliance assurance program and assumed inspection responsibility from Customs for all items under its jurisdiction. Prior to July 1972, Commerce followed essentially the same procedures still used by OMC. An export license was issued to the exporter, who filed it with Customs and then presented a Shipper's Export Declaration for validation by Customs for each shipment. Customs routinely inspected selected shipments of all kinds for compliance with the export declaration and with the export license terms and related laws and regulations.

Under the new Commerce system, the exporter retains the license, lists each shipment on the back of the license, and returns the completed or expired licenses to Commerce. The Customs validation procedure was dropped, as was the requirement for Customs to make compliance inspections of exports under Commerce Department licenses. The Facilitations Branch of Commerce's Compliance Division assists exporters in applying export regulations, makes random inspections of cargo at the point of shipment, and makes postshipment reviews of SED's to detect possible violations. The Branch's staff is stationed in Washington, D.C., except for a small group at John Fitzgerald Kennedy Airport (JFK) in New York.

The Branch staff at JFK performs cargo inspections primarily at JFK but occasionally visits other ports, principally Boston and Philadelphia. The Washington staff covers the rest of the United States on a spot check basis. In addition, Commerce reimburses Customs for two inspectors assigned to work with the Commerce staff at JFK.

Instructions issued by the Customs Service (then the Bureau of Customs) to its offices in 1972 specified that, although Customs would no longer inspect export shipments under Commerce Department licenses, it would continue to be responsible for inspecting exports under State Department and Atomic Energy Commission licenses. Customs officials, however, told us very specifically that they do not make these inspections. Even if they did, they would be limited to examining shipments that were specifically declared by the exporter as being made under either a State Department or Atomic Energy Commission (now Nuclear Regulatory Commission) license. Under current arrangements, Customs is not responsible for and does not inspect exports under Commerce licenses. Therefore, even if Customs inspected shipments declared under a State or NRC license, it would not detect munitions or nuclear shipments fraudulently declared to be a type of commodity permitted to move under a Commerce general license. To detect such shipments, Customs would have to spot inspect Commerce-licensed shipments as well, thus duplicating the coverage of the Commerce Department's Compliance Unit.

Also, many Customs Inspectors that we spoke with were not familiar with the Munitions List and were not technically qualified to inspect munitions exports. Most inspectors we met thought of munitions as guns and ammunition. (See app. IV on p. 61 for the Munitions List.) Commerce inspectors told us that they do not look for illegal munitions

shipments during their inspections, nor are they qualified for munitions control work. The job description of a Commerce inspector requires him to be familiar with the provisions of the Export Administration Act but properly makes no mention of the Munitions List or the Arms Export Control Act, as these are not the responsibility of the Commerce Department.

Thus, Customs' dropping its export inspections following the division of inspection responsibility between Customs and Commerce has resulted in a total absence of inspections of export shipments to assure compliance with munitions control requirements. Furthermore, during the 7 years since this change, the State Department has not made other arrangements for inspections.

#### TEST INSPECTIONS MADE FOR GAO

As a test of U.S. firms' compliance with munitions control regulations, we asked the Customs Service to physically inspect with us selected munitions and general cargo export shipments in New York, Boston, Los Angeles, and San Francisco. Customs and GAO staff inspected 74 munitions and 117 general cargo shipments.

The almost 200 inspections performed impressed upon us both the difficulty and necessity of an effective inspection program. We found numerous violations of munitions export regulations, which indicates, at a minimum, that not all firms and/or agents are familiar with which items require licenses and points up deficiencies in their handling of licenses and SEDs.

We believe that a limited inspection program conducted on a surprise basis would identify problems in the control system as well as put firms on notice as to the seriousness of the requirement that only licensed items may be exported.

A major difficulty encountered in both munitions and general inspections was actually recognizing the item being inspected. It takes no special expertise to confirm that a crate contains 60 .38 caliber revolvers or 10 electric eggbeaters. It is quite another matter, however, to recognize an "image dissector," an "AN/ARC-114A test set," a "VBX-7504 EA BWO," an "escapement louver assembly," or a "headup display subsystem." Given the somewhat cryptic descriptions of exports on SEDs, the only clue to Munitions List items may be the reference to the State Department license number. For example, in Los Angeles a SED for an "auxiliary storage

unit" being shipped by a U.S. firm to a European affiliate stated that it was a "replacement unit for equipment shipped under State Department license." After both the firm and OMC were contacted, we learned that the replacement "auxiliary storage unit" did indeed require a new license (the previous license had expired) and that the firm would have to apply for one.

If there is no license number on the SED, an inspector must make a difficult and potentially time-consuming series of phone calls. For example, at an air cargo terminal in Los Angeles, a SED for a "flexible pipe joint" being shipped to a foreign government's military arsenal did not note a State Department license. The U.S. firm, when contacted, told us it was a replacement part for a gunpowder plant originally shipped under a license. Several phone calls and days later, the firm notified the State Department that the item was a "standard piping unit not uniquely built for a powder plant and therefore is not a munitions list item."

Another obstacle to inspections is the degree of containerization of export cargo, especially at seaports. Frequently, munitions items we had selected to inspect had already been packed with other merchandise into large sealed containers which shippers were naturally reluctant to open. Even if items were not containerized, the size of the package or method of packing had to be considered in selecting items to inspect; a very large wooden crate would not only be difficult to open but also require more effort to repack. Frequently, a cardboard box would be opened only to reveal items packed in more cardboard boxes; one shipment of aircraft spare parts was in 13 large cardboard boxes, each filled with a number of individually packaged items.

Despite these difficulties, we believe that an inspection program is necessary to monitor compliance with munitions control regulations.

For example, our limited inspections revealed three shipments in Los Angeles being attempted by firms without the required license. Several unvalidated SEDs, which might or might not have been discovered during Customs manifest review, were also uncovered. In San Francisco we found one shipment being attempted with no notation on the SED of the valid State Department license and another shipment being made without Customs validating the SED. These examples demonstrate that compliance cannot be taken for granted. We believe that even a minimal inspection program would reveal how well firms understand and are complying with munitions export regulations.

## OTHER MEANS OF ENFORCEMENT

The Customs Service refers to cases with violations of munitions control regulations as "neutrality" cases because of various neutrality laws concerned with controlling commercial and other activities of private citizens which could jeopardize the neutrality of the United States in conflicts between other countries. According to the Customs Technical Investigations Manual:

"Strictly speaking our 'neutrality' laws embrace those outlined in 18 U.S.C. 951/969, and 22 U.S.C. 401/464, including all regulations pertaining thereto. Laws of this nature which were first enacted in 1793 have as their basic purpose the control of activities that affect the neutrality and foreign policy of the United States.

"In actual practice other statutes properly called 'munitions controls' (22 U.S.C. 1934) have proved more effective for neutrality enforcement purposes."

During fiscal year 1977, Customs' Office of Investigations opened 1,676 cases to investigate suspected neutrality violations and closed 1,806 cases, which constituted about 6 percent of Customs' total investigative caseload for the year. At the end of fiscal year 1977, Customs had 943 open and pending neutrality cases and had made 146 (11.2 percent of the total) arrests for neutrality violations, and had seized merchandise valued at nearly \$3 million.

To determine how Customs obtains information to open investigations of suspected violations without an export inspection program, we asked the Investigation Division for information on all neutrality cases opened and/or closed during fiscal year 1977 in Boston, New York, Los Angeles, and San Francisco. The sources of information from which these cases were initiated are shown below.

Information Source	Number of cases			
	Boston	New York	Los Angeles	San Francisco
Customs:				
Inspectors (note a)	5	7	21	6
Office of Investigations	34	46	205	100
Other Customs	1	4	22	10
Bureau of Alcohol, Tobacco and Firearms (Treasury)	6	3	44	16
FBI	1	8	18	5
Drug Enforcement Administration	-	-	10	-
Border Patrol	1	-	6	-
Commerce Department	-	-	-	-
Other Federal agencies	6	4	7	6
State or local authorities	2	3	27	8

a/Inspectors do not routinely inspect export shipments but occasionally discover suspicious looking shipments through casual observations while moving about the ports.

It should be noted that, although Customs has no routine export inspection program, 39 cases in this sample were initiated through information from Customs inspectors. On the other hand, no cases were initiated through information from the Commerce Department, which does have an export inspection program. This appears to confirm that the Commerce Department is not primarily concerned with munitions exports in its compliance control program. Commerce Department officials told us, however, that, if their inspectors happened to find an obvious violation of munitions control laws, they would refer it to Customs and have done so.

The significance of our four-region sample to Customs as a whole is shown in the following table.

Customs' Neutrality Investigations

Comparison of Four-Region Sample to Customs Total

Fiscal Year 1977

	Number of cases opened and/or <u>closed</u>	<u>Arrests</u>	<u>Seizures</u>	Value of <u>Seizures</u> (000 omitted)
Boston	49	-	5	\$187
New York	55	2	2	67
Los Angeles	269	31	85	43
San Francisco	<u>115</u>	<u>1</u>	<u>8</u>	<u>12</u>
Sample total				
Number	<u>488</u>	<u>34</u>	<u>100</u>	<u>\$309</u>
Percent of Customs total	14	23	42	10
Customs total	3,482	146	238	\$2,962

Source: Enforcement accomplishments for fiscal year 1977  
Department of the Treasury  
U.S. Customs Service  
Office of Investigations

The types of munitions involved in fiscal year 1977 neutrality cases in the sample are shown below.

	Number of cases			
	<u>Boston</u>	<u>New York</u>	<u>Los Angeles</u>	<u>San Francisco</u>
Weapons:				
Automatic	9	9	57	24
Semiautomatic	2	2	35	7
Handguns	8	10	130	69
Shotguns	2	-	2	2
Rifles	8	3	57	11
Explosives	0	5	2	2
Other	7	8	32	27
Explosives	5	4	5	1
Ammunition	3	4	48	8
Aircraft	1	-	5	7
Vessels	-	1	-	-
Vehicles	-	-	2	-
Electronic equipment	4	2	-	-
Military equipment and parts	-	7	4	7
Other	10	24	13	13

The statistics on Customs' neutrality enforcement activities and the results of the test inspections made for us by Customs show that violations of munitions control laws and regulations do occur. We believe that an effective program of physical inspections of selected export shipments could significantly improve U.S. munitions export controls.

#### CONCLUSION

The Customs Service is authorized to inspect exports made under State Department license but does not do so. Even if it did inspect such shipments, it would be unable to detect munitions shipments which have been either intentionally or unknowingly declared under a Commerce Department license unless Customs duplicated Commerce inspections.

The Commerce Department inspects, on a sample basis, export shipments of commodities subject to its regulations, but does not look for illegal munitions shipments.

### CHAPTER 3

#### THE LICENSE APPROVAL PROCESS

##### NEEDS IMPROVEMENT

We sampled a number of license applications to test OMC's procedures, and concluded that it is generally doing a good job of using other agencies' views in the decision process. OMC management seemed conscientious about balancing responsiveness to both industry and Government needs and concerns. Although we noted that turnaround time was occasionally slow, it has been improved during the past year, and OMC is continuing its efforts to improve turnaround time.

We believe, however, that other improvements could be made, such as (1) making greater use of overseas embassies in checking the validity of information concerning end use of items and (2) using automated management data to monitor progress of applications through the process and reduce response time.

##### OMC's ROLE IN THE APPROVAL PROCESS

OMC's principal function is to make sure that U.S. foreign policy, national security, and other needs are considered in reviewing applications for munitions export licenses. As such, OMC serves as a conduit for the views of other agencies more directly responsible for the various aspects of national policy, and brings these diverse views together into the final decision. OMC personnel are not experts in U.S. foreign policy, national security, or any other technical areas; rather, their expertise lies in knowing areas of interest and expertise of other U.S. agencies and when to seek counsel from them in reaching a decision on an application.

OMC obtains the counsel of other agencies by routing individual license applications to agencies concerned with that particular application or type of application. Not all applications are routed to other agencies. OMC officials said they automatically disapprove those that clearly would violate U.S. policy. On the other hand, OMC routinely approves certain types of applications for which precedence has been established.

We noted that a far greater percentage of disapproved applications had been routed to other agencies for comment than had approved applications. This agrees with an OMC official's explanation that OMC is less likely to seek

comments from others when an application concerns an item and country for which precedent has clearly been established, conditions remain the same, and the potential export seems reasonable. As an example, if approval has previously been given to export a certain major end item to country X, then approval of subsequent exports of spare parts for the end item is more or less routine.

### OMC's workload

The following table shows OMC's workload for the five types of licenses it issued for the last four years.

#### OMC Workload Statistics

License type and action taken	Quantity and approval/disapproval as percentage of total processed									
	FY 1974		FY 1975		FY 1976		FY 1976T		FY 1977	
	Quantity	Percent	Quantity	Percent	Quantity	Percent	Quantity	Percent	Quantity	Percent
DSP-5, Permanent export of unclassified Muni- tions List articles:										
Received (note a)	16,944		18,452		18,049		4,553		19,377	
Approved	16,141	99	17,710	99	16,111	99	4,424	98	18,343	98
Disapproved	140	1	138	1	238	1	73	2	415	2
Total	16,281	100	17,848	100	16,349	100	4,497	100	18,758	100
DSP-85, Permanent export of classified Muni- tions List articles:										
Received (note a)	572		537		625		121		613	
Approved	405	87	453	84	520	82	96	80	528	83
Disapproved	58	13	85	16	112	18	24	20	111	17
Total	463	100	538	100	632	100	120	100	639	100
DSP-73, Temporary export of unclassified Muni- tions List articles:										
Received (note a)	1,179		1,247		1,222		368		1,847	
Approved	1,112	99	1,186	98	1,118	97	362	94	1,681	93
Disapproved	13	1	22	2	36	3	23	6	119	7
Total	1,125	100	1,208	100	1,154	100	385	100	1,800	100
DSP-61, Temporary import of unclassified Muni- tions List articles:										
Received (note a)	411		671		830		232		1,146	
Approved	377	99	663	99.8	855	99.7	225	100	1,123	99.9
Disapproved	3	1	1	0.2	3	0.3	-	-	1	0.1
Total	380	100	664	100.0	858	100.0	225	100	1,124	100.0
Manufacturing and Technical Assistance Agreements:										
Received (note a)	298		320		412		80		521	
Approved	188	96	271	97	282	93	81	88	406	92
Disapproved	7	4	6	3	23	7	11	12	34	8
Total	195	100	217	100	305	100	92	100	440	100

a/ Quantity shown is the actual number received minus those returned without action because the application was incomplete or improperly done, etc.

### Input from other agencies

As a test of the frequency with which OMC seeks comments from other agencies, we analyzed available data for a random sample of 86 approved and 49 disapproved applications. We found that 96 percent of the disapproved applications and 24 percent of those approved had been routed to other agencies.

As shown below, most of the disapprovals resulted from Department of Defense objections.

<u>Commenting agency</u>	<u>Number of applications routed to agency (note a)</u>	<u>Objection</u>	<u>Percentage of objections</u>
Defense Department	39	35	90
State Department regional and functional bureaus	44	18	41
Arms Control and Disarmament Agency	10	3	30
National Aeronautics and Space Administration	3	-	-
State Department Assistant Secretary for Human Rights and Humanitarian Affairs	3	3	100

a/ An application may be routed to more than one office, bureau, or agency.

Reasons for disapproving applications are shown below.

<u>Reason</u>	<u>Number of times used</u>
Release of advanced state-of-the-art equipment or data would be premature.	11
Release of the equipment or data would reveal U.S. capabilities and might result in foreign production.	2
Equipment or data too sensitive.	5
Item was developed for U.S. forces, is still under evaluation, and is in short supply.	1
Reliability of equipment is questionable.	1
Classification level of equipment or data exceeds U.S. disclosure limits for the particular country involved.	7
U.S. policy is not to sell such advanced equipment to proposed recipient country.	2
U.S. policy prohibits sale of munitions to proposed recipient country.	2
U.S. policy is not to sell automatic weapons to private individuals or to export guns capable of accepting silencers or suppressors.	4
Denial based upon human rights considerations.	3
U.S. Embassy investigation of proposed buyer disclosed that application contained false or misleading information.	1
Denied pending review of U.S. arms transfer policies.	1

Between fiscal years 1974 and 1977, OMC denied an increasing number of license applications and in recent years has disapproved a larger percentage of applications. The ratio of approvals to disapprovals dropped from 83 to 1 in fiscal year 1974 to 33 to 1 in fiscal year 1977. Nevertheless, OMC still denies only a small percentage of all

applications. For example, in fiscal year 1977 OMC denied only 3 percent of the applications it processed that year.

We found that more than 50 percent of the applications denied were for shipments of technical data, not military hardware. Almost one-third of the sampled applications denied were for shipments to NATO countries, Japan, New Zealand, and Israel, although the President's May 19, 1977, policy statement calling for restraint in conventional arms trade specifically excluded these countries from any reductions in arms sales because of U.S. treaty and security obligations.

#### Timeliness of application review

In January 1978, the Undersecretary of State for Security Assistance, Science and Technology issued a standard operating procedure for interdepartmental clearance of arms transfers and commercial arms exports, which stated that organizations receiving for comment export license requests from OMC would have 20 working days to complete their reviews and submit recommendations to OMC. At the time of our review, OMC did not have information prepared on the frequency with which the 20-day target was being met, but it did produce a monthly report on license applications held by other agencies and State Department bureaus more than 30 calendar days. Allowing for weekends this would roughly equate to 20 working days.

The purpose of this report is to assure timely responses from the other bureaus and agencies. OMC does not similarly report externally on license applications it has held for more than 30 days without making a decision. However, it does regularly report such cases to higher levels in the State Department.

Analysis of our sample cases showed that 73 percent of the approved applications were completed within 30 days of receipt of the application and 87 percent within 90 days. Only 5.8 percent took over 120 days.

Those that were disapproved, however, took longer; only 4 percent were completed within 30 days and 39 percent within 90 days. Thirty-two percent took over 120 days. One should remember, though, that the disapprovals represent only 3 percent of all applications.

We believe that preparing reports on the timeliness of its license application review process would make OMC more aware of situations where review takes substantially more

than the 20-day goal. Since OMC presently prepares such information on other agencies and State Department bureaus, it should expand its report to include the timeliness of its own activities and thus monitor the total review process.

PRESHIPMENT AND POSTSHIPMENT  
END USE CHECKS

OMC sometimes makes use of a technique it calls the "end-use check," in which OMC or one of the State Department bureaus requests the U.S. Embassy in the recipient country to verify information in the application concerning the buyer, ultimate end use, and destination of the item or data to be exported. Most such reports from embassies that we reviewed confirmed the truthfulness of information in the application, but we did note a few cases in which the embassy found the application facts to be false and recommended against approval. For example, one application indicated the export items would be used by a certain country's national police. The end use check revealed that the police had no knowledge of the sale, and OMC denied the application.

A State Department official said that requests for end use checks, in which the embassy is asked to verify specific information, are more useful than those which simply ask for the embassy's views. Of the 30 end use checks we reviewed, 12 were of the unspecific variety.

We discussed end use checks with officials in a number of U.S. Embassies in Latin America and Europe. Generally, they thought them a useful tool that should be used more. They also said they cannot really evaluate the usefulness of the information they provide because (1) OMC does not inform the embassy whether or not the application was approved and (2) no followup has ever been done, to their knowledge, to determine the actual (as opposed to the stated) end use of articles exported.

OMC officials told us that most end use checks have been for Latin American countries. We reviewed both OMC's and the State Department's Bureau of Inter-American Affairs' files and found that OMC had requested only 14 such checks and the Bureau 16 between April 1, 1977, and March 30, 1978. Considering the potential importance and value of this independent verification of the essential elements of the proposed exportation, we feel that OMC should make greater use of it.

OMC officials told us that they have only infrequently asked U.S. Embassies to verify the buyers actual use of a Munitions List item after he receives it. The Commerce Department has recently experimented with this technique as a means of detecting and deterring diversion of items from the use or destination stated in the license application. In general, in a situation in which Commerce suspected the licensed item might be diverted to a forbidden use or destination Commerce granted the export license with the condition that the seller include in his contract with the buyer a clause allowing representatives of the U.S. Government the right to inspect the item on the buyer's premises upon short notice any time within 3 years after purchase.

We suggest that OMC investigate using this method as a further means of assuring that exported munitions go where intended. It has limitations, of course, such as being of little value with a buyer with no real roots or permanence in his locale, but it could be effective in the right conditions.

## CHAPTER 4

### DOCUMENT CONTROL ERRORS FURTHER

#### WEAKEN MUNITIONS CONTROLS

Errors being made by Customs Service personnel in controlling and processing export licenses and SEDs further reduce the effectiveness of shipping document control as a means of preventing and detecting improper exports and cause inaccuracies in OMC's management information data. The errors may be attributed, in part, to the fact that OMC has not issued standardized guidelines or instructions to govern the handling and processing of munitions export control documents and, in part, to insufficient attention to export control by Customs.

Enforcement is further weakened by Customs' inconsistency in levying penalties against exporters for improper or illegal actions.

#### ERRORS BY THE CUSTOMS SERVICE

In observing Customs procedures at seaports and airports in New York, Boston, Los Angeles, and San Francisco, we documented a variety of procedural errors. Some were common to several locations. Among the more prominent errors by Customs were:

- Shipments recorded on the back of the license exceeded the amount authorized on the face, several by well over 1,000 percent.
- Inaccurate amounts were recorded on the back of the license, both in terms of quantity and value shipped.
- Completed licenses were not returned to OMC as required by regulations.
- Some ports validated SEDs for shipment under licenses held at different ports without calling those ports for verification.
- SEDs were held by Customs until the license expired, being returned to them promptly to OMC as required by regulation.

- SEs validated by a port other than the one holding the export license were not transmitted promptly to the port with the license for posting of shipment and for calculation of the remaining authorized balance.
- When shippers submitted corrections of erroneous SEDs to Customs, Customs personnel did not correct the license posting or send the correction to OMC.
- Inconsistent procedures resulted in duplicate SEDs being sent to OMC.

#### ERRORS BY LICENSEES

In addition to errors by Customs, we noted quite a number of errors made by licensees themselves and/or their freight forwarders in preparing and handling SEDs and in following the prescribed procedures, such as:

- Making or attempting to make shipments without first filing the export license with Customs.
- Making shipments without having the SED validated by Customs.
- Making shipments before submitting SEDs to Customs for validation.
- Submitting incomplete and/or inaccurate SEDs.

Details and examples of these errors are given in Appendix I. (See p. 49.)

#### CUSTOMS MINIMIZES EXPORT CONTROL

Among other things, export control personnel should:

- Be completely familiar with complex OMC export control regulations, know when they are violated, and issue appropriate penalties.
- Compare license and SED data before the goods are exported.
- Coordinate export control verification with shippers, exporters, freight forwarders, and other customs ports.

--Ensure accurate reporting to the Bureau of the Census and to OMC.

--Perform the necessary work to ensure that the exports OMC has authorized in Washington are accurately and completely recorded when shipped.

The priority that Customs gives export control is reflected in its staffing of export control positions. In San Francisco for example, export controls processing responsibilities changed hands five times from October 1976 to November 1977. The position was not permanently filled until 1 year after a full-time staff member retired in 1976. This may account for some of the paperwork deficiencies we found.

In Los Angeles, the Customs clerk whose main job was import controls also covered export controls as an extra duty. She spent only about 10 hours a week on export control and said it wasn't enough. Although we observed that export license and SED processing presented no workload problems for the clerk, we also observed that certain processing procedures were not performed. At another location, the export control position was technically vacant. Consequently, export license and SED processing procedures were performed only as other duties in addition to a primary assignment.

Since import functions consume almost all the staff's time, ship manifests of exported goods are not always checked for unvalidated SEDs, licenses are not returned promptly, and calls are not always made to verify that licenses are lodged at other ports. One Customs staff member who supervises license and SED processing noted that, as far as exports are concerned, the staff does "only what we have to do."

We believe that Customs does not attach enough importance to export control work. We question whether sufficient consideration has been given to the fact that export control work directly affects the accuracy of reports to the Congress. (See ch. 5.) As pointed out in our discussion of errors made by Customs personnel, the accuracy and timeliness of export data reported to the Congress is directly affected by the quality of work performed and time allowed export control staff to perform the work.

CUSTOMS EXPORT CONTROL  
STAFF NEEDS GUIDANCE

We believe that many of the procedural errors we found can be attributed to a lack of instructions or guidelines. OMC has not issued clear, concise guidelines on the proper handling of export documents for munitions shipments, and, judging from the errors we found, they are needed. In our opinion, the ITAR does not provide sufficient procedural guidance.

OMC should prepare very specific and clearly worded guidelines to aid Customs export control personnel in processing munitions export control documents. OMC should also take measures to assure that the guidelines reach the Customs clerks and other personnel who actually need them. We noted that the Customs staffs in Los Angeles, San Francisco, and New York were using outdated ITARs, or had no copy of the ITAR at all.

VIOLATORS OF REGULATIONS NOT PENALIZED

The integrity of any control system rests on the clarity and enforcement of its rules. During our visits to Customs offices, we noted inconsistency in Customs' levying fines when SEDs were not validated prior to shipment. The few fines we saw had been levied against the shipping company or airline carrying the shipment, rather than the licensee or freight forwarder, and were often reduced to only \$25. In our opinion, these fines were not levied against the party committing the violation and were too small to be effective.

Different sections of the Foreign Trade Statistics Regulations issued by the Bureau of the Census were used as the basis for the fines. New York referred to section 30.24, which requires carriers under bond to file the required manifest and related SEDs within the allowed time period after departure. San Francisco cited violations of section 30.12, which requires the exporter or his agent to deliver the required numbered of SEDs to the carrier prior to export. Both sections carry a penalty for violation not to exceed \$1,000. However, neither section 30.12 nor 30.24 specifically requires a licensee to submit SEDs to Customs for validation prior to export or provides a penalty for failure to do so. Customs personnel at JFK Airport attempted for a 3-month period to fine licensees for non-validation of SEDs but stopped when the airport claims division questioned

their authority to do so. Los Angeles Customs officials told us they were reluctant to issue penalties because the Foreign Trade Statistics Regulations did not specifically address failure to validate a SED.

None of the above-mentioned Customs offices had cited violations of the ITAR in assessing penalties. The ITAR specifically requires Customs validation of SEDs prior to shipment. The Arms Export Control Act, as amended, provides both civil and criminal penalties for violation of the ITAR. Civil penalties may be levied by the Director, Bureau of Politico-Military Affairs, Department of State, for violation of arms export control regulations; but it appears that Customs has not always informed OMC of violations so that the Director of the Politico-Military Affairs Bureau might take appropriate action.

## CHAPTER 5

### OMC'S DATA PROCESSING NEEDS IMPROVEMENT

Deficiencies in OMC's data processing, coupled with document handling errors by the Customs Service, are causing significant errors in OMC's data base from which it prepares the reports to the Congress required by section 657 of the Foreign Assistance Act. The 657 Report can never be completely current and accurate because of the inherent timelag in the system for reporting exports to the control agencies; nevertheless, OMC could make substantial improvement in the accuracy of its data.

### DATA BASE ACCURACY IS QUESTIONABLE

To check the accuracy of OMC's data base, we tested the dollar amounts of exports by individual licenses as shown on an OMC computer printout for 99 randomly selected licenses of the 40,022 that had been approved by OMC during fiscal years 1976 and 1977. A conservative projection of our sample results, at a 95-percent confidence level, indicates that the export values shown in OMC's data base are questionable for about 50 percent of all expired or returned 1976 and 1977 licenses.

Because of a sampling anomaly, we cannot project the dollar amount in question with a reliable degree of accuracy. In our sample, however, OMC's data appeared to be overstated by \$424,623, or 17.6 percent, and understated by \$281,487, or 11.7 percent. The absolute value of possible error was \$705,750, or 29.3 percent. The net effect of possible errors was an overstatement of \$142,776, or 5.9 percent.

While the net effect in dollar terms may appear insignificant, there is no assurance that future errors will always be offsetting. Furthermore, the above figures represent sample totals and are not projected to a universe total. The 657 Report lists exports by individual countries. While the total figure for all exports cited may be accurate within an acceptable range, the figures reported for individual countries or regions remain subject to very serious distortion.

Finally, we should explain why we say that the values for 50 percent of the entries in OMC's data base are "questionable" rather than "erroneous." OMC's data base contains export values from two sources--SEDS and the amounts posted by Customs on the back of licenses returned to OMC. The 657 Report is based upon the figures derived from SEDs. We tested

the SED figures shown on OMC's computer run by comparing them to posted values on the backs of actual returned licenses and, in some cases, by telephoning the exporter for information. While this method readily identifies discrepancies between the two sources, it was not possible in every case to determine which figure was in error. As noted in previous chapters, a significant number of procedural errors are made by the Customs Service which can affect OMC's data. In checking to the third source, we found, as one might suspect, that in nearly half the cases the exporter's figure did not agree with either OMC or Customs, as will be explained in this chapter.

### Obvious errors

There were obvious discrepancies on 29 of the licenses tested. The amount exported, as noted by Customs on the back of the license, simply did not agree with the amount shown on OMC's printout.

Eleven expired licenses that should have been returned to OMC were not in the files and could not be found. It was, therefore, not possible to compare the printout to those licenses. We tested the printout accuracy for those licenses by telephoning 7 of the 11 licensees and asking for information from their records on the value of exports shipped by them under those licenses. Each of the seven reported a significantly larger value exported than shown on the OMC printout.

### Hidden errors

As a further test, we telephoned 12 of the 50 licensees whose licenses, as posted by Customs, agreed with OMC's printout and found that five of them did not agree with the figure shown by Customs and OMC. Each indicated that a larger amount was shipped than did Customs and OMC. The other seven agreed with the printout.

### Sampling conclusion

Using very conservative techniques, we estimated that 50 percent of the export values in OMC's data base as of May 1978 for expired or returned 1976 and 1977 licenses were questionable. The error rate for our estimate is 10.3 percent, which means the estimated percentage of questionable value entries could range from 39.7 to 60.3 percent. We are confident, however, that the actual discrepancy rate is 50 percent or higher.

OMC's reports to the  
Congress have been inaccurate

Licensed munitions exports increased from \$800 million in OMC's fiscal year 1975 section 657 Report to nearly \$1.8 billion in the 1976 report--over a 100-percent increase. The Director of OMC acknowledged that munitions exports had been understated in the reports prior to 1976 because the statistical unit could not keep up with its workload. It simply could not stay current in processing (coding and keypunching) export documents. Thus, many exports had not been entered into the data base by the time the 657 Report was compiled. In an attempt to overcome this bottleneck, OMC hired a contractor in September 1975 to process export documents.

The problem is apparently still not solved. Improved though it was, the 1976 report was still significantly understated. It had been prepared from a computer printout dated March 1977 which had been destroyed before our review started. However, OMC had a later printout, dated November 2, 1977, which showed fiscal year 1976 munitions exports as \$1.9 billion. Apparently, OMC's contractor processed an additional \$108 million in fiscal year 1976 export documents between March and November 1977.

Furthermore, the 50-percent error rate in our test sample of returned licenses suggests that much of the data in OMC's data base is inaccurate. As a further test, we traced figures from 10 of the sample licenses with discrepancies to OMC's computer printouts which are the source for the section 657 Reports to the Congress. The same questionable figures were in the printouts for all 10 licenses.

UNTIMELY REPORTING

As noted on page 4, the Foreign Assistance Act requires the 657 Report to be submitted to the Congress not later than March 31 of each year for the prior fiscal year. OMC did not send its report for fiscal year 1976 to the Congress until March 10, 1978, nearly a year beyond the target date. In May 1978, the report for fiscal year 1977 was already a month late and only in the rough draft stage. This, and the fact that the 1976 report omitted some data because of late processing, indicates that OMC was not keeping up with its workload of processing export documents to update its computer data base.

In December 1978 OMC officials said the processing was caught up and staying current.

Also, as we mentioned, Customs personnel frequently are not timely in forwarding export documents to OMC for processing. OMC officials pointed out that the 657 Report would always be understated to a degree because of late reporting of exports to OMC.

#### CAUSES OF ERRORS

In chapter 4 we reported that errors by Customs in handling SEDs and licenses result in inaccurate and untimely reporting of export shipments to OMC. Errors in OMC's data base and related reports occur because (1) Customs makes errors in posting shipments to licenses and in submitting SEDs and licenses to OMC, (2) OMC makes errors in controlling export documents and in transferring data from the documents to computer records, and (3) OMC does not have sufficient quality control procedures to identify and correct these errors. Also OMC may not have enough personnel assigned to data processing, and at the time of our review, was using them ineffectively by placing too much priority on putting prior years' data on the computer and too little priority on identifying and resolving current data discrepancies and system weaknesses that create those discrepancies.

In addition, OMC and the State Department have made slow progress in designing and implementing a complete automated data management and management information system. The current system was established in 1971 for the purpose of producing the 657 Report. It has been revised several times since but is still not a complete management information system and still does not produce accurate reports.

#### Expired licenses not accounted for

OMC does not effectively account for returned licenses. It has no procedure to ensure that expired or completed licenses are returned, nor does its computer data accurately reflect when a license has been returned. Of the 99 licenses in our sample, 79 had expired on or before March 31, 1978, and should have been returned to OMC. The computer run of May 10, 1978, showed that only 35, or about 44 percent, had been returned. A search of OMC's files, however, unearthed another 34 that had been returned and filed without being processed into the data base and were thus not on the computer run.

The remaining 10 licenses, plus one of the 35 the computer listed as returned, could not be found in OMC's offices. We telephoned the licensees and/or their agents on 7 of these 11 licenses for which OMC's printout showed no exports and were told by all of them that export shipments had been made under the license authority. In summary, projecting our sample findings indicates that about 13 percent of the expired licenses which should have been returned to OMC were missing and that about 43 percent had been returned but were somehow filed by OMC without being entered into its data base.

Returned licenses not checked against data base

OMC officials said they relied on the accuracy of Customs' shipment postings on the back of returned licenses to verify data from SEDs already in the computer. As previously stated, we made this same test on a sample of 99 licenses. We found an error rate of such proportions that we could only conclude OMC had not performed this accuracy check in the past.

Twenty-nine of the licenses in our sample had obvious discrepancies between the data posted by Customs on the back of the licenses and OMC's printout. Although most of these licenses had expired before our fieldwork, the discrepancies were still unresolved by OMC.

We telephoned the licensees on 7 of the 29 licenses in question and asked for shipment information from their records. Five of the 7 agreed with the value shown by Customs on the back of the license. The other 2 did not agree with the figures of either Customs or OMC, as shown in the following table.

License number	Expiration date	Value authorized	Value shipped		
			Per OMC	Per Customs	Per licensee
02502	9/ 8/76	\$ 1,783	\$ -	\$ 1,783	\$ 1,783
04174	10/ 2/76	14,417	1,194	1,465	14,416
05069	11/21/76	47,250	-	15,750	47,250
05512	10/29/76	1,260	-	1,260	1,260
13077	3/17/77	66	-	66	66
29890	1/ 3/78	16,974	-	17,946	17,946
35123	3/30/78	448	-	448	448

Since some of the licensees' shipment information did not agree with either OMC or Customs, we also performed a telephone check on 12 sample licenses which did not show differences of shipment value between OMC's printout and the Customs postings on the licenses. We were also motivated by our observations of Customs' procedures (ch. 4), which indicated a high degree of error in Customs' export postings on licenses. Seven of these licensees agreed with the figure shown by OMC and Customs and five did not, as shown below.

License number	Expiration date	Value authorized	Value shipped		
			Per OMC	Per Customs	Per licensee
02036	8/20/76	\$3,996,400	\$ -	\$ -	\$ -
03341	10/31/76	7,485	-	-	-
07290	1/14/77	100	-	-	100
07705	12/ 4/76	35,400	-	-	35,400
09027	12/31/76	102,980	16,047	16,047	16,047
25336	10/ 5/77	10,801	68	68	5,512
27396	11/11/77	7,792	-	-	-
26590	2/10/78	70,000	35,000	35,000	70,000
29034	12/31/77	1,567,131	-	-	-
32019	2/14/78	3,670	-	-	3,670
33761	3/16/78	3,045	-	-	-
43666	8/24/78	26,350	26,350	26,350	26,350

Known discrepancies not corrected

When OMC's coding and keypunching contractor discovers discrepancies, he notes the documents and returns them unprocessed to OMC for resolution. One would expect OMC to resolve the discrepancy and return the documents to the contractor. At the time of our review, however, we saw boxes containing at least 250 such documents dating as far back as 1976 which OMC had not followed up on. This data, therefore, was omitted from OMC's data base.

For example, 2 licenses in our sample of 99 licenses were so notated by the contractor and returned unprocessed. On one license the SED value exceeded the authorized value (\$4,384 authorized, \$13,974 exported), and Customs had not properly indicated the quantity exported on the back of the license. We telephoned the licensee, who could not provide the exact figure for value shipped but did say that the

authorized quantity had been shipped. For the other license, the contractor's note stated, "Shipment of 5/22 for \$316,387 was SEDed twice."

During our work, we noticed 20 other licenses not in our sample which had been returned unprocessed by the contractor for the following reasons:

- Twelve licenses had discrepancies between export values per OMC's computer and Customs' posting on the licenses.
- Four licenses indicated actual export shipments exceeded authorized amounts.
- One license indicated that a shipment occurred before the license was issued.
- One license was incompletely filled out by Customs as to quantity, commodity, value, and date of export.
- On one license, the contractor noted that recordings of shipments were "a mess." We would call that one illegible and saw several others that were very messy.

#### Inadequate SED processing

OMC sometimes receives duplicate copies of SEDs from Customs. The OMC statistical staff is supposed to screen SEDs for duplicates before sending them to the contractor but is not doing so. Duplicate SEDs could be easily identified because they have the same Customs validation number stamped on the upper right-hand corner. The Customs validation number is not entered into OMC's computer data base, and after a SED is keypunched by the contractor it is destroyed.

Having thus thrown away this valuable key to reconciling errors, OMC then must rely upon Customs' shipment postings on the back of the license (or telephone the exporter), to verify SED data in OMC's computer. The head of the OMC statistical unit explained to us that until a license is returned by Customs, two shipments of equal value are assumed to be different shipments unless they exceed the license face value. If Customs records only one of the shipments on the back of the license, OMC assumes that the other shipment was a duplicate.

In our sample, 8 of the 99 licenses had only one shipment posted whereas OMC's computer SED data indicated two or more identical shipments on or about the same date. For these eight licenses, it is possible that OMC recorded duplicate SEDs or perhaps OMC's contractor mistakenly coded the same shipment twice--once from the SED and once from the returned license. It is also possible that duplicate shipments were actually made but not recorded by Customs.

Without the Customs validation number or the SED source document the only way to reconcile the conflicting data is to contact the exporter.

#### Processed data not verified

All data processed through OMC's computer, including that with errors, are shown by license number on a printout. By comparing the printout data with source data in a timely manner, OMC could identify and resolve errors as they occur.

During our review, OMC had several large stacks of unchecked printouts dating back through 1977. We reviewed 38 of them dating from January 5 through May 11, 1978. These printouts showed a total of 398 discrepancies. Twenty-one printouts had a total of 147 errors in the initial license entries, and 13 had 251 discrepancies in SED and returned license entries. Only one of the 38 printouts showed signs that an attempt had been made to identify and correct errors already in the system. Most of the errors were the result of:

- Data entries incorrectly coded or keypunched.
- SEDs with value or quantity greater than that authorized on the license.
- Returned licenses with dollar values recorded by Customs either more or less than the authorized amount or the SED amount.
- SED and return license entries for licenses not in the computer system.

#### OMC MANAGEMENT INFORMATION SYSTEM IS INADEQUATE

Over 2 years ago, the Department of State's Inspector General reported that OMC's statistical unit did not produce enough information for the Director to effectively manage. We believe the Inspector General's conclusion is still valid.

The problem is not a lack of data but of accessibility. At the time of our review, the only data which was computerized, and therefore readily available, was for approved military hardware licenses. Data on license applications was kept by hand, from which statistics were manually prepared on the number of licenses received, approved, disapproved, returned without action, and licensing officer workload and timeliness.

OMC's Director maintains his own personal information system on license applications, consisting of handwritten lists and summaries of each day's activity which he uses to keep track of what is going on, to monitor the progress of applications, and to respond quickly to inquiries about specific applications. He prepares the lists by hand because data is not computerized until an application is approved.

The Director realizes that one of OMC's primary needs is automation of all necessary management data. Since the computers that service OMC belong to the State Department and serve many other State offices, solution to the problems does not lie entirely within OMC's control.

The Department is currently taking steps to correct this problem. A program has been prepared to address all of OMC's informational needs which is under review by OMC. The current plan is to place all OMC records and data on the computer starting with license applications as they are received. The system will receive license application data from terminals located in OMC's offices. Export data will continue to be entered from contractor-prepared punch cards. Data would be processed on a real-time basis, according to the program now under review, and management reports would be returned to OMC.

## CHAPTER 6

### CONCLUSIONS AND RECOMMENDATIONS

Much of the U.S. munitions export control system does not work as it should and cannot be depended upon to ensure that munitions are not exported without a license or that shipments made under license conform to license terms. Required reports submitted to the Congress have been inaccurate and late because of errors in OMC's data base which are the cumulative effects of procedural errors in document control by Customs personnel and in data processing by OMC personnel. Furthermore, OMC's management information system does not provide enough data for the Director of OMC to properly manage its activities without resorting to laborious, handwritten lists and statistics.

The primary deficiency in compliance assurance is the lack of physical inspections of export shipments to detect unauthorized shipments and to provide more of a visible deterrent to the public.

While it is true that the Customs Service Office of Investigations uncovers a significant number of munitions export violations each year, there is no way to measure what portion of the illegal munitions traffic is thus detected. We believe the fact that a sizable number of violations are detected from intelligence leads, fallout from other enforcement and investigation activities, etc., without an inspection program is evidence that a much larger volume of illegal or improper munitions traffic is actually occurring.

#### RECOMMENDATIONS

To correct the problems identified in this report, we make the following recommendations.

##### To strengthen compliance assurance and avoid potentially duplicative programs

In our opinion, the absence of physical inspections of export shipments seriously weakens munitions export controls. We believe that an effective export inspection system is essential to assure compliance with export regulations and license terms.

We therefore recommend that the Secretary of State arrange with the Secretary of Commerce and the Director, Office of Management and Budget, to incorporate compliance

inspections for munitions exports into the Commerce Department's own export compliance program with appropriate budget and personnel increases. This would result in Commerce making all physical inspections for all industrial articles being exported. Note that we are not suggesting that each inspector should be an expert in all types of commodities, only that the inspection of export shipments to assure compliance with all standing U.S. regulations be placed under a single manager to ensure adequate coordination between various inspection programs. Because of the many different types of products being exported and the complex nature of the various U.S. control lists, it would no doubt be necessary for export inspectors to specialize by control list. They should, however, be crosstrained so as to be sufficiently familiar with the other lists to recognize potential violations and know which experts to call upon for confirmation. The Director of OMC should report on the deficiencies uncovered in these inspections in the OMC Munitions Control Newsletter as a means of both educating exporters and enlarging the deterrent value of the program through increased visibility.

To further facilitate inspections of and for munitions exports, whether performed by Commerce or Customs inspectors, we recommend that the Secretary of State:

- Prepare and issue, to the extent possible, specific lists of items known to be subject to OMC license. The lists might be by classification category as cited in the ITAR and could be issued as an addendum to the ITAR. Their specific purpose should be to assist inspectors who cannot reasonably be expected to develop technical expertise on the many items covered in general terms by the ITAR. In preparing these lists, the Director, OMC, should be guided and assisted by the Secretary of Commerce and the Secretary of Defense.
- Amend the ITAR to require that the manufacturers of specific items subject to OMC licensing, the improper export of which might affect national security interests, clearly label such items with a warning that the item may not be legally exported without OMC license and citing the appropriate regulation. The label should be permanently affixed to the item itself, if possible; otherwise it should be on the container and accompanying brochures, instructions, documents, etc.

We also recommend that the Secretary of State coordinate with the Commissioner of Customs and the Secretary of Commerce to work out specific procedures to ensure that (1) Customs and Commerce personnel inform OMC of all noted violations of the ITAR and (2) proper penalties are levied in all such cases.

To improve export document control

We recommend that the Secretary of State consider eliminating the current system of requiring SED validations and license control by the Customs Service. The many errors and inconsistencies being made by Customs may be negating the control benefits of the system. This was the conclusion reached by a consultant to the Commerce Department in 1971 which led Commerce to drop the Customs validation process.

If a decision is made to retain the current system, we would recommend that the Secretary of State issue written guidelines for U.S. Customs export control staff on the handling of munitions export documents covering each step from issue of the license to return of the completed license and all related SEDs to OMC. We suggest the guidelines cover such subjects as:

- When expired and/or completed licenses should be returned to OMC; i.e., 15, 30, or 60 days after expiration or final use of the license.
- How corrected SEDs should be processed and sent to OMC.
- How Customs staff should process SEDs that are presented for validation at a port other than where the license is filed, i.e., how to avoid sending duplicate SEDs to OMC.
- What actions Customs staff should take where unvalidated SEDs are discovered in shipping manifests or where unvalidated SEDs are turned in by applicants or agents.
- The extent to which shipping manifests should be checked by Customs staff for unvalidated SEDs.
- The procedures Customs staff should follow when overall export data on the SED generally conforms to the license but does not conform in all details.

--How Customs should uniformly indicate exports on the back of the license, including partial shipments.

We also would recommend that the Secretary of State periodically verify that these procedures are being followed by either analyzing export documents received from Customs or by visiting Customs port operations.

We would further recommend that the Secretary of State take the following actions to increase effectiveness of export document control.

--Mail export licenses directly to the District Director of Customs at the port where the applicant states most of his shipments will be made, instead of mailing them to the applicant.

--Amend the ITAR to require that SEDs for OMC-licensed exports be submitted to Customs for validation not less than 48 hours before scheduled carrier departure.

To improve the license approval process  
and OMC's information system

Although we found the current license approval process to be generally good, we did note several areas where improvements could be made.

A major deficiency is the lack of readily available data to identify strengths and weaknesses in the license review process. OMC is developing a better information system and entering more data, but we believe priority should be given to ensuring the accuracy of this data and of data already automated. We question the wisdom of laying additional tasks on the statistical unit staff in view of the inaccuracy of data now produced by that unit.

We therefore recommend that the Secretary of State:

--Use both preshipment and postshipment end use checks more frequently and give Embassies feedback on the licensing decision.

--Concentrate efforts on reducing discrepancies in current automated data before resolving prior years' records by establishing routine procedures to

--check SEDs for duplicate copies before they are entered into the data base,

- retain SEDs until the data has not only been entered into the computer's data base but has also been checked for accuracy,
- determine which returned licenses are now in OMC files but not on its computer,
- determine which licenses have expired but have not been returned to OMC,
- obtain unreturned expired licenses and if not possible, document and analyze the reasons why,
- ensure that unprocessed data, returned by the contractor because of errors, is corrected and returned to him for processing, and
- reconcile export data on returned licenses and SEDs before entering the returned license export data into the data base, making certain that all necessary export data adjustments and the reasons therefor are fully documented by OMC on the back of the returned license.

#### To improve reporting to the Congress

We recommend that the Secretary of State make every effort to provide required reports to the Congress when they are due.

#### Followup

We recognize that there are arguments for and against our proposed solution to the problem of inadequate munitions export inspections, as reflected in the following agency comments. The validity and importance of the points raised no doubt vary in each agency's point of view. We also recognize that an effective compliance program could be built around test inspections by either Customs or Commerce. The thread of commonality in each agency's comments, however, is recognition that the problem exists and that the system for assuring compliance with munitions export regulations needs to be improved.

We recommend, therefore, that upon conclusion of appropriate study and coordination with the other agencies, the Secretary of State advise the Congress of steps taken or planned to establish export inspections adequate to ensure compliance with munitions export regulations.

## AGENCY COMMENTS

### State Department

OMC officials said the report criticizes and dwells upon aspects of OMC operations that it considers of lesser importance while devoting only a few lines to acknowledging the good job OMC is doing in the area it considers to be the core of its mission; namely, making licensing decisions. (GAO response: The purpose of our review, however, was to evaluate the effectiveness of munitions export controls. We chose, therefore, to concentrate upon what we perceive to be the major weaknesses of these controls as currently implemented--inadequate enforcement and insufficient management information.)

According to OMC officials the report required by section 657 of the Foreign Assistance Act will always be understated due to the timelag in export reporting to OMC. The officials noted that the later the report is issued the more accurate it should be. As to the accuracy of the report, it has been OMC's impression that the Congress wanted a report that portrayed an order of magnitude for management purposes more than pinpoint accuracy. Officials said the quarterly reports OMC submits to the Congress are probably more useful for oversight purposes than the report required by section 657, which is basically a historical document.

OMC officials agreed with the proposal that the Secretary of State arrange with the Secretary of Commerce to incorporate compliance inspections for munitions exports into the Commerce Department export compliance program and said they will discuss the idea with Commerce officials.

OMC officials did not agree, however, that eliminating the Customs validation process for SEDs would be a good idea but did consent to study the proposal further.

OMC agreed that better guidelines for munitions export document control are needed and said they will prepare them and agreed that it needs to more closely monitor implementation of such procedures by Customs. At the time of our review, only one OMC official was assigned to enforcement activities and he had many other responsibilities as well. OMC officials said they had recently transferred an authorized vacant position from OMC's statistical unit to enforcement and would soon fill the position. (GAO response: While we feel OMC needs help in its statistical unit as

well as in enforcement, we agree that if a choice on resource allocation must be made, enforcement should take priority.)

Concerning the recommendation to mail licenses directly to Customs, OMC said it had been studying this idea for some time and expected to reach a decision on it soon.

OMC agreed to make greater use of end use checks, and also to provide feedback to concerned Embassies on the results.

OMC said its statistical unit has now caught up the backlog of prior years' work and is staying current. It did not agree to screen SEDs for duplicate copies any further than those sent to the contractor on the same day because of the delay this would involve. OMC officials believe the subrecommendations concerning data processing routine procedures are desirable but feel they do not have enough staff to carry out these actions. They did state that these routines will be incorporated into the information and data processing system now under development. (GAO response: We concur with OMC's comments, but we urge the State Department to move with more alacrity in completing and implementing the new system.)

#### Commerce Department

Commerce officials commented only upon the proposal that the Secretary of State arrange with the Secretary of Commerce to incorporate munitions compliance inspections into the Commerce Department export compliance program. They opposed this proposal for the following reasons.

- The Commerce Department lacks sufficient resources (both funds and personnel) to take on additional responsibility of this magnitude. With only a handful of inspectors to cover the entire country, the depth of coverage it is able to give to its own commodities is inadequate. It could not possibly take on the State Department licenses without additional funds and personnel.
- Commerce personnel are not trained to be familiar with the ITAR and Munitions List. Even learning the different terminology would be time consuming. Assuming munitions

inspection responsibility would require extensive retraining and crosstraining.

- Legal authority of the Commerce Department to seize shipments for violations of the ITAR is nonexistent. This entire area of legal responsibility and authority would have to be thoroughly researched.
- There would be the usual difficulties of managing a program with two agencies involved. Reporting channels for inspectors would have to be completely revised.
- Commerce does not now have large field offices for its compliance staff. To establish an inspection force of any magnitude would probably require field offices and expensive overhead and administrative costs. Commerce noted that the Customs Service already has the administrative machinery in place at each port and it would undoubtedly be less expensive to expand Customs staff to perform export inspections.

#### GAO response

We fully agree that Commerce would have to have sufficient funding and staff if it were to take on the inspection and compliance responsibility for munitions exports. We also agree that Commerce personnel would have to receive appropriate training for the task. This should not be considered an additional cost to the program, however. Customs inspectors are not familiar with the ITAR and Munitions List either and would also require training to be effective. The point is that no one is doing these inspections now. Regardless of which agency eventually does the job, it is going to require adequate numbers of properly trained and supervised personnel and sufficient funds.

We agree that the matter of legal authority and responsibility would require research and study and that inter-agency coordination would present some problems. These are not unusual or insurmountable problems, however.

The basic concept of the Commerce compliance program is to use roving inspectors to make spot checks at various locations, rather than have resident inspectors concentrating upon one locale. We believe this program could be effective if properly staffed and given sufficient depth of coverage.

Including munitions items in this program would require very few more inspections than would adequate coverage of the Commerce items.

Essentially, an effective random inspection program is an exercise in statistical sampling with psychological overtones. The universe of munitions exports is so small compared to the universe of general exports that their combination into a single universe would probably have a negligible effect upon the sample size required to achieve a given confidence level even if that were the objective. Actually, it is probably not cost effective to inspect with sufficient frequency to have a good chance of catching all or even most possible violations. The primary value of such an inspection program is deterrence, which is increased by making it highly visible to the exporting public and widely publicizing violations detected.

#### U.S. Customs Service

The Customs Service agreed that the overall control of munitions exports is less than satisfactory. Customs believes the deficiencies are due to:

- Lack of manpower. Increasing demands are constantly being placed on Customs by many agencies whose regulations it is required to enforce, primarily on imports. Past increases in manpower resources have not matched this increase in enforcement responsibilities. Under its present manpower limitations, Customs believes it will continue to have difficulty in giving munitions export controls the time required to conduct extensive examinations and to ensure that errors in controlling and processing export licenses and SEDs are reduced.
- Inadequate guidelines. Customs agreed that OMC should issue specific written guidelines for use by personnel handling munitions export documents. Customs further commented that the guidelines should include a list of all arms, ammunition, and implements of war subject to OMC licensing. The only listing at the present time is in the ITAR, which is not readily available to Customs inspectors on piers or in cargo areas. With hundreds of different items subject to OMC licensing,

it is unreasonable to expect any one inspector to develop technical expertise on all the items involved. Customs suggested that OMC issue instructions to the exporter when forwarding the license to ensure that the exporter or his agency is aware of OMC regulations; i.e., filing the license with Customs at the actual port of exportation and presenting the SED to Customs at that port for validation before the shipment leaves the United States.

--Failure to present the SED in sufficient time to make an examination. Customs suggested that OMC include, either in instructions to the exporter or in section 123.53 of ITAR, the requirement that the SED must be presented to Customs for validation not less than 48 hours before the shipment leaves the United States. Examinations of export shipments are not possible unless the SED is available to the inspector in sufficient time to locate the shipment on the pier or in the cargo area.

#### GAO response

Our review did not include evaluation of the adequacy of Customs' manpower except in export control functions, so we cannot knowledgeably comment on its overall situation. We can state, however, that our observations bear out Customs' claim that export control functions are definitely understaffed. Staffing shortages were a common complaint that we heard at each location and at all levels from management down to the clerical ranks.

We agree with Customs' suggestions that instructions also be issued to exporters and that they include the requirement to present the SED 48 hours before shipment. We believe the ITAR would be the more appropriate vehicle for this requirement as it would provide a legal foundation for enforcement. Accordingly, we have included this suggestion as a recommendation.

#### U.S. Customs Service

Customs further commented on our recommendation as follows.

- If Commerce were to perform physical inspections of munitions shipments, Commerce would still have to obtain the SED from Customs officers in order to have the pertinent information on the shipment and for verification purposes. Customs would also have to give Commerce the license with the SED so that it could ensure that the commodities and quantity being exported are authorized by the license. When Commerce completed its physical inspection, it would be required to return the SED and the license to Customs. Under this procedure, would Commerce post the amount and value shipped to the back of the license, subtract the amount and value from that authorized, and show the remainder authorized, if any, based on its physical inspection and verification of the information on the SED--or would that remain Customs responsibility?
- If Customs validation of the SED covering munitions shipments is discontinued, what export documents will be used by Commerce to conduct physical examinations? The carrier must have the SEDs in its possession prior to departure; however, there is no "time" requirement, i.e., the carrier could receive the SED an hour before departure when the merchandise would already be loaded on the vessel or aircraft. Under the Foreign Trade Statistics Regulations, vessel and air carriers do not have to submit a complete manifest, with the required SEDs attached, to Customs until four working days after departure.
- If validation of SEDs covering munitions shipments is discontinued, it will be very difficult for Customs to post shipment data to the license since the SED will not be readily available. That is, Customs will not receive the manifest, with the SEDs attached until four working days after departure of the vessel or aircraft. Further, it would be very difficult for export clerks to go through each SED (there are hundreds attached to a manifest) in order to locate the SEDs covering munitions shipments. Customs would not have the personnel available to review each and every SED attached to the manifest and to detach those SEDs covering munitions shipments.

Customs' final comment was that a transfer of the munitions export control function to the Department of Commerce would prove counterproductive and would not be cost effective. Customs officers are already stationed at all major ports within the United States; this would continue to be the case even if the munitions control responsibility were transferred. Establishing an additional force, limited solely to one function, would be inefficient and duplicative. Customs suggested that the problem should be handled instead by providing additional staffing to the Customs Service, which has already proven itself capable of multiple functions at ports of entry.

#### GAO response

In considering Customs' comments concerning inspection procedures, one should bear in mind that export inspections should serve two purposes--(1) to confirm that an item declared on a SED as munitions being exported under a specific license is, in fact, what it is declared to be, that it is properly declared, and that the cited license is valid and (2) to identify munitions or other control list items being shipped without the required specific license by being falsely declared as a more routine commodity being exported under a Commerce general license.

Considering Customs' first comment concerning license posting, we feel the ideal time for this step is when the SED is presented for validation and the Customs clerk pulls the license to compare it with the SED. The SED should be posted to the license immediately after validation before the two are filed and overlooked. It would be more logical for Customs to perform this step at that time; if a Commerce inspection subsequently revealed discrepancies, appropriate notations could then be made and actions taken.

If the Customs validation function is discontinued, inspections for both purposes could be carried out by requiring a copy of the SED to be attached to the shipment by the exporter before delivery to the pier or cargo area to facilitate inspections performed by randomly selecting parcels. A copy of the SED could be delivered to Customs at the port where it would be held long enough to facilitate inspections initiated by reviewing SEDs. The license could continue to be filed with Customs by either the exporter or by OMC.

Under the SED processing system now followed by the Commerce Department, the licensee, not Customs, posts each SED to the license. If validation of munitions SEDs by

Customs is discontinued, the same system of self-posting by the licensee could be used. Although this might appear to result in some loss of control, the point we are raising is that Customs is currently making so many errors in its validation and posting procedure that discontinuing validation and using self-posting by the licensee may be just as accurate and a lot less costly.

In response to Customs' final comment that the transfer of function would be counterproductive and not cost effective, we believe that either system--using the current Commerce compliance system (strengthened, as Commerce admits it needs) or beefing up Customs to handle the inspections--properly designed, implemented, and managed, could effectively do the job. Improperly managed, either system could also be ineffective, inefficient, and duplicative as Customs fears. We believe, however, that it would be more efficient and less disruptive to exporters to have only one agency inspecting exports.

SPECIFIC EXAMPLES OF ERRORS IN  
DOCUMENT PROCESSING AND CONTROL

ERRORS BY CUSTOMSShipments recorded in excess of value authorized

Licenses on file at five locations had shipments recorded on the back in excess of the value authorized by the license. In each case the value of shipments exceeded the authorized value by more than the 10 percent permitted by the ITAR, as shown below.

<u>License number</u>	<u>Value of license</u>	<u>Value of shipments</u>	<u>Percent of overshipment</u>
44072	\$ 30,000	\$ 123,225	311
44071	800,000	1,796,668	125
44074	6,000	187,190	3,020
43782*	33,212	45,802	38
C-04220*	1,532,200	2,594,532	69
39867*	100,936	113,730	13
35515*	2,083	36,045	1,630
46555*	168,142	238,675	42
35289	5,782	7,089	23
35331	1,254	18,232	1,354
34424	1,975	18,936	859
47938	10,898	17,001	56

The above licenses followed by an asterisk appear to be examples of errors in reporting or recording exports rather than actual oversh shipments. In the other seven examples we did not attempt to ascertain if the error was an actual oversh shipment or a recording error. Postings in excess of the license value may be due partly to the fact that Customs export control clerks do not calculate the remaining unshipped authorized balances against the license after each shipment.

In four locations, we noted that export control clerks were not accurately posting the quantity of items being shipped. In one location, they were posting the number of cartons in the shipments rather than the specific quantity of an item authorized on the face of the license; the actual quantity shipped was never checked to ensure it did not exceed the quantity authorized. In two other locations when

specific quantities were authorized, the quantity shipped was not consistently noted on the back of the license. In another location, a Customs export control clerk stressed the difficulty of keeping track of the quantity shipped when the license listed several commodities; consequently, he posted only the shipment value.

None of these four locations had an adequate method for keeping track of shipped versus unshipped quantities. If a license authorizes different quantities of several commodities and a number of shipments are made against the license, Customs clerks need a method for keeping track of the quantity of each item already shipped. One such system being used by a San Francisco Customs clerk was exemplary. If 10 items were authorized but only five were being shipped initially, the clerk would draw a line through 10 and write 5 next to the item. If three were shipped subsequently, she drew a line through the 5 and wrote a 2 next to the item, and so on--very simple, but effective.

There may be no direct cause and effect relationship between failing to calculate unshipped balances after every shipment and posting shipments in excess of the license value, but it most likely is a contributing factor. In some of the examples, the apparent overshipment occurred in one shipment. In another, an unshipped balance of \$19,893 was noted on the back of the license and a \$27,795 shipment posted despite the fact that it was \$2,700 more than the 10-percent overshipment permitted by ITAR. For licenses with a high value and many small shipments, it is probably sufficient to calculate the unshipped balance periodically rather than after every shipment. While calculating unshipped balances regularly is a sensible control, the posted overshipments we found were so large as to suggest that some Customs clerks lack a basic understanding of what they are being asked to do.

#### Inaccurate postings

Although we did not attempt to verify the accuracy of postings made by Customs clerks, we did uncover some inaccurate postings while making other checks.

For example, in two different locations, licenses with apparent overshipments had been incorrectly posted by Customs as follows.

<u>License</u>	<u>Incorrect posting</u>	<u>Correct posting</u>
46555	\$159,987	\$15,987
44074	187,190	9,642
44071	9,642	289,045

The daytime export control clerk at another location told us that Customs Inspectors working the export control desk at night made inaccurate postings. We did note one instance where the night inspector posted the license number, 50353, as the shipment value, when it was actually \$5000. In another case, \$7000 rather than \$9000 was posted for the value of the shipment.

#### Completed licenses not returned

Two East Coast locations do not return all completed licenses. The ITAR requires licenses to be returned upon either expiration or completion, whichever comes first.

One of these locations had 70 completed licenses on file, many of which were completely used within 3 months of issuance. Had we not noted these licenses, they most likely would not have been returned to OMC until their expiration date, since they had been erroneously returned to the active file after final shipment had been recorded.

Only three such licenses were found at the other location but the Customs clerk explained to us that it was standard procedure to retain completed licenses until they had expired.

#### Duplicate SEDs sent to OMC

Export control clerks at four of the locations we visited believed that the port validating a SED was responsible for sending it to OMC. Clerks at four other locations believed the port holding the license should send the SED to OMC.

Lack of a standard procedure results in OMC receiving two copies of the same SED. Since OMC does not check for duplicate SEDs, both are entered into the computer system used to keep track of shipments. The SEDs are then discarded, making it very difficult to determine whether duplicates were received for the same shipment or whether two different shipments of the same value were actually made.

SEDs not returned to OMC when required

Clerks at two locations were attaching validated SEDs to the license and returning the entire package to OMC when the license expired. Although OMC regulations do not specifically require the return of SEDs at the time of export (or at any other time), OMC thinks that is the procedure being uniformly followed. The other locations we visited were returning them at the time of export.

SEDs not sent to other ports for posting in a timely manner

A West Coast clerk told us that other ports frequently wait too long to transmit validated SEDs for licenses she holds. She pointed out that the licenses could have expired and been returned to OMC, thus precluding posting of the shipments to the back of the license. On April 4, 1978, Customs in Los Angeles received 25 SEDs for posting to a single license filed there. The SEDs had been validated by Customs in New Orleans between December 22, 1977, and March 20, 1978.

Corrected SEDs not sent to OMC or posted

At one location, licensee/agent corrections--usually in the value or the quantity exported--to previously validated SEDs had not been submitted by Customs to OMC. If the Customs clerk has already returned the license to the State Department, there is little chance that errors in the amount or quantity shipped will ever be corrected.

In another location, corrections were not always made to the original posting on the back of the license. For example, although the export control clerk was informed that the shipment value posted as \$117,870 should have been \$127,870 the posting was never changed. In another case, the shipper informed Customs that two SEDs had been validated at two different ports for the same shipment; both shipments were still posted on the back of the license.

License data not verified

Seven percent of the licenses on file in Los Angeles, 27 percent in San Francisco, and 11 percent in Boston showed shipments from other ports. Customs officials in Washington told us that under these circumstances, a Customs clerk at the port receiving the SED for validation would telephone the port holding the license to verify the license number, quantity, unshipped balance, and expiration date

and to inform the port that a shipment was being made against the license.

We found, however, that this procedure was not being uniformly followed.

The four West Coast locations we visited did not follow this procedure. Essentially, they validated SEDs of this nature without checking them against the license at all. Customs clerks at two of these locations said they had never received calls from other ports about licenses in their files. Clerks at three East Coast locations said that telephone checks are now standard policy at their ports. However, one of these locations only began calling other ports in January 1978, and the export control supervisor commented that she rarely gets calls from other ports. At the fourth East Coast location, the clerk said the only time a SED was presented for a license filed at another port, he refused to validate it.

Verification of licenses is equally important whether it involves different Customs offices in two different locations or in the same city. Of the four cities we visited, only the Customs clerks in New York and Boston routinely check when the license is on file at the airport, for example, and the SED is presented for validation at the Customs office downtown. In June 1977, export control at JFK Airport attempted to discontinue telephone verification of licenses. It was not allowed to do so, however, and we were told that since March 1978, JFK has been cooperative about answering telephone inquiries and is itself calling about licenses on file downtown.

We believe that the following examples demonstrate the need for verifying SEDs against licenses before validation.

A clerk in Los Angeles received a SED on March 9, 1978, which stated that the license was on file there. When the license could not be located, the SED was returned to the freight forwarder. It was later resubmitted with a new license number and the notation that the license was on file with Customs, New York. The clerk assumed the information on the SED was correct, validated it without telephoning New York, and forwarded it to New York so the shipment could be recorded on the back of the license. At the same time a copy of the SED was sent to the State Department, where the export was probably recorded in its computerized information system. On April 24, 1978, 1-1/2 months after first being submitted, the SED was returned to Los Angeles by New York with the notation, "license not on file." The

Customs clerk contacted the freight forwarder and was given a third license number, said to be on file in New York. Again, the information was assumed to be correct and the SED was mailed to New York. Meanwhile, incorrect information has probably been entered in the State Department computer; almost 2 months after the shipment, the license and its location are still uncertain; OMC has never been notified of the original error; and, assuming the correct license has finally been identified, OMC will learn of the shipment only when the license expires or is completed.

Three other SEDs presented in Los Angeles for a license filed in New York were also returned under similar circumstances. Customs in Los Angeles assumed that the unshipped balance on the license was sufficient to cover the value of the shipments, validated the SEDs, and sent them to New York. Although the license had been on file in New York, its value had been used either before the three SEDs were presented in Los Angeles or before they arrived in New York. Two additional SEDs received by New York Customs for posting also cited licenses completed and returned to OMC.

The Customs clerks at the Los Angeles and San Francisco airports told us that they frequently have SEDs returned that they have sent to other ports for posting, with the notation "license not on file here." During our fieldwork in San Francisco, a SED was presented at the airport stating that the license was in New York. We discovered that the license was actually filed with Customs in downtown San Francisco.

We believe that the State Department regulations should require export control clerks to verify by telephone that a license is actually on file at another port, that a sufficient unshipped balance exists, and that the item, quantity, and ultimate destination indicated on the SED agree with the license. Although this procedure might result in some delay in the validation of SEDs, the other alternatives--no verification and permitting shipments only from the port where the license is on file--are unacceptable. The former would permit the continuation of errors, while the latter would be an unreasonable requirement to place upon exporters. Telephone verification is much less stringent than the requirement in effect before November 1970 for written authorization from the port holding the license before a shipment could be made from a different port. Currently Customs at the New York seaport is permitting sufficient time to telephone other ports by requiring that a SED brought in one day not be validated until the next

day. This procedure apparently has not resulted in any complaints that exports are being unnecessarily delayed.

#### ERRORS BY LICENSEES AND FREIGHT FORWARDERS

U.S. firms which apply for and receive licenses rely extensively on agents such as freight forwarders to handle export documents. The freight forwarder may be responsible for filing the license, preparing the SED, and presenting it for validation. Some freight forwarders acting as agents for foreign governments actually apply for as well as file the license. One branch office of the freight forwarder may have the license and prepare the SED while another branch office at the port of export may be responsible for presenting both documents to Customs. Occasionally, both the license and SED will be presented to an airline or shipping company which is expected to handle the filing and validation.

We believe that errors described in the following sections result from the diversity of procedures and participants in the handling of export documents. OMC regulations should pinpoint responsibility for compliance to eliminate some of the more obvious errors.

#### Exports without license on file

The ITAR requires that licenses be filed with Customs prior to any shipments. In the four West Coast locations, we noted instances in which shipments were made or attempted even though the license had never been filed with Customs. One freight forwarder had posted \$19,209 in shipments against a \$200,000 license for aircraft engine spare parts. Another freight forwarder filed a SED which did not indicate where the license was filed; after several phone calls, the license was located in the files of the exporting company. Initially, the firm told us that the freight forwarder had been given the license and instructed to file it at Customs. In a third case, an unvalidated SED was found by a Customs clerk in San Francisco while processing manifests. The Chicago office of the freight forwarder had forgotten to send the license to its San Francisco branch office to be filed with Customs.

We were told in two East Coast locations that licenses attached to unvalidated SEDs are sometimes found in airline cargo manifests. In Los Angeles an export control clerk actually found such a license while we were there. The clerk keeps no record of how frequently this occurs, but she said it has happened before.

SEDs not being validated

One reason for requiring SED validations before shipment is to ensure that the export is recorded on the license and reported to OMC. Prior validation also serves as a control function, since the SED can be compared to the license to verify that OMC has authorized the export of Munitions List items of that description and quantity to that destination.

In six locations which we visited, unvalidated SEDs were either discovered when Customs clerks examined cargo manifests or were reported to Customs by freight forwarders. However, not all unvalidated SEDs are discovered by Customs. At Los Angeles Airport, for example, we noted several unvalidated SEDs reported by freight forwarders that had not been discovered during manifest examinations. The Customs clerk told us that the volume of manifests examined daily precludes careful checking for unvalidated SEDs.

We question, however, whether freight forwarders are reporting all unvalidated SEDs. In a 10-month period, freight forwarders notified New York Seaport Customs of 14 unvalidated declarations, while only 7 were discovered during manifest examination. During 3- and 6-month periods, however, clerks at JFK and San Francisco Airports found 20 and 10 unvalidated SEDs, respectively, while only 3 were reported by freight forwarders.

In three locations we observed that SEDs were being presented for validation after shipment. This is in violation of OMC regulations but is difficult to detect since Customs presumes that SEDs presented for validation are for licensed items not yet shipped. The head of the Customs Export Control Unit at John F. Kennedy Airport said he first became aware of the problem when a clerk noticed that a validated munitions SED was filed with an airline manifest for a flight which departed the previous day.

During our test inspections (see p. 9.) we were unable to inspect shipments for six SEDs validated in Los Angeles and San Francisco because the shipments had already left.

Inaccurate and inadequately prepared SEDs

In Los Angeles and San Francisco, we compared SEDs presented for validation with the related licenses on file and found discrepancies in value and quantity shipped, description of item, license number, and expiration date, city in which license was lodged, date of export, and port

of exit. Some of the SEDs had been validated despite apparent discrepancies. For example:

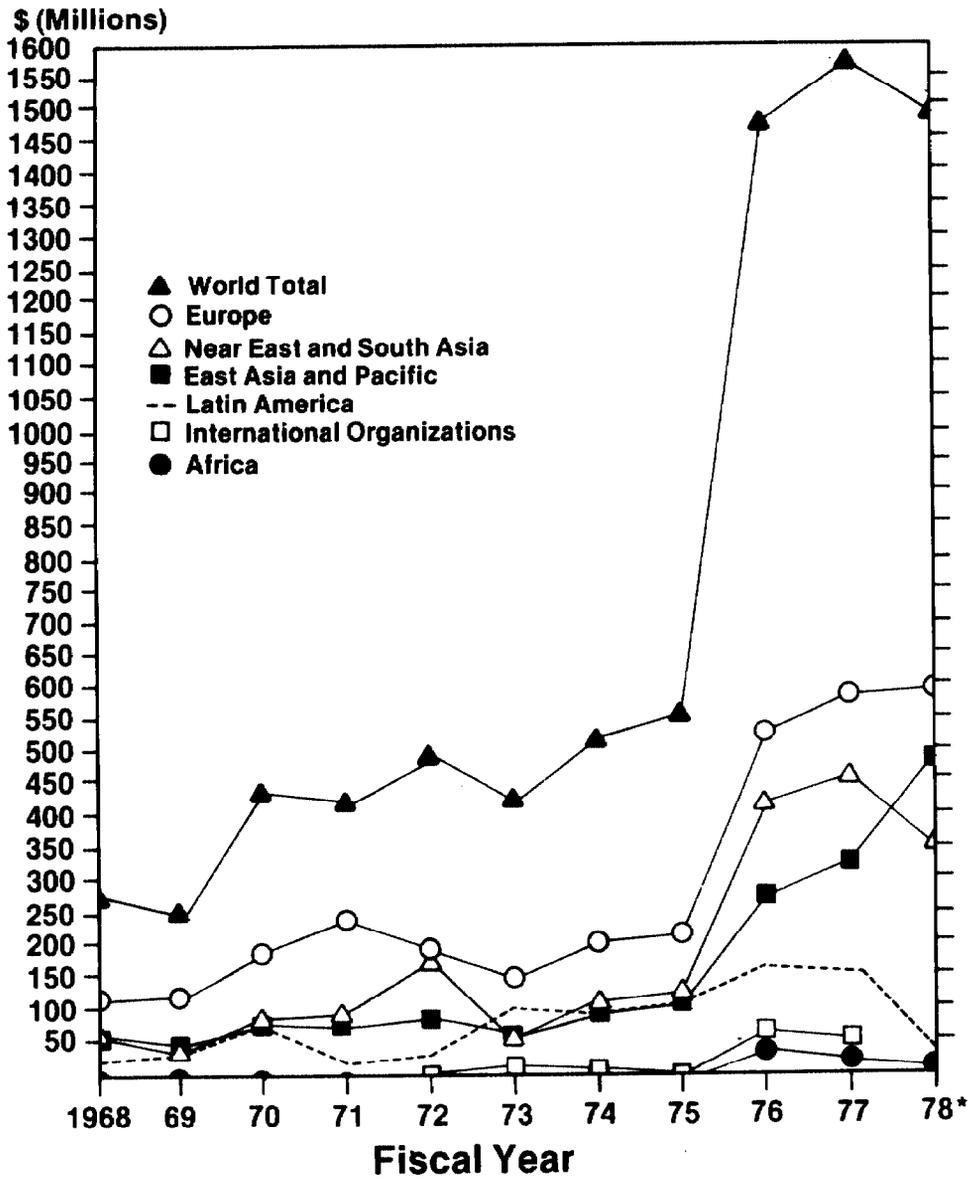
- In San Francisco, a SED was validated for the shipment of one carton containing a traveling wave tube amplifier valued at \$2,725. The date of export was not given. The license authorized the export of one amplifier valued at \$8,000. The freight forwarder told us that one amplifier valued at \$8,000 had actually been shipped.
- In Los Angeles, a SED was validated for 639 resistors, connectors, and diodes worth \$1,823; however, the license was for 7,500 optically coupled isolators worth \$54,375. We called the exporting firm, which said that 2,000 isolators valued at \$14,500 had actually been shipped. A secretary at the firm apparently typed the license number on the wrong SED.
- Two revised SEDs were submitted for military aircraft and radar spare parts shipped to a foreign government. The original unvalidated SEDs prepared by the freight forwarder listed two licenses expiring in January 1979. Those licenses, which had been on file in Los Angeles, expired in January 1978--2-months before the shipments. The revised SEDs cited two new licenses.
- A freight forwarder in another case indicated that the full value of the license--\$100,936--was being shipped. The amount was posted to the back of the license and it was returned to the State Department. When a subsequent SED was presented for validation, it was discovered that the initial SED had listed the value of the shipment incorrectly. Using a copy of the license, the value of the first shipment was changed from \$100,936 to \$18,035. It later turned out that this figure was also incorrect. The actual value was said to be \$23,323. A different SED incorrectly listed the value of a shipment as \$2,118 instead of \$9,762.
- In another example, Los Angeles validated a SED for \$1,532,200, while the actual value of the shipment was \$374,900. Moreover, although 46 of the 188 units authorized were shipped, the SED listed only the number of cartons in the shipment.

Validation in other than port of export

In Los Angeles and San Francisco, we saw SEDs validated for shipments being made from other ports. For example, the license might be filed in San Francisco and the SED validated in the same port, but the shipment could be placed aboard a domestic airline and actually exported on an international carrier from New York.

From the standpoint of control, we believe that validation and export should occur at the same port preferably at the port where the license is on file.

# U.S. Commercial Exports Licensed Under Arms Export Control Act World and Regional Totals



\* Estimate

Source: *Foreign Military Sales and Military Assistance Facts*, Published by Data Management Division, Comptroller, Defense Security Assistance Agency. Figures for FY 1968-1970 and International Organizations are from the December 1977 issue. FY 1971-1978 are from the December 1978 issue.

COMPARATIVE LEVELSFMS SALES, DELIVERIES, AND COMMERCIAL EXPORTS

Fiscal year	Foreign Military Sales				Commercial exports	
	Sales agreements		Deliveries		No. of countries	Amount (millions)
	No. of countries	Amount (millions)	No. of countries	Amount (millions)		
1968	60	\$ 1,185	63	\$ 987	66	\$ 257
1969	63	1,184	64	1,277	72	251
1970	58	1,156	60	1,342	72	438
1971	61	1,389	70	1,372	130	428
1972	68	3,061	69	1,460	127	481
1973	65	4,480	70	1,516	131	362
1974	69	10,741	70	3,178	126	502
1975	71	13,938	75	3,479	124	547
1976*	74	13,233	75	5,933	131	1,407
1977	76	11,342	74	7,132	131	1,523
1978**	67	13,534	79	7,699	133	1,485

\* Includes transition quarter

\*\* Estimate

Source: Foreign Military Sales and Military Assistance Facts - Dec. 1977 and 1978.  
Published by Data Management Division, Comptroller, Defense Security  
Assistance Agency.

INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)  
(Updated through August 1978)

## § 121.01

## Title 22—Foreign Relations

**SUBCHAPTER M—INTERNATIONAL TRAFFIC IN ARMS**

**NOTE:** For regulations which supersede certain provisions of this Subchapter M, see 27 CFR Part 47.

**PART 121—ARMS, AMMUNITION, AND IMPLEMENTS OF WAR****ENUMERATION OF ARTICLES****Sec.**

121.01 The U.S. munitions list.

**DEFINITIONS AND INTERPRETATIONS**

- 121.02 Equipment.
- 121.03 Significant combat equipment.
- 121.04 Firearms.
- 121.05 Cartridge and shell casing.
- 121.06 Military demolition blocks and blasting caps.
- 121.07 Apparatus and devices under Category IV(b).
- 121.08 Amphibious vehicles.
- 121.09 Chemical agents.
- 121.10 Propellants.
- 121.11 Military explosives.
- 121.12 Military fuel thickeners.
- 121.13 Vessels of war and special naval equipment.
- 121.14 Aircraft and related articles.
- 121.15 End-items, components, accessories, attachments, and parts.
- 121.16 Forgings, castings, and machined bodies.
- 121.17 "United States."
- 121.18 Person.
- 121.19 Export.
- 121.20 Intransit shipments.
- 121.21 Licenses.
- 121.22 District Director of Customs.

**AUTHORITY:** Sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934; secs. 101 and 105, E.O. 10973, 26 FR 10469; sec. 6, Departmental Delegation of Authority No. 104, 26 FR 10608, as amended, 27 FR 9925, 28 FR 7231; and Redlegation of Authority No. 104-3-A, 28 FR 7231.

**SOURCE:** Dept. Reg. 108.605, 34 FR 12029, July 17, 1969, unless otherwise noted.

Sections 121.04-121.22 redesignated by Dept. Reg. 108.733, 42 FR 16617, Mar. 29, 1977.

**ENUMERATION OF ARTICLES**

§ 121.01 The U.S. munitions list.

Pursuant to the authority cited *supra* the following articles<sup>1</sup> are

<sup>1</sup>The term "article" shall mean any of the arms, ammunition, and implements of war

hereby designated as arms, ammunition, and implements of war.

**CATEGORY I—FIREARMS**

(a) Nonautomatic and semiautomatic firearms, to caliber .50 inclusive, shotguns with barrels less than 18 inches in length, and all components and parts therefor (see §§ 121.03 and 123.30 through 123.34).

(b) Automatic firearms and all components and parts therefor to caliber .50 inclusive (see § 121.03).

(c) Insurgency-counterinsurgency type firearms or other weapons having a special military application regardless of caliber; and all components and parts therefor.

(d) Firearms silencers.

(e) Bayonets and specifically designed components therefor.

(f) Riflescopes (except sporting type sights including optical) and specifically designed components therefor.

**CATEGORY II—ARTILLERY AND PROJECTORS**

(a) Guns over caliber .50, howitzers, mortars, and recoilless rifles.

(b) Military flame throwers and projectors.

(c) Components and parts including, but not limited to, mounts and carriages for the articles in paragraphs (a) and (b) of this category.

**CATEGORY III—AMMUNITION**

(a) Ammunition for the arms in Categories I and II of this section (see §§ 123.03 and 121.04).

(b) The following components, parts, accessories, and attachments: Cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun), projectiles, boosters, fuzes and components therefor, primers, and other detonating devices for such ammunition (see § 121.04).

(c) Ammunition belting and linking machines.

(d) Ammunition manufacturing machines, and ammunition loading machines (except hand loading).

**CATEGORY IV—LAUNCH VEHICLES, GUIDED MISSILES, BALLISTIC MISSILES, ROCKETS, TORPEDOES, BOMBS, AND MINES**

(a) Rockets (except meteorological sounding rockets), bombs, grenades, torpedoes, depth charges, land and naval mines, and demolition blocks and blasting caps (see § 121.05).

and technical data relating thereto enumerated in the U.S. Munitions List (see § 123.38).

## Chapter I—Department of State

§ 121.01

(b) Launch vehicles, guided missiles, and ballistic missiles, tactical and strategic.

(c) Apparatus, devices, and materials for the handling, control, activation, detection, protection, discharge, or detonation of the articles in paragraphs (a) and (b) of this category (see § 121.06).

(d) Missile and space vehicle powerplants.

(e) Military explosive excavating devices.

(f) Ablative materials fabricated or semi-fabricated from advanced composites (e.g., silica, graphite, carbon, and boron filaments) for the articles in this category when clearly identifiable as arms, ammunition, and implements of war, including the tape wrapping and other techniques for their production.

(g) All specifically designed components, parts, accessories, attachments, and associated equipment for the articles in this category.

## CATEGORY V—PROPELLANTS, EXPLOSIVES, AND INCENDIARY AGENTS

(a) Propellants for the articles in Categories III and IV of this section (see § 121.09).

(b) Military explosives (see § 121.10).

(c) Military fuel thickeners (see § 121.11).

(d) Military pyrotechnics except (i) non-irritant smoke and (ii) other pyrotechnic materials having dual military and commercial use.

## CATEGORY VI—VESSELS OF WAR AND SPECIAL NAVAL EQUIPMENT

(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels, service crafts, floating dry docks, and experimental types of naval ships (see § 121.12).

(b) Turrets and gun mounts, missile systems, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments, and accessories specifically designed for combatant vessels, including but not limited to, battleships, command ships, guided missile ships, cruisers, aircraft carriers, destroyers, frigates, escorts, mine-sweepers, and submarines.

(c) Submarine and torpedo nets, and mine sweeping equipment. Components, parts, attachments and accessories specifically designed therefor.

(d) Harbor entrance magnetic, pressure, and acoustic detection devices, controls and components thereof.

(e) Naval nuclear propulsion plants, their land prototypes and special facilities for their construction, support, and maintenance, including any machinery, device, component, or equipment specifically devel-

oped or designed for use in such plants or facilities\* (see § 123.38).

## CATEGORY VII—TANKS AND MILITARY VEHICLES

(a) Military type armed or armoured vehicles, military railway trains, and vehicles fitted with, designed or modified to accommodate mountings for arms or other specialized military equipment.

(b) Military tanks, tank recovery vehicles, half-tracks and gun carriers.

(c) Self-propelled guns and howitzers.

(d) Military trucks, trailers, hoists, and skids specifically designed for carrying and handling the articles in paragraph (a) of Categories III and IV; military mobile repair shops specifically designed to service military equipment.

(e) Military recovery vehicles.

(f) Amphibious vehicles (see § 121.07).

(g) All specifically designed components, parts, accessories, attachments, and associated equipment, including military bridging and deep water fording kits for the articles in this Category.

## CATEGORY VIII—AIRCRAFT, SPACECRAFT, AND ASSOCIATED EQUIPMENT

(a) Aircraft including helicopters designed, modified, or equipped for military purposes, including but not limited to the following: Gunnery, bombing, rocket, or missile launching, electronic surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, military trainers, drones, and lighter-than-air aircraft (see § 121.13).

(b) Spacecraft including manned and unmanned, active and passive satellites.

(c) Military aircraft engines, except reciprocating engines, and spacecraft engines specifically designed or modified for the aircraft and spacecraft in paragraphs (a) and (b) of this category.

(d) Airborne equipment, including but not limited to airborne refueling equipment.

\*Applications for licensing the export of any such machinery, device, component, or equipment, or technical data relating thereto, will not be granted if the proposed export does not come within the scope of an existing Agreement for Cooperation for Mutual Defense Purposes concluded pursuant to the Atomic Energy Act of 1954, as amended, with the government of the country to which the item will be exported, unless the license application involves an item (a) which is identical to that in use in an unclassified civilian nuclear powerplant, and its furnishing does not disclose its relationship to naval nuclear propulsion, and (b) which is not for use in a naval propulsion plant.

**§ 121.01**

specifically designed for use with the aircraft, spacecraft, and engines of the types in paragraphs (a), (b), and (c) of this category.

(c) Launching, arresting, and recovery equipment for the articles in paragraphs (a) and (b) of this category.

(f) Nonexpansive balloons in excess of 3,000 cubic feet capacity, except such types as are in normal sporting use.

(g) Power supplies and energy sources specifically designed for spacecraft.

(h) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (a) through (g) of this category, excluding propellers used with reciprocating engines and aircraft tires.

(i) Developmental aircraft components known to have a significant military application, excluding aircraft components concerning which Federal Aviation Agency certification is scheduled.

(j) Parachutes, except such types as are in normal sporting use, and complete canopies, harnesses, and platforms, and electronic release mechanisms therefor.

(k) Ground effect machines (GEMS), including surface effect machines and other air cushion vehicles, except such machines as are in normal commercial use, and all components parts, accessories, attachments, and associated equipment specifically designed or modified for use with such machines.

(l) Inertial systems, and specifically designed components therefor, inherently capable of yielding accuracies of better than 1 to 2 nautical miles per hour circular error of probability (c.e.p.).

**CATEGORY IX—MILITARY TRAINING EQUIPMENT**

(a) Military training equipment includes but is not limited to attack trainers, radar target trainers, radar target generators, gunnery training devices, antisubmarine warfare trainers, target equipment, armament training units, flight simulation devices, operational flight trainers, flight simulators, radar trainers, instrument flight trainers and navigation trainers.

(b) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraph (a) of this category.

**CATEGORY X—PROTECTIVE PERSONNEL EQUIPMENT**

(a) Military body armor (including armored vests), flak suits and components and parts specifically designed therefor; military helmets, including liners.

(b) Partial pressure suits, pressurized breathing equipment, military oxygen masks, anti-"G" suits, protective clothing

**Title 22—Foreign Relations**

for handling guided missile fuel, military crash helmets, liquid oxygen converters used for aircraft (enumerated in Category VIII(a)) missiles, catapults, and cartridge-actuated devices utilized in emergency escape of personnel from aircraft (enumerated in Category VIII(a)).

(c) Protective apparel and equipment specifically designed for use with the articles in paragraphs (a) through (d) in Category XIV.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed for use with the articles in paragraphs (a), (b) and (c) of this category.

**CATEGORY XI—MILITARY AND SPACE ELECTRONICS**

(a) Electronic equipment not included in Category XII of the Munitions List assigned a military designation or specifically designed, modified or configured for military application, including but not limited to the following items:

(1) Underwater sound equipment including long towed arrays, electronic beam formed sonar, target classification equipment, and spectrographic displays; search, acquisition, tracking, moving target indication and imaging radar systems; active and passive countermeasures, counter-countermeasures; electronic fuses; identification systems; command, control and communications systems, and regardless of designation, any experimental or developmental electronic equipment specifically designed or modified for military application, or for use with a military system, and

(2) Simple fathometers; underwater telephones; electro-mechanical beam former sonars and elementary sonobuoys; weather, navigation and air traffic control radar systems; navigation, guidance, object-locating methods and means; displays; and telemetering equipment.

(b) Space electronics: (1) Electronic equipment specifically designed or modified for spacecraft and spaceflight, other than equipment specifically designed or modified for use with communications satellites.

(2) Electronic equipment specifically designed or modified for use with communications satellites.

(c) Electronic systems or equipment designed, configured, used, or intended for use in search, reconnaissance, collection, monitoring, direction-finding, display, analysis, and production of information from the electromagnetic spectrum for intelligence or security purposes.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed for use or currently used with the equipment in paragraphs (a) through (c) of this category, except such items as are in normal commercial use.

**Chapter I—Department of State****§ 121.01****CATEGORY XII—FIRE CONTROL, RANGE FINDER, OPTICAL AND GUIDANCE AND CONTROL EQUIPMENT**

(a) Fire control systems; gun and missile tracking and guidance systems; military infrared, image intensifier and other night sighting and night viewing equipment; military masers and military lasers; gun laying equipment; range, position and height finders and spotting instruments; aiming devices (electronic, gyroscopic, optic, and acoustic); bomb sights, bombing computers, military television sighting and viewing units, inertial platforms, and periscopes for the articles of this section.

(b) Intertial and other weapons or space vehicle guidance and control systems; spacecraft guidance, control and stabilization systems; astro compasses; and star trackers.

(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (a) and (b) of this category, except such items as are in normal commercial use.

**CATEGORY XIII—AUXILIARY MILITARY EQUIPMENT**

(a) Aerial cameras, space cameras, special purpose military cameras, and specialized processing equipment therefor; military photointerpretation, stereoscopic plotting, and photogrammetry equipment, and specifically designed components therefor.

(b) Speech scramblers, privacy devices, cryptographic devices (encoding and decoding), and specifically designed components therefor, ancillary equipment, and especially devised protective apparatus for such device, components, and equipment.

(c) Self-contained diving and underwater breathing apparatus designed for a military purpose and specifically designed components therefor.

(d) Armor plate.

(e) Concealment and deception equipment, including but not limited to, special paints, decoys, and simulators, components, parts and accessories specifically designed therefor.

(f) Energy conversion devices for producing electrical energy from nuclear, thermal, or solar energy, or from chemical reaction, specifically designed or modified for military application.

(g) Chemiluminescent compounds and solid state devices specifically designed or modified for military application.

**CATEGORY XIV—TOXICOLOGICAL AGENTS AND EQUIPMENT; RADIOLOGICAL EQUIPMENT**

(a) Chemical agents, including lung irritants, vesicants, lachrymators, and tear gases, sternutators and irritant smoke, and

nerve gases and incapacitating agents (see § 121.08).

(b) Biological agents adapted for use in war to produce death or disablement in human beings or animals, or to damage crops and plants.

(c) Equipment for dissemination, detection, and identification of, and defense against the articles in paragraphs (a) and (b) of this Category (see § 123.31).

(d) Nuclear radiation detection and measuring devices, except such devices as are in normal commercial use.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category.

**CATEGORY XV—[RESERVED]****CATEGORY XVI—NUCLEAR WEAPONS DESIGN AND TEST EQUIPMENT<sup>1</sup>**

(a) Any article, material, equipment, or device, which is specifically designed or specifically modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices.

(b) Any article, material, equipment, or device, which is specifically designed or specifically modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions except such items as are in normal commercial use for other purposes.

(c) Cold cathode tubes such as krytrons and sprytrons.

**CATEGORY XVII—CLASSIFIED ARTICLES**

All articles including technical data relating thereto, not enumerated herein, containing information which is classified as requiring protection in the interests of national defense.

**CATEGORY XVIII—TECHNICAL DATA**

Technical data relating to the articles designated in this subchapter as arms, ammunition, and implements of war (see § 125.01 for definition and § 125.11 for exemptions; see also § 123.38).

**CATEGORY XIX—[RESERVED]****CATEGORY XX—SUBMERSIBLE VESSELS, OCEANOGRAPHIC AND ASSOCIATED EQUIPMENT<sup>2</sup>**

(a) Submersible vessels, manned and unmanned, designed for military purposes or

<sup>1</sup>See § 123.38. See also Department of Commerce Export Regulations, 15 CFR 373.7.

<sup>2</sup>Any submersible vessels, oceanographic or associated equipment assigned a military designation shall constitute an article on the U.S. Munitions List, whether expressly enumerated therein.

**§ 121.02**

having independent capability to maneuver vertically or horizontally at depths below 1,000 feet or powered by nuclear propulsion plants.

(b) Submersible vessels, manned or unmanned, designed in whole or in part from technology developed by or for the U.S. Armed Forces.

(c) Any of the articles in Categories VI, IX, XI, XIII, and elsewhere in § 121.01 of this subchapter that may be used with submersible vessels.

(d) Equipment, components, parts, accessories, and attachments designed specifically for any of the articles in paragraphs (a) and (b) of this category.<sup>4</sup>

**CATEGORY XXI—[RESERVED]****CATEGORY XXII—MISCELLANEOUS ARTICLES**

Any article and technical data relating thereto not enumerated herein having significant military applicability, determined by the Director, Office of Munitions Control, Department of State, in consultation with appropriate agencies of the Government and having the concurrence of the Department of Defense.

(Redelegation of Authority No. 104-7-A, 35 FR 5423, 5424)

[Dept. Reg. 108.607, 34 FR 13274, Aug. 15, 1969, as amended by Dept. Reg. 108.629, 35 FR 19016, Dec. 16, 1970; Dept. Reg. 108.630, 35 FR 19994, Dec. 31, 1970; Dept. Reg. 108.646, 36 FR 20939, Nov. 2, 1971; Dept. Reg. 108.650, 36 FR 24800, Dec. 23, 1971; Dept. Reg. 108.668, 37 FR 14694, July 22, 1972; Dept. Reg. 108.733, 42 FR 16617, Mar. 29, 1977]

**DEFINITIONS AND INTERPRETATIONS****§ 121.02 Equipment**

The term "equipment" as used in this subchapter, unless it appears otherwise in the context, means any article (see footnote 1, § 121.01) not including technical data. The terms "equipment" and "article" include (a) experimental equipment being developed for military use, and (b) models and mockups (with or without moving parts) if they reveal any information relating to the use, operation, mainte-

<sup>4</sup>Items, including technical data relating thereto, for submarine nuclear propulsion plants which upon review are determined to have significant naval nuclear propulsion applicability will be considered as naval nuclear propulsion items for the purposes of these regulations and processed in accordance with Category VI(e) and the footnote thereto.

**Title 22—Foreign Relations**

nance, repair, overhaul, production, processing, manufacture, research, development, or design of any arms, ammunition, and implements of war on the U.S. Munitions List.

**§ 121.03 Significant combat equipment.**

Significant combat equipment includes the articles (not including technical data) enumerated in Categories I (a), (b), and (c) (in quantity); II (a) and (b); III(a) (excluding ammunitions for firearms in Category I); IV (a), (b), (d), and (e); V(b) (in quantity); VI(a) (limited to combatant vessels as defined in § 121.12(a) (b) (inclusive only of turrets and gun mounts, missile systems, and special weapons systems) and (e); VII (a), (b), (c), and (f); VIII (a), (b), (c), GEMS as defined in (k), and inertial systems as defined in (1); XI (a)(1), (b)(1), and (c); XII(a); XIV (a), (b), (c), and (d); XVI; XVII; and XX (a) and (b).

(Sec. 38, as amended, 90 Stat. 744, 22 U.S.C. 2778; E.O. 11958, 42 FR 4311.)

[Dept. Reg. 108.733, 42 FR 16617, Mar. 29, 1977]

**§ 121.04 Firearms.**

Rifles, carbines, revolvers, and pistols, to caliber .50 inclusive, and shotguns with barrels less than 18 inches in length, are included under Category I(a). Machineguns, submachineguns, machine pistols, and fully automatic rifles to caliber .50 inclusive are included under Category I(b).

(a) As used in this subchapter, the term "firearm" denotes a weapon not over .50 caliber which will or is designed to or may readily be converted to expel a projectile by the action of an explosive. (BB and pellet guns are not included on the Munitions List.)

(b) A "rifle" is a shoulder firearm discharging bullets through a rifled barrel at least 16 inches in length, including combination and drilling guns.

(c) A "carbine" is a lightweight shoulder firearm with a short barrel, under 16 inches in length.

(d) A "pistol" is a hand-operated firearm having a chamber integral with, or permanently aligned with, the bore.

(e) A "revolver" is a hand-operated firearm with a revolving cylinder con-

## Chapter I—Department of State

## § 121.10

taining chambers for individual cartridges.

(f) A "machinegun," "machine pistol" or "submachinegun" is a firearm originally designed to fire, or capable of being fired fully automatically by a single pull of the trigger.

## § 121.05 Cartridge and shell casings.

Cartridge and shell casings are included under Category III of the U.S. Munitions List unless, prior to their exportation, they have been rendered useless beyond the possibility of restoration for use for the purpose originally produced by means of excessive heating, flame treatment, mangling, crushing, cutting, or popping. (Shotgun ammunition is not included in the Munitions List.)

## § 121.06 Military demolition blocks and blasting caps.

The term "military demolition blocks and blasting caps" does not include the following articles:

- (a) Electric squibs.
- (b) No. 6 and No. 8 blasting caps, including electric.
- (c) Delay electric blasting caps (including No. 6 and No. 8 millisecond).
- (d) Seismograph electric blasting caps (including SSS, Static-Master, Vibrocap SR, and SEISMO SR).
- (e) Oil well perforating devices.

## § 121.07 Apparatus and devices under Category IV(b).

Category IV(b) includes inter alia the following: Fuzes and components thereof, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance system materials (except those having a commercial application), launching racks and projectors, pistols (exploders), igniters, fuze arming devices, intervalometers, and components therefor, guided missile launchers and specialized handling equipment and hardened missile launching facilities.

## § 121.08 Amphibious vehicles.

As used in Category VII (f), the term "amphibious vehicles" includes, but is not limited to, automotive vehicles or chassis embodying all-wheel drive and

equipped to meet special military requirements, with adaptation features for deep water fording and sealed electrical systems.

## § 121.09 Chemical agents.

(a) (See Category XIV(a).) A chemical agent is a substance useful in war which by its ordinary and direct chemical action, produces a powerful physiological effect. The term "chemical agents" includes but is not limited to the following chemical compounds:

1. Lung irritants:
  - (a) Diphenylcyanoarsine (DC).
  - (b) Fluorine (but not fluorene).
  - (c) Trichloronitro methane (Chlorpicrin PS).
2. Vesicants:
  - (a) B Chlorvinylchloroarsine (Lewisite, L).
  - (b) Bisdichlorethyl sulphide (Mustard gas, HD or H).
  - (c) Ethyldichloroarsine (ED).
  - (d) Methylidichloroarsine (MD).
3. Lachrymators and tear gases:
  - (a) Brombenzylcyanide (BBC).
  - (b) Chloroacetophenone (CN).
  - (c) Dibromodimethyl ether.
  - (d) Dichlorodimethyl ether (ClCl).
  - (e) Ethyldibromoarsine.
  - (f) Phenylcarbylamine chloride.
  - (g) Tear gas solutions (CNB and CNS).
  - (h) Tear gas orthochlorobenz almalonitrile (CS).
4. Sternutators and irritant smokes:
  - (a) Diphenylaminechloroarsine (Adamantite, DM).
  - (b) Diphenylchloroarsine (BA).
  - (c) Liquid pepper.
5. Nerve gases. These are toxic compounds which affect the nervous system, such as:
  - (a) Dimethylaminoethoxycyanophosphine oxide (GA).
  - (b) Methylisopropoxyfluorophosphine oxide (GB).
  - (c) Methylpinacolyloxyfluorophosphine oxide (GD).
6. Antiplant chemicals:
  - (a) Butyl 2-chloro-4-fluorophenoxyacetate (LNF).

[Dept. Reg. 108.605, 34 FR 12029, July 17, 1969, as amended by Dept. Reg. 108.636, 35 FR 19994, Dec. 31, 1970; Dept. Reg. 108.606, 36 FR 20940, Nov. 2, 1971]

## § 121.10 Propellants.

The term "propellants" includes but is not limited to the following:

- (a) Propellant powders, including smokeless shotgun powder (see § 123.37).

## § 121.11

(b) Hydrazine (including Monomethyl hydrazine and symmetrical dimethyl hydrazine but excluding hydrazine hydrate).

(c) Unsymmetrical dimethyl hydrazine.

(d) Hydrogen peroxide over 85 percent concentration.

(e) Nitroguanidine or picrite.

(f) Nitrocellulose with nitrogen content of over 12.20 percent.

(g) Nitrogen tetroxide.

(h) Other solid propellant compositions, including but not limited to the following:

(1) Single base (nitrocellulose).

(2) Double base (nitrocellulose, nitroglycerin).

(3) Triple base (nitrocellulose, nitroglycerin, nitroguanidine).

(4) Composite of nitroglycerin, ammonium perchlorate, potassium perchlorate, nitronium perchlorate, guanidine (guanidinium) perchlorate, nitrogen tetroxide, ammonium nitrate or nitrocellulose with plastics, metal fuels, or rubbers added; and compounds composed only of fluorine and one or more of the following: Other halogens, oxygen, or nitrogen.

(5) Special purpose chemical base high energy solid military fuels.

(1) Other liquid propellant compositions, including but not limited to the following:

(1) Monopropellants (hydrazine, hydrazine nitrate, and water).

(2) Bipropellants (Hydrazine, fuming nitric acid HNO<sub>3</sub>).

(3) Perchloryl fluoride.

(4) Special purpose chemical base high energy liquid military fuels and oxidizers.

## § 121.11 Military explosives.

The term "military explosives" includes, but is not limited to, the following:

(a) Ammonium picrate.

(b) Black powder made with potassium nitrate or sodium nitrate.

(c) Cyclotetramethylene - tetranitramine (HMX).

(d) Cyclotrimethylene - trinitramine (RDX, Cyclonite, Hexogen or T4).

(e) Dinitronaphthalene.

(f) Ethylenedinitramine.

(g) Hexanitrodiphenylamine.

## Title 22—Foreign Relations

(h) Nitroglycerin.

(i) Nitrostarch.

(j) Pentaerythritol tetranitrate (penthrite, pentrite or PETN).

(k) Tetranitronaphthalene.

(l) Trinitroanisol.

(m) Trinitronaphthalene.

(n) Trinitrophenol (picric acid).

(o) Trinitrophenylmethylnitramine (Tetryl).

(p) Trinitrotoluene (TNT).

(q) Trinitroxylene.

(r) Ammonium perchlorate nitrocellulose (military grade).

(s) Any combinations of the above.

## § 121.12 Military fuel thickeners.

The term "military fuel thickeners" includes: compounds (e.g., octal), or mixtures of such compounds (e.g., napalm) specifically formulated for the purpose of producing materials which, when added to petroleum products, provide a gel-type incendiary material for use in bombs, projectiles, flame throwers, or other implements of war.

## § 121.13 Vessels of war and special naval equipment.

(See Category VI.) The term "vessels of war" includes, but is not limited to, the following:

(a) Combatant:

(1) Warships (including nuclear-powered versions):

Aircraft carriers (CVA, CVE, CVHE, CVL, CVS).

Battleships (BB, BBG).

Command ships (CBC, CLC).

Cruisers (CA, CAG, CB, CG, CL, CLAA, CLG).

Destroyers (DD, DDC, DDE, DDG, DDR, DL, DLG).

Submarines (SS, SSB, SSG, SSK, SSR).

(2) Amphibious warfare vessels:

Amphibious assault ship (LPH).

Amphibious force flagship (AGC).

Assault helicopter aircraft carrier (CVHA).

Attack cargo ship (AKA).

Control escort vessel (DEC).

Cargo submarine (AK(SS)).

Inshore fire support ship (IFS).

Landing ships (LSD, LSMR, LST, LPD).

Transport submarine (AP(SS)).

Transports (APA, APD).

## Chapter I—Department of State

§ 121.13

(3) Landing craft (LCM, LCU, LCVP, ATC, CCB).

(4) Landing vehicle, tracked (LVT).

(5) Mine warfare vessels:

Mine hunter, coastal (MHC).  
Mine countermeasures support ship (MCS).

Minelayers (DM, MMA, MMC, MMF).  
Minesweepers (DMS, MSC, MSC(O), MSP, MSO, MSI, MSB, MSA, YMS, MSL, Ub/MS).

(6) Patrol vessels:

Escort vessels (DE, DER, PCS, PCER, PF, DEG).

Gunboats (PCM, PR).  
Submarine chasers (PC, PCS, SC).  
Yacht (PY).

(b) Auxiliary vessels and service craft:

(1) Advanced aviation base ship (AVB).

(2) Auxiliary submarine (AG(SS)).

(3) Cable repairing or laying ship (ARC).

(4) Degaussing vessel (ABG).

(5) Distilling ship (AW).

(6) Drone aircraft catapult control craft (YV).

(7) Floating dry docks, cranes, and associated workshops and lighters (AFDB, AFDL, AFDL, AFDL, ARD, YFD, YFMD, YR, YRDH, YRDM, YHL, YSD).

(8) Guided missile ship (AVM).

(9) Harbor utility craft (YFU).

(10) Icebreaker (AGB).

(11) Logistic support ships (AE, AF, AK, AKS, AO, ACE, AGO, AOR, AO(SS), AVS).

(12) Miscellaneous auxiliary (AG, IX, YAG).

(13) Miscellaneous cargo ships (AKD, AKL, AKV, AVT).

(14) Naval barges and lighters (YC, YCF, YCK, YCV, YF, YFB, YFN, YFNS, YFNX, YFP, YFR, YFRN, YRFT, YFT, YG, YGN, YO, YOG, YOGN, YON, YOS, YSR, YTT, YW, YWN).

(15) Net laying and tending ships (AKN, AN, YNG).

(16) Oceanographic research ship (AGOR).

(17) Patrol craft (PT, YP).

(18) Repair, salvage and rescue vessels (AR, ARB, ARG, ARL, ARS, ARSD, ARV, ARVA, ARVE, ASR).

(19) Survey ships (GS, AGSC).

(20) Target and training submarine (SST).

(21) Tenders, (AD, AGP, ARST, AS, AV, AVP, YDT).

(22) Transports and barracks vessels (AP, APB, APC, APL, YHB, YRB, YRBM).

(23) Tugs (ATA, ATF, ATR, YTB, YTL, YTM).

(24) Ocean radar picket ship (AGR).

(25) Submersible craft (X). (See Category XX.)

(26) Utility aircraft carrier (CVU).

(c) Coast Guard patrol and service vessels and craft:

(1) Submarine repair and berthing barge (YRB).

(2) Labor transportation barracks ship (APL).

(3) Coast Guard cutter (CGC).

(4) Gunboat (WPG).

(5) Patrol craft (WPC, WSC).

(6) Seaplane tender (WAVP).

(7) Icebreaker (WAGB).

(8) Cargo ship (WAK).

(9) Buoy tenders and boats (WAGE, WD).

(10) Cable layer (WARC).

(11) Lightship (WAL).

(12) Coast Guard tugs (WAT, WXT).

(13) Radio ship (WAGR).

(14) Special vessel (WIX).

(15) Auxiliary vessels (WAG, WAGE).

(16) Other Coast Guard patrol or rescue craft (i) of over 300 horsepower when equipped with a gas turbine engine or engines, and (ii) of over 600 horsepower when equipped with an engine or engines of the internal combustion, reciprocating type.

(d) Air Force craft: Air Force rescue boat.

(e) Army vessels and craft:

(1) Transportation Corps tug: 100 ft. (LT), 65 ft. (ST), T-boat, Q-boat, J-boat, E-boat.

(2) Barges (BG, BC, BR, BSP, BSPI, BKI, BCF, BBL, BARC, BK).

(3) Cranes, floating (BD).

(4) Drydock, floating (FDL).

(5) Repair ship, floating (FMS).

(6) Trainer, amphibious 20-ton wheeled tow boat, inland waterway (LTI, STI).

[Dept. Reg. 108.605, 34 FR 12029, July 17, 1969; 34 FR 12437, July 30, 1969]

**§ 121.14****§ 121.14 Aircraft and related articles.**

(a) The term "aircraft" used in Category VIII of the U.S. Munitions List means aircraft designed, modified, or equipped for military purpose as specified in Category VIII, including so-called "demilitarized" aircraft. The export of such aircraft is subject to the licensing requirements of the Department of State.

(b) Regardless of demilitarization, all aircraft bearing an original military designation are included in Category VIII of the U.S. Munitions List, except the following aircraft which have not been specifically equipped, re-equipped, or modified for military operations:

(1) Cargo aircraft bearing "C" designations C-45 through C-118 inclusive, and C-121.

(2) Trainer aircraft bearing "T" designations and using reciprocating engines only.

(3) Utility aircraft bearing "U" designations and using reciprocating engines only.

(4) All liaison aircraft bearing an "L" designation.

(5) All observation aircraft bearing "O" designations and using reciprocating engines only.

[Dept. Reg. 108.605, 35 FR 12029, July 17, 1969, as amended by Dept. Reg. 108.630, 35 FR 19994, Dec. 31, 1970]

**§ 121.15 End-items, components, accessories, attachments, and parts.**

(a) End-items are defined as assembled whole systems or equipment, ready for its intended use, (1) for which only ammunition, fuel or other energy sources are required to place them in an operating state, and (2) consisting of components and parts, with or without accessories or attachments. (Examples: rifles, tanks, aircraft, transceivers, ships, etc.)

(b) Components are items which are useful only when used in conjunction with an end-item. They are defined as either major or minor: (1) Major components include any assembled elements which form a portion of an end-item without which the end-item is inoperable (examples: airframes, tail sections, engines, transmissions, tank treads, hulls, etc.); and (2) minor com-

**Title 22—Foreign Relations**

ponents include any assembled elements of a major component.

(c) Accessories and attachments are defined as elements of any components, systems, or products not necessary for the operation of an end-item, but which enhance the usefulness or effectiveness of the end-item. (Examples: riflescopes, special paints, etc.)

(d) Parts are defined as any single unassembled elements of major and minor components, accessories and attachments which are not normally subject to disassembly without destruction or impairment of design use. (Examples: rivets, wire, bolts, etc.)

(Redelegation of Authority No. 104-7-A, 35 FR 5423, 5424)

[Dept. Reg. 108.668, 37 FR 14694, July 22, 1972]

**§ 121.16 Forgings, castings, and machined bodies.**

Items in a partially completed state, such as forgings, castings, extrusions, and machined bodies of any of the articles enumerated on the U.S. Munitions List which have reached a stage in manufacture where they are clearly identifiable as arms, ammunition, and implements of war are considered to be such articles for the purposes of section 414 of the Mutual Security Act, as amended.

**§ 121.17 "United States."**

For the purposes of this subchapter the term "United States," when used in the geographical sense, unless otherwise expressly defined, includes the several States, the insular possessions of the United States, the Canal Zone, the District of Columbia, and any territory over which the United States exercises all and any powers of administration, legislation, and jurisdiction.

**§ 121.18 Person.**

For the purposes of this subchapter the term "Person" includes a partnership, company, association, corporation, firm, society, or joint stock company, as well as a natural person.

**§ 121.19 Export.**

For the purposes of this subchapter the term "export" means the sending or taking out of the United States in

**Chapter I—Department of State****§ 122.01**

any manner any article, equipment, or technical data on the U.S. Munitions List except as may be otherwise expressly provided in a particular context.

**§ 121.20 Intransit shipments.**

For the purposes of this subchapter equipment on the U.S. Munitions List temporarily entering the United States in transit to another country, including return to the country of export, shall constitute a temporary import for which a Department of State Intransit License (DSP-61) shall be required.

**§ 121.21 Licenses.**

(a) For the purposes of this subchapter the term "license" denotes a document bearing the word "license" which when dated, sealed, numbered, and signed by the Secretary of State or his authorized designees permits the export, temporary export, or intransit shipment of specific articles on the U.S. Munitions List (See §§ 123.05.)

(b) Licenses shall be issued valid for 12 months unless a different period is expressly stated thereon. Licenses are not transferable.

(c) No photographic or other copy may be made of an original license unless authorized by the Department of State.

[Dept. Reg. 108.605, 34 FR 12029, July 17, 1969, as amended by Dept. Reg. 108.629, 35 FR 19016, Dec. 16, 1970; Dept. Reg. 108.646, 36 FR 20940, Nov. 2, 1971. Redesignated by Dept. Reg. 108.733, 42 FR 16617, Mar. 29, 1977]

**§ 121.22 District Director of Customs.**

When used in this subchapter the term "district director of customs" includes the district directors of customs at customs headquarters ports (other than the port of New York, N.Y.); the regional commissioner of customs, the deputy and assistant regional commissioners of customs for customs region II at the port of New York, N.Y.; and port directors at customs ports not designated as headquarters ports.

**PART 122—REGISTRATION****Sec.**

- 122.01 Registration requirements.
- 122.02 Application for registration.
- 122.03 Refund of fee.
- 122.04 Notification of changes in information furnished by registrants.
- 122.05 Maintenance of records by registrants.

**PROCEDURES****122.10 Submission of application.**

**AUTHORITY:** Sec. 414, as amended, 68 Stat. 848, 22 U.S.C. 1934; secs. 101 and 105, E.O. 10973, 26 FR 10469; sec. 6, Departmental Delegation of Authority No. 104, 26 FR 10608, as amended, 27 FR 9925, 28 FR 7231; Redlegation of Authority No. 104-3-A, 28 FR 7231.

**SOURCE:** Dept. Reg. 108.605, 34 FR 12031, July 17, 1969, unless otherwise noted.

**§ 122.01 Registration requirements.**

(a) Persons (as defined in § 121.17 of this subchapter) engaged in the business, in the United States, of manufacturing or exporting articles enumerated in the U.S. Munitions List, shall be required to register with the Secretary of State. Manufacturers, whether they engage in export, shall also be required to register.

(b) Persons engaged in the business, in the United States, of exporting articles enumerated in the U.S. Munitions List, and importing such articles under the provisions of Title 26, Code of Federal Regulations, are required to register for a fee with the Secretary of State as exporters, and to register for a fee with the Secretary of the Treasury as importers.

(c) The fabrication of arms, ammunition, and implements of war for experimental or scientific purposes, including research and development, is not considered as manufacture for the purposes of the regulations in this part.

(d) Registration is not required of persons (1) whose pertinent business activities are confined to the production or exportation of unclassified technical data relating to arms, ammunition, and implements of war, or (2) whose export activity is subject to license under the provisions of the Atomic Energy Act of 1954, as amended, and

**§ 122.02**

which does not include exports of articles on the U.S. Munitions Lists.

**§ 122.02 Application for registration.**

(a) Applicants may be registered for periods of from 1 to 5 years at a time upon submission of a completed Form DSP-9, and payment of a fee as follows:

1 year .....	\$125
2 years .....	250
3 years .....	350
4 years .....	425
5 years .....	500

(b) A registrant who fails to renew his registration after its lapse and, after an intervening period seeks to register again, shall be liable to pay registration fees if during that period or part thereof he had conducted business activities involving articles enumerated in the U.S. Munitions List.

**§ 122.03 Refund of fee.**

When a multiple-year registration fee has been paid, a request for refund for whole future years will be honored pro rata only if the person ceases to be a manufacturer or exporter of Munitions List articles during the years for which the refund is claimed.

**§ 122.04 Notification of changes in information furnished by registrants.**

Registered persons must notify the Secretary of State of significant changes in the information set forth in their applications for registration, such as the establishment of a foreign affiliate.

**§ 122.05 Maintenance of records by registrants.**

(a) Persons required to register must maintain for a period of 6 years, subject to the inspection of the Secretary of State or any person designated by him, records bearing on U.S. Munitions List articles, including records concerning the acquisition and disposition of such articles by the registrant. The Secretary may prescribe a longer or shorter period in individual cases as he may deem appropriate.

(b) Officers of the Office of Security, of the Office of Munitions Control of the Department of State, and of the U.S. Customs Agency Service, Bureau

**Title 22—Foreign Relations**

of Customs, Treasury Department, are hereby designated as the representatives of the Secretary of State for the purposes of this section.

**PROCEDURES****§ 122.10 Submission of application.**

(a) Department of State Form DSP-9, Application for Registration, must be submitted to the Department in original. The Department will not register an applicant who has not satisfactorily replied to all questions on the form or who fails to accompany the application with a payment of one of the fees prescribed in § 122.02(a).

(b) Applications and fees (by money order or check payable to the Department of State) must be mailed or delivered together to the Department as indicated in the instructions on the back of Form DSP-9.

(c) Other matters pertaining to registration requirements should be addressed to the Office of Munitions Control, Department of State, Washington, D.C. 20520.

**PART 123—LICENSES FOR UNCLASSIFIED<sup>1</sup> ARMS, AMMUNITION, AND IMPLEMENTS OF WAR**

Sec.	
123.01	Export license.
123.02	Imports.
123.03	Intransit license.
123.04	Temporary export license.
123.05	License denial, revocation, suspension or amendment.
123.06	Foreign trade zones and customs bonded warehouses.
123.07	Export to warehouse or distribution points outside the United States.
123.08	Export of vessels of war and military aircraft.
123.09	Overhaul, repairs, or modifications of foreign-owned arms, ammunition, and implements of war.
123.10	Country of ultimate destination.
123.11	Movements of vessels outside U.S. territorial jurisdiction.
123.12	Canadian shipments.
123.13	Shipments between U.S. possessions and the Panama Canal Zone.
123.14	Domestic aircraft shipments via foreign ports.

<sup>1</sup>Provisions for the export of classified arms, ammunition and implements of war are contained in Part 125 of this subchapter.

**Chapter I—Department of State****§ 123.04****Sec.**

- 123.15 Import certificate/delivery verification procedure.  
 123.16 Approval of proposals to sell significant combat equipment.

**EXEMPTIONS**

- 123.30 Obsolete small arms.  
 123.31 Arms and ammunition for personal use.  
 123.32 Arms for personal use of members of the Armed Forces and civilian employees of the U.S. Government  
 123.33 Sample shipments.  
 123.34 Minor components.  
 123.35 Border shipments and shipments transiting the Panama Canal.  
 123.37 Propellants and explosives.  
 123.38 Nuclear materials.

**PROCEDURES**

- 123.50 Applications for licenses.  
 123.51 Renewal and disposition of licenses.  
 123.52 Ports of exit or entry.  
 123.53 Filing of export and intransit licenses, and shipper's export declarations, with district directors of customs.  
 123.54 Shipments by mail.  
 123.55 Temporary exports.  
 123.56 Domestic aircraft shipments via a foreign country.

**AUTHORITY:** Sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934; secs. 101 and 105, E.O. 10973, 26 FR 10469; sec. 6 Departmental Delegation of Authority No. 104, 26 FR 10608, as amended, 27 FR 9925, 28 FR 7231; and Redellegation of Authority No. 104-3-A, 28 FR 7231.

**SOURCE:** Dept. Reg. 108.605, 34 FR 12032, July 17, 1969, unless otherwise noted.

**§ 123.01 Export license.**

Equipment (see § 121.02 of this subchapter for definition) on the U.S. Munitions List shall not be exported from the United States until a license has been obtained from the Department of State, or it is otherwise exempt under other provisions of this subchapter. As a condition precedent for the issuance of an export license for equipment the Department of State may require all pertinent documentary information regarding the proposed transaction, and may also require the execution of an appropriate bond. (Applications for export license where the value is \$50,000 or more

shall be accompanied by a copy of the relevant DD form 1513 in cases involving the U.S. Foreign Military Sales program, and by a copy of a firm order or letter of intent in other cases.)

[Dept. Reg. 108.646, 36 FR 20940, Nov. 2, 1971]

**§ 123.02 Imports.**

Equipment on the U.S. Munitions List shall not be imported into the United States unless (a) it had been previously exported temporarily under a license issued by the Department of State; (b) it constitutes a temporary import under the Intransit license procedure (see §§ 123.03 and 123.09); or (c) its import has been authorized or exempted by the Secretary of the Treasury (26 CFR Parts 178 to 180).

[Dept. Reg. 108.615, 35 FR 3030, Feb. 11, 1970]

**§ 123.03 Intransit license.**

An intransit license shall be required for the temporary entry of any equipment enumerated in the U.S. Munitions List into the United States for transshipment to a third country (see also § 123.35). The Department may require the execution of an appropriate bond. (An Intransit License may also be used for other temporary imports. See §§ 121.19 and 123.09.)

**§ 123.04 Temporary export license.**

A license for the temporary export of unclassified equipment on the Munitions List may be obtained from the Department of State in lieu of export and import licenses when such equipment will be exported on a temporary basis and will be returned to the United States. The Department may require full documentary information regarding such proposed transaction, and the execution of an appropriate bond. (See § 123.55 for procedures.) With respect to firearms as defined in 26 U.S.C. 5845(a), evidence shall be shown that all applicable requirements of 26 CFR Part 179 have been satisfied.

**§ 123.05**

**§ 123.05 License denial, revocation, suspension or amendment.<sup>1</sup>**

(a) Licenses may be denied, revoked, suspended, or amended by the Department of State without prior notice whenever the Department believes such action to be advisable in furtherance of (1) World peace; (2) The security of the United States; (3) The foreign policy of the United States; or (4) Whenever the Department believes that 22 U.S.C. 2778 or any regulations contained in this subchapter has been violated; or (5) Whenever the applicant or licensee has been debarred under § 127.07 or suspended under § 127.08, or whenever an order of debarment or suspension has been made applicable to the applicant or licensee under § 127.09, or whenever a person who has been debarred or suspended has a significant interest in the transaction.

(b) Whenever a license application is denied, or an outstanding license is revoked, suspended, or amended, the applicant or licensee shall be advised promptly in writing of the Department's decision, together with the reasons therefor as specifically as security and foreign relations considerations permit.

(c) Upon written request within 30 days after receipt of an adverse decision by the Department of State, the applicant or licensee shall be accorded an opportunity to present additional information and a review of the whole case by the Department.

(Dept. Reg. 108.605, 34 FR 12032, July 17, 1969, as amended by Dept. Reg. 108.744, 42 FR 42851, Aug. 25, 1977)

**§ 123.06 Foreign trade zones and customs bonded warehouse.**

A Foreign Trade Zone and a U.S. Customs bonded warehouse are considered integral parts of the United States for the purpose of this subchapter. An export license is therefore not required for shipments between the United States and a Foreign Trade Zone or a Customs bonded warehouse.

<sup>1</sup>The provisions of § 123.05 are also applicable to applications and licenses for the export of technical data (see Part 125 of this subchapter).

**Title 22—Foreign Relations**

However, an export license shall be required for all shipments of articles on the U.S. Munitions List from Foreign Trade Zones and U.S. Customs bonded warehouses to other countries, regardless of how the articles reached the zone or warehouse.

(Dept. Reg. 108.629, 35 FR 19016, Dec. 16, 1970)

**§ 123.07 Export to warehouses or distribution points outside the United States.**

Applications for license to export U.S. Munitions List equipment to warehouses or distribution points outside the United States for subsequent resale will be considered by the Department of State. Licenses issued for such transactions normally will contain conditions for special distribution controls and reporting.

**§ 123.08 Export of vessels of war and military aircraft.**

(a) The transfer of a privately owned vessel of war as defined by § 121.12 or a privately owned military aircraft as defined in § 121.13 from the United States to foreign registry shall constitute an export for which an approval or license from the Department of State shall be required. If the vessel or aircraft in question is physically located abroad, the written approval of the Department of State shall be obtained before the registry of such vessel or aircraft may be transferred.

(b) The registration under a foreign flag of a privately owned vessel of war or privately owned military aircraft that has not been registered in the United States, but is located in the United States, shall constitute an export for which a license from the Department of State is required.

NOTE: Such transactions may also require the prior approval of the Maritime Administration or the Federal Aviation Administration, as applicable.

**§ 123.09 Overhaul, repairs, or modifications of foreign-owned arms, ammunition, and implements of war.**

Persons intending to overhaul, repair, or modify foreign-owned arms, ammunition, and implements of war on the U.S. Munitions List, in the United States, shall obtain an Intran-

## Chapter I—Department of State

## § 123.11

sit License from the Department of State. The entry of such equipment into the United States for overhaul, repair, or modification shall constitute a temporary import provided it will be returned directly to the country of ownership.

## § 123.10 Country of ultimate destination.

(a) The country designated on the application for an export license as the country of ultimate destination shall be the country in which the equipment shall ultimately receive end use. Such equipment shall not be diverted from that country even though it might have been incorporated through an intermediate process into other end items.

(b) The prior written approval of the Department of State shall be obtained before U.S. Munitions List equipment previously exported from the United States under a license of the Department of State may be resold, diverted, transferred, transhipped, reshipped, or reexported to, or disposed of in any country other than the country of ultimate destination as stated in the export license.

(c) The exporter shall incorporate the following statement as an integral part of the shipper's export declaration, the bill of lading and the invoice, whenever the U.S. Munitions List equipment is to be exported: "These commodities are licensed by the U.S. Government for export to (Country of ultimate destination). Diversion contrary to U.S. law is prohibited." The person to whom a license has been granted shall be responsible for the inclusion of such a statement even though the transaction may be handled by a freight forwarder or other forwarding agent.

(d) Applications for export (form DSP-5) of unclassified significant combat equipment submitted to the Office of Munitions Control shall be accompanied by a "Consignee-Purchaser Transaction Statement" (Form DSP-83) which must be submitted by the foreign importer to the U.S. applicant for export license. (Exports of classified significant combat equipment, shall also require from DSP-83 submissions. See § 125.21 of this sub-

chapter.) The Transaction Statement shall provide that, except as specifically authorized by prior written approval of the Department of State, the ultimate consignee (and purchaser if not the same as the ultimate consignee) will not reexport, resell or otherwise dispose of the equipment enumerated in the application outside the country named as the location of the ultimate consignee. The office of Munitions Control reserves the right to require a Consignee-Purchaser Transaction Statement with respect to the export of any U.S. Munitions List article.

(e) In applications for export where a Consignee-Purchaser transaction Statement is required and where both the ultimate consignee and the purchaser are nongovernmental entities, the Department of State may require a Nonretransfer Assurance (DSP-83, Item 8) from the appropriate authority of the foreign importer's government. The Nonretransfer Assurance shall provide that the foreign importer's government undertakes not to authorize the reexport, resale, or other disposition of the equipment enumerated in the application without obtaining the prior written consent of the U.S. Government.

[Dept. Reg. 108.650, 34 FR 12032, July 17, 1969, as amended by Dept. Reg. 108.646, 36 FR 20940, Nov. 2, 1971; Dept. Reg. 108.650, 36 FR 24800, Dec. 23, 1971; Dept. Reg. 108.733, 42 FR 16617, Mar. 29, 1977]

## § 123.11 Movements of vessels outside U.S. territorial jurisdiction.

(a) A license from the Department of State shall be required whenever a vessel on the U.S. Munitions List makes a voyage outside the United States which is deemed an export as defined in § 121.18 of this subchapter.

(b) An export license shall not be required when such a vessel departs from the United States without entering the territorial waters of a foreign country, provided no arms, ammunition, or implements of war, or technical data related thereto are carried as cargo. In the event that such a vessel shall enter the territorial waters of a foreign country before returning to the United States, or carries as cargo arms, ammunition, or implements of

**§ 123.12**

war, or technical data related thereto, a License for Temporary Export (DSP-73) shall be obtained from the Department of State. (See §§ 123.04 and 123.55.)

**§ 123.12 Canadian shipments.**

District directors of customs and postmasters may release unclassified Munitions List equipment (as defined in § 121.01 of this subchapter) to Canada without an export license with the following exceptions:

(a) Intransit shipments through the United States to or from Canada, or intransit shipments through Canada from the United States;

(b) [Reserved]

(c) Nuclear weapons strategic delivery systems and all specifically designed components parts, accessories, attachments, and associated equipment therefor;

(d) Nuclear weapons design and test equipment as defined in Category XVI;

(e) Naval nuclear propulsion equipment as defined in Category VI(e);

(f) Aircraft as defined in Category VIII(a);

(g) Submersible and oceanographic vessels and related articles as defined in Category XX(a) through (d).

**NOTE:** The exemption from obtaining export licenses for certain equipment on the U.S. Munitions List destined for Canada shall not exempt shippers from filing Shipper's Export Declarations as required by § 123.53.

[Dept. Reg. 108.650, 34 FR 12032, July 17, 1969, as amended by Dept. Reg. 108.630, 35 FR 19994, Dec. 31, 1970; Dept. Reg. 108.646, 36 FR 20940, Nov. 2, 1971]

**§ 123.13 Shipments between U.S. possessions and the Panama Canal Zone.**

Export licenses shall not be required for shipments of equipment on the U.S. Munitions List between the United States, U.S. possessions, and the Panama Canal Zone. Licenses, however, are required for shipments between these areas and foreign countries.

**Title 22—Foreign Relations****§ 123.14 Domestic aircraft shipments via foreign ports.**

A license is not required for airborne shipments of arms, ammunition, and implements of war being transported from one port in the United States to another U.S. port via a foreign country. In lieu thereof, a statement is required of the pilot (see § 123.56).

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

(IC/DC) General. The United States and a number of foreign countries have agreed on a procedure designed to assure that certain commodities imported into their territories will not be diverted, transhipped, or reexported to another destination except in accordance with export control regulations of the importing country. The procedure covered by such agreement is known as the Import-Certificate/Delivery Verification Procedure (IC/DV) and may be invoked with respect to equipment on the U.S. Munitions List.

(a) *Exports.* As a supplement to normal control procedures, the Department may utilize the IC/DV procedure on proposed exports of Munitions List equipment to nongovernment entities in the following countries: Austria, Belgium, Denmark, France, Federal Republic of Germany, Greece, Hong Kong, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Turkey, and the United Kingdom. In each case in which the Department invokes the IC/DV procedure, U.S. exporters will be required to submit, in addition to an export license application (a completed form DSP-5), the original Import Certificate authenticated by the government of the importing country. This document will serve as evidence that the foreign importer has complied with the import regulations of the government of the importing country and that he has declared his intentions not to divert, transship or reexport the material described therein without prior approval of that government. After delivery of the commodities to the foreign consignee, the Department may also require U.S. exporters to furnish documentation (Delivery Verifi-

## Chapter I—Department of State

## § 123.16

cation) from the government of the importing country attesting to the delivery in accordance with the terms of the approved export license. Both the Import Certificate and the Delivery Verification will be obtained and furnished to the U.S. exporter by the foreign importer.

(b) *Triangular transaction.* When a transaction involves three or more countries which have adopted the IC/DV procedure, governments of these countries may stamp a triangular symbol on the "Import Certificate." This symbol is usually placed on the "Import Certificate" when the applicant for the "Import Certificate" (the importer) has stated either (1) he is uncertain whether the items covered by the "Import Certificate" will be imported into the country issuing the "Import Certificate"; (2) that he 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. Consequently, it is possible that the ultimate consignee and the country of ultimate destination will not coincide with that of the importer. All parties, including the ultimate consignee in the true country of ultimate destination will be shown on the completed "Import Certificate."

§ 123.16 Approval of proposals to sell significant combat equipment.

(a) The approval of the Department of State is required as a condition precedent to any proposal or presentation designed to constitute a basis for a decision to purchase, either through commercial or Foreign Military Sales procedures, made to any foreign government or foreign national if:

(1) The subject of the proposal or presentation is significant combat equipment on the United States Munitions List to be sold under a contract for \$7,000,000 or more; and

(2) The equipment is intended for use by the armed forces of a foreign country; and

(3) The sale of the equipment would involve the export from the United

States of any item on the United States Munitions List or of any technical data relating to an item on the United States Munitions List.

(b) A "proposal or presentation designed to constitute a basis for a decision to purchase" means the communication of information in sufficient detail that the person communicating that information knew or should have known that it would permit an intended purchaser to decide to acquire the particular significant combat equipment in question. For example, a presentation which described the equipment's performance characteristics, price, and probable availability for delivery would require prior approval in any case where the three criteria specified in paragraph (a) of this section were met. By contrast, advertising or other reporting in a publication of general circulation, preliminary discussions to ascertain market potential or merely calling attention to the fact that a company manufactures a particular item of significant combat equipment would not require prior approval.

(c)(1) Every application for an export license to implement a sale which meets the three criteria specified in paragraph (a) of this section must be accompanied by a statement from the applicant which either:

(i) Refers to a specific approval previously granted with respect to the transaction; or

(ii) Certifies that no proposal or presentation requiring prior approval has been made.

(2) The Department of State may require a similar statement from the Foreign Military Sales contractor concerned in any case where the United States Government receives a request for a letter of offer for a sale which meets the three criteria specified in subsection (a) of this section.

(d) The requirement of this section for prior approval is met by any of the following:

(1) A written statement approving the proposed sale or approving the making of a proposed or presentation.

(2) A license for the export of technical data relating to the proposal sale

**§ 123.30**

to the country concerned issued under §§ 125.04 or 125.05.

(3) A temporary export license relating to the proposed sale for a demonstration to the armed forces of the country of export issued under § 123.55.

(e) In addition to other remedies and penalties prescribed by law or this subchapter, a failure to obtain the approval required by paragraph (a) of this section may be considered to be a reason for disapproval of a license application or request for a letter of offer.

[Dept. Reg. 108.743, 42 FR 41632, Aug. 18, 1977]

**EXEMPTIONS****§ 123.30 Obsolete small arms.**

District directors of customs are authorized to permit the export, without a license, of firearms covered by Category I (a) and (e) of the U.S. Munitions List, which were manufactured prior to 1898, on presentation of satisfactory evidence of age.

**§ 123.31 Arms and ammunition for personal use.**

(a) Subject to § 126.01, district directors of customs are authorized to permit a United States Citizen or a permanent resident of the United States, after declaration by the individual and inspection by a customs officer, to export temporarily from the United States without a license not more than three non-automatic firearms and not more than 1,000 cartridges therefor. The firearms and accompanying ammunition must be with the individuals baggage or effects, whether accompanied or unaccompanied (but not mailed), and are intended exclusively for that person's use for legitimate hunting or lawful sporting purposes, scientific purposes, or personal protection and not for resale. Accordingly this exemption does not apply to firearms being exported permanently from the United States. This exemption also extends to one tear gas guns or other type hand dispensers and not more than 25 tear gas cartridges therefor. The foregoing exemption is not applicable (1) to crew-

**Title 22—Foreign Relations**

members of vessels or aircraft unless they personally declare the firearms to a customs officer upon each departure from the United States, and declare the intention to return them on each return to the United States, and (2) to the personnel referred to in § 123.32.

(b) District directors of customs are authorized to permit a nonresident of the United States to export such firearms and ammunition as the nonresident brought into the United States under the provisions of 27 CFR 178.115 (d), which specifically excludes from the definition of importation, the bringing into the United States of firearms and ammunition by certain nonresidents for specified purposes.

(c) Subject to the provisions of § 126.01 of this subchapter, district directors of customs are authorized to permit United States Citizens and persons permanently resident in the United States to export ammunition for firearms, without a license, provided the quantity does not exceed 1,000 cartridges (or rounds) in any shipment, and the ammunition is for their personal use and not for resale. The foregoing exemption is not applicable to the personnel referred to in § 123.32.

[Dept. Reg. 108.742, 42 FR 39104, Aug. 2, 1977]

**§ 123.32 Arms for personal use of members of the Armed Forces and civilian employees of the U.S. Government.**

The following exemptions shall apply to uniformed personnel of the U.S. Armed Forces and U.S. civilian employees of the U.S. Government (both referred to hereinafter as "personnel") who are assigned abroad for extended duty. These exemptions do not apply to dependents of the personnel.

(a) **Firearms.** District directors of customs are authorized to permit Category I(a) firearms and parts for such weapons to leave (but not be mailed from) the United States without a license provided: (1) They are consigned to servicemen's clubs, abroad for uniformed members of the U.S. Armed Forces; (2) in the case of uniformed members of the U.S. Armed Forces

**Chapter I—Department of State****§ 123.50**

and civilian employees of the Department of Defense, they are consigned to the personnel, for their personal use and not for resale, if the firearms are accompanied by a written authorization from the commanding officer; or (3) in the case of other U.S. Government employees, they are consigned to such personnel for their personal use and not for resale, and the Chief of the U.S. Diplomatic Mission, or his designee, in the country of destination, has approved in writing to the Department of State the bringing of specific types and quantities of firearms into that country.

(b) *Ammunition.* District directors of customs are authorized to permit not more than 1,000 cartridges (or rounds) of ammunition for the firearms in paragraph (a) of this section to be exported (but not mailed) from the United States without a license when the firearms are on the person of the owner or with his baggage or effects, whether accompanied or unaccompanied (but not mailed).

**§ 123.33 Sample shipments.**

Subject to the provisions of § 126.01 of this subchapter, district directors of customs are authorized to permit a total of not more than three rifles, carbines (excluding automatic and semiautomatic models), revolvers, and pistols to be exported without a license, provided the articles in question are not for sale and will be returned to the original shipper. Customs authorities may also permit the export of sample firearms without a license when they are being returned to their original owner abroad.

**§ 123.34 Minor components.**

Subject to the provisions of § 126.01 of this subchapter district directors of customs are authorized to permit the export without a license of components and parts for Category I(a) firearms, except barrels, cylinders, receivers (frames), or complete breech mechanisms, when the total value does not exceed \$100 wholesale in any single transaction.

**§ 123.35 Border shipments and shipments transiting the Panama Canal.**

Shipments originating in Canada or Mexico which incidentally transit the United States en route to a delivery point in the country of origin are exempt from the requirement of an intransit license. Vessels transiting the Panama Canal without off-loading cargo are exempt from the requirement of an intransit license.

**§ 123.37 Propellants and explosives.**

Subject to the provisions of § 126.01 of this subchapter, district directors of customs are authorized to permit the export, without a license in any single transaction, of not more than 25 pounds of propellants and explosives for nonexplosive uses, such as for medical uses and laboratory tests. Such shipments must be clearly marked as to content and must not include any materials bearing a military security classification.

**§ 123.38 Nuclear materials.**

To the extent that equipment, the export of which is controlled by the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended, is coextensive with equipment in Category VI(e), Category XVI, and Category XVIII, the provisions of this subchapter shall not apply.

**PROCEDURES****§ 123.50 Applications for licenses.<sup>4</sup>**

Applications for licenses for the export of arms, ammunition, and implements of war shall be made as follows (on forms dated not earlier than 1968) to the Office of Munitions Control, Department of State, Washington, D.C. 20520:

- (a) Applications for export licenses shall be made on Form DSP-5.
- (b) Applications for intransit licenses shall be made on Form DSP-61.
- (c) Applications for temporary export licenses shall be made on Form DSP-73.

<sup>4</sup>The procedures governing the export of classified information and equipment are set forth in Part 125 of this subchapter.

**§ 123.51****§ 123.51 Renewal and disposition of licenses.**

(a) If any licensed commodities are not shipped within the period authorized in the license, a new application for another license shall be submitted therefor. The new application shall refer to the lapsed license and shall not include any commodities other than the unshipped balance of the lapsed license.

(b) Unused, expired, suspended, amended, or revoked licenses shall be returned immediately to the Department of State.

**§ 123.52 Ports of exit or entry.**

An application for a license shall state the proposed port or ports of exit from, and if applicable, entry into, the United States. If, after the issuance of the license, there will be any change of the port or ports originally stated in the application, the Office of Munitions Control shall be notified immediately by letter of such proposed change, and a copy shall be sent to the district director of customs at the new port.

**§ 123.53 Filing of export and intransit licenses, and shipper's export declarations, with district directors of customs.**

(a) Prior to the actual shipment of any arms, ammunition and implements of war on the U.S. Munitions List, the license issued therefor shall be filed with the district director of customs at the port where the shipment is made, except for exports by mail (see § 123.54). A person holding a valid license may file it at one port and if necessary make shipment at another port provided the procedural requirements of the Bureau of Customs are followed. A Shipper's Export Declaration (U.S. Department of Commerce Form 7525-V) shall also be filed with, and be authenticated by, the district director of customs before the arms, ammunition, and implements of war are actually shipped for export. The district director of customs shall endorse each license to show the shipments made. Licenses shall be returned by the district director of customs to the Office of Munitions Con-

**Title 22—Foreign Relations**

trol, Department of State, upon expiration of the dates stated thereon, or upon the completion of the shipments, whichever first occurs. (If in particular circumstances an export license is not required—e.g., certain equipment destined for Canada—a Shipper's Export Declaration is nevertheless required to be filed with a U.S. customs officer. Such declaration shall certify that the proposed export is covered by a relevant section of these regulations. Certification shall be made by annotating the declaration "22 CFR Part 123 \* \* \* applicable", identifying the section under which an exemption is claimed. A copy of each such declaration shall be mailed immediately by the shipper to the Office of Munitions Control, Department of State, Washington, D.C. 20520.)

(b) District directors of customs are authorized to permit the shipment of arms, ammunition, and implements of war on the U.S. Munitions List identified on any license when the total value of the shipment does not exceed 10 percent of the aggregate value (not quantity) stated in the license.

(Dept. Reg. 108.605, 34 FR 12032, July 17, 1969, as amended by Dept. Reg. 108.646, 36 FR 20940, Nov. 2, 1971)

**§ 123.54 Shipments by mail.**

Export licenses for U.S. Munitions List equipment being sent abroad by mail shall be filed with the postmaster at the post office where the equipment is mailed. A Shipper's Export Declaration (U.S. Department of Commerce Form 7525-V) shall also be filed with, and be authenticated by, the postmaster before the equipment is actually sent. The postmaster shall endorse each license to show the shipments made. Licenses shall be returned by the postmaster to the Department of State upon expiration of the dates stated thereon or upon completion of the mailings, whichever first occurs.

**§ 123.55 Temporary exports.**

(a) A License for Temporary Export of unclassified U.S. Munitions List equipment (not technical data) shall be obtained from the Department of State, on Forms DSP-73 when such

**Chapter I—Department of State****§ 123.56**

arms, ammunition, and implements of war will be sent temporarily abroad for brief periods and will be returned to the United States in the same condition.

(b) Equipment authorized for temporary export under License for Temporary Export shall be shipped only from a port in the United States where a district director of customs is available. The License for Temporary Export shall be presented to the district director of customs who, upon verification, shall endorse the exit column on the reverse side of the license. The endorsed License for Temporary Export shall be retained by the licensee. In the case of a military aircraft or vessel the endorsed license shall be carried on board such vessel or aircraft as evidence that it has been duly authorized by the Department of State to leave the United States temporarily.

(c) Upon the return to the United States of equipment covered by a License for Temporary Export, the license shall be endorsed in the entry column by the district director of customs. The licensee shall transmit the used license immediately to the Office of Munitions Control, Department of State.

(d) The Department of State may permit a series of temporary exports of aircraft and vessels on the U.S. Munitions List under a single License for Temporary Export. Full details regarding such transactions shall be submitted to the Department on Form DSP-73, supplemented if necessary by a covering letter. Such series of temporary exports shall usually be for a period not exceeding 6 months. The district director of customs shall endorse the License for Temporary Export upon each exit from, and reentry into, the United States. On the final return, the licensee shall transmit the used license immediately to the Office of Munitions Control, Department of State.

(e) All unused Licenses for Temporary Export shall be returned to the Office of Munitions Control, Department of State, prior to, or immediately after, the expiration of the authorized dates stated thereon.

(f) Owners of arms, ammunition, and implements of war on the U.S. Munitions List exported under Licenses for Temporary Export shall be responsible for the acts of their employees, agents, and all authorized persons to whom possession has been entrusted regarding the operation, use, possession, transportation, and handling of such arms, ammunition, and implements of war abroad. All transferees abroad obtaining temporary custody of such arms, ammunition, and implements of war, directly or indirectly, and irrespective of the number of intermediate transfers, shall be bound by the regulations of this subchapter in the same manner and to same extent as the original owner-transferor.

(g) Failure to return immediately a used or a lapsed unused License for Temporary Export to the Office of Munitions Control, Department of State, shall constitute an offense punishable under the provisions of Part 127 of this subchapter.

(h) Extensions of Licenses for Temporary Export shall be made to the Office of Munitions Control, Department of State, on new application forms (DSP-73), which shall state, *inter alia*, the port of departure stated in the original application and the name of the new port of departure if different.

**§ 123.56 Domestic aircraft shipments via a foreign country.**

When airborne shipments of arms, ammunition, and implements of war on the U.S. Munitions List are to be transported from one location in the United States to another location in the United States via a foreign country, the pilot of the aircraft shall file a written statement with the district director of customs at the port of exit in the United States. The original statement shall be filed at the time of exit with the district director of customs. A duplicate of the statement shall also be filed with the district director of customs at the port of reentry, who shall duly endorse it and transmit it to the district director of customs at the port of exit. The statement shall be as follows:

**§ 124.01**

**STATEMENT**

**DOMESTIC SHIPMENTS VIA A FOREIGN COUNTRY OF ARMS, AMMUNITION, AND IMPLEMENTS OF WAR ON THE U.S. MUNITIONS LIST**

Under the penalty according to Federal law, the undersigned certifies and warrants that all the facts in this document are true and correct, and that the equipment listed below are 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.

Amount	Description of equipment	Value
.....	.....	.....
Signed _____		
Endorsement: Customs Inspector _____		
Port of exit _____		
Date: _____		
Endorsement: Customs Inspector _____		
Port of entry _____		
Date: _____		

**PART 124—MANUFACTURING LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS**

**Sec.**

- 124.01 Manufacturing license and technical assistance agreements.
- 124.02 Export of technical data in furtherance of an agreement.
- 124.03 Deposit of copies of signed agreements with the Department of State.
- 124.04 Termination of manufacturing license and technical assistance agreements.
- 124.05 Proposed agreements not concluded.
- 124.06 Approval of proposals for the technical assistance and manufacturing license agreements.

**PROCEDURES**

- 124.10 Required information in agreements.
- 124.11 Required information in letters of transmittal.
- 124.12 Agreement disapproval and revocation, Suspension of amendment of approval.

**EXEMPTIONS**

- 124.20 Offshore procurement.

**AUTHORITY:** Sec. 414, as amended, 55 Stat. 848, 22 U.S.C. 1934; secs. 101 and 105, E.O. 10973, 26 FR 10469; sec. 6, Departmental Delegation of Authority No. 104, 26 FR 10608, as amended, 27 FR 9925, 28 FR 7231;

**Title 22—Foreign Relations**

Redelegation of Authority No. 104-3-A, 28 FR 7231.

Source: Dept. Reg. 108.605, 34 FR 12036, July 17, 1969, unless otherwise noted.

**§ 124.01 Manufacturing license and technical assistance agreements.**

Proposed agreements and proposed amendments to existing agreements between persons in the United States and persons in foreign countries, private or governmental, for (a) the manufacture abroad (i.e., whereby an American person grants a foreign person a legal right or license to manufacture abroad) or (b) the furnishing abroad of technical assistance (i.e., the performance of functions and/or the conveyance of information involving the disclosure of technical data, as opposed to granting a right or license to manufacture) relating to arms, ammunition, and implements of war on the U.S. Munitions List, shall be submitted by letter to the Office of Munitions Control, Department of State, for approval from the standpoint of world peace, U.S. foreign policy and the security of the United States. Proposed agreements (or amendments thereto) shall not take effect until Department of State approval has been obtained. (Sales representation agreements are not subject to Department of State approval.)

[Dept. Reg. 108.630, 35 FR 19994, Dec. 31, 1970]

**§ 124.02 Export of technical data in furtherance of an agreement.**

(a) District directors of customs or postal authorities may permit the export without a license of unclassified technical data, in furtherance of a manufacturing license or technical assistance agreement covering arms, ammunition, and implements of war on the U.S. Munitions List which has been approved in writing by the Department of State, unless the unclassified technical data exceed the technical and/or product limitations approved in the relevant agreement. The U.S. party to the agreement shall certify that the unclassified technical data to be exported comply with the limitations imposed in this subsection. Department of State approval shall be

**Chapter I—Department of State****§ 124.06**

additionally obtained for the export of any portion of the unclassified technical data which may exceed such limitations.

(b) The export of classified information in furtherance of an approved manufacturing license or technical assistance agreement which provides for the transmittal of classified information shall not require further Department of State approval provided:

(1) The U.S. party certifies to the Department of Defense transmittal authority that the classified information does not exceed the technical and/or product limitations in the agreement approved by the Department of State, and

(2) The U.S. party complies with the requirements of the Department of Defense Industrial Security Manual concerning the transmission of such classified information, and any other requirements of cognizant U.S. departments or agencies.

**§ 124.03 Deposit of copies of signed agreements with the Department of State.**

U.S. parties to manufacturing license and technical assistance agreements shall, within 30 days after their signature and entry into force, file with the Office of Munitions Control, Department of State, one copy of all such agreements concluded with the foreign parties.

**§ 124.04 Termination of manufacturing license and technical assistance agreements.**

U.S. parties to manufacturing license and technical assistance agreements shall inform the Office of Munitions Control, Department of State, in writing not less than 60 days prior to the expiration date of any such approved agreement of the impending termination of that agreement.

**§ 124.05 Proposed agreements not concluded.**

Proposed agreements that have been approved by the Department of State, with or without provisos, but not finally concluded with foreign parties for any reason whatsoever, shall be brought to the attention of the Office of Munitions Control, Department of

State, within 60 days following a decision not to conclude the agreements.

**§ 124.06 Approval of proposals for technical assistance and manufacturing license agreements.**

(a) The approval of the Department of State is required as a condition precedent to any proposal or presentation designed to constitute a basis for a decision to purchase, either through commercial or Foreign Military Sales procedures, made to any foreign government or foreign national if:

(1) The subject of the proposal or presentation is a technical assistance or manufacturing license agreement for the production or assembly of significant combat equipment on the United States Munitions List; and

(2) The equipment is intended for use by the armed forces of a foreign country; and

(3) The technical assistance or manufacturing license agreement would involve the export from the United States of any item on the United States Munitions List or of technical data relating to an item on the United States Munitions List.

(b) A "proposal or presentation designated to constitute a basis for a decision to purchase" means the communication of information in sufficient detail that the person communicating that information knew or should have known that it would permit an intended purchaser to decide to enter into the proposed technical assistance or manufacturing license agreement. For example, a presentation which described the price and probable schedule for performance would require prior approval in any case where the three criteria specified in paragraph (a) of this section were met. By contrast, advertising or other reporting in a publication of general circulation, preliminary discussions to ascertain market potential or merely calling attention to the fact that a company manufactures a particular item of significant combat equipment would not require prior approval.

(c)(1) Every request for an approval of a technical assistance or manufacturing license agreement which meets the three criteria specified in para-

**§ 124.10**

graph (a) of this section must be accompanied by a statement from the applicant which either:

(i) Refers to a specific approval previously granted with respect to the transaction; or

(ii) Certifies that no proposal or presentation requiring prior approval has been made.

(2) The Department of State may require a similar statement from the Foreign Military Sales contractor concerned in any case where the United States Government receives a request for a letter of offer for a sale which meets the three criteria specified in subsection (a) of this section.

(d) The requirements of this section for prior approval is met by any of the following:

(1) A written statement approving the proposed agreement or approving the making of a proposal or presentation relating to the proposed agreement.

(2) A license for the export of technical data to the country concerned issued under §§ 125.04 or 125.05 and specifying its relation to a technical assistance or manufacturing license agreement.

(3) A temporary export license relating to the proposed agreement for a demonstration to the armed forces of the country of export issued under § 123.04 and specifying its relation to a technical assistance or manufacturing license agreement.

(e) In addition to other remedies and penalties prescribed by law or this subchapter, a failure to obtain the approval required by paragraph (a) of this section may be considered to be a reason for disapproval of a proposed technical assistance or manufacturing license agreement.

(Sec. 38, as amended, 90 Stat. 744 (22 U.S.C. 2778), E.O. 11958, 42 FR 4311.)

[Dept. Reg. 108.743, 42 FR 41633, Aug. 18, 1977]

**PROCEDURES****§ 124.10 Required information in agreements.**

Proposed manufacturing license and technical assistance agreements (and amendments thereto) shall be submit-

**Title 22—Foreign Relations**

ted in five copies to the Department of State for approval. (Such agreements shall not become effective until the Department's approval has been obtained.) The proposed agreements shall contain, inter alia, all of the following information and statements in terms as precise as possible, or the transmittal letter (see § 124.11) shall state the reasons for their omission or variation:

(a) The equipment and technology involved as described by military nomenclature, contract number, Federal stock number, nameplate data, or other specific information.

(b) A detailed description of the assistance and information to be furnished and the manufacturing rights to be granted, if any.

(c) The duration of the proposed agreement.

(d) A statement that reads as follows: "This agreement shall not become effective without the prior approval of the Department of State of the U.S. Government."

(e) A statement that reads as follows: "This agreement is subject to all the laws and regulations, and other administrative acts, now or hereafter in effect, of the U.S. Government and its departments and agencies."

(f) A statement that reads as follows: "The parties to this agreement declare 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 or its departments and agencies."

(g) A statement that reads as follows: "Any use of tooling and facilities which the U.S. Government owns or to which it has the right to acquire title must be authorized by the U.S. Government contracting officer."

(h) A statement that reads as follows: "No liability shall be incurred by or attributed to the U.S. Government in connection with any possible infringements of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement."

## Chapter I—Department of State

## § 124.11

(i) A statement that reads as follows: "The article to be produced under license, including technical data pertaining thereto" (or in the case of a technical assistance agreement only: "The technical data pertaining to the article(s) to be produced") "are not authorized to be directly or indirectly sold, leased, released, assigned, transferred, conveyed, or in any manner disposed of in or to Albania, Bulgaria, Communist China, Cuba, Czechoslovakia, East Germany, Estonia, Hungary, Latvia, Lithuania, North Korea, Outer Mongolia, Poland, Romania, Union of Soviet Socialist Republics, any of the area of Vietnam which is under de facto Communist control, and any other area which is determined by the Department of State to be under Communist control."

(j) [Reserved]

(k) Specific identification of the countries or areas in which manufacturing, production, processing, sale, or other form of transfer is to be licensed.

(l) [Reserved]

(m) (1) With respect to all manufacturing license agreements, a statement that reads as follows: "No export, sale, transfer, or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government."

(2) With respect to manufacturing license agreements for significant combat equipment, the Department may require that the prospective foreign licensee furnish an "Nth Country Control Statement" (Form DSP-83a) to the Office of Munitions Control. The Nth Country Control Statement shall provide that the licensee agrees to ensure that any contract or other transfer arrangement with a recipient of the licensed article in any country within the licensed sales territory will include the following provision:

(n) A statement that reads as follows:

(1) It is agreed that sales under contracts made with funds derived through the Military Assistance Program or otherwise through the U.S. Government will not include either (i) charges for patent rights in

which the U.S. Government holds a royalty-free license, or (ii) charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others.

(2) If the U.S. Government is obligated or becomes obligated to pay licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed item, any royalties, fees or other charges in connection with purchases of such licensed item from licensee or its sublicensees with funds derived through the Military Assistance Program or otherwise through the U.S. Government shall not exceed the total amount the U.S. Government would have been obligated to pay the licensor.

(3) If the U.S. Government has made financial or other contributions to the design and development of any licensed item, any charges for technical assistance or know how relating to the item in connection with purchases of such items with funds derived through the Military Assistance Program or otherwise through the U.S. Government shall be proportionately reduced to reflect the U.S. Government contributions and, subject to the provisions of paragraph (2) above, no other royalties, fees or other charges will be assessed against U.S. Government funded purchases of such item. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data.

NOTE: Manufacturing license agreements shall contain all of the information and statements in § 124.10 (a) through (n) (3); technical assistance agreements shall contain all of the information and statements in § 124.10 (a) through (l). See § 124.01 to distinguish between types of agreements.

[Dept. Reg. 108.605, 34 FR 12036, July 17, 1969, as amended by Dept. Reg. 108.646, 36 FR 20940, Nov. 2, 1971; Dept. Reg. 108.649, 36 FR 22741, Nov. 30, 1971; Dept. Reg. 108.650, 36 FR 24800, Dec. 23, 1971; Dept. Reg. 108.733, 42 FR 16617, Mar. 29, 1977]

§ 124.11 Required information in letters of transmittal.

An application for approval of a manufacturing license or technical assistance agreement with a foreign person by the Department of State shall be accompanied by an explanatory letter, in original and four copies, containing the following:

**§ 124.12**

(a) A statement giving the applicant's Munitions Control registration number.

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

(c) A statement giving the military security classification of the equipment or technical data.

(d) A statement reading as follows: "If the agreement is approved by the Department of State, such approval will not be construed by.....as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will.....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."

(e) A statement identifying any patent applications which disclose any of the subject matter of the equipment or technical data covered by secrecy orders issued by the U.S. Patent Office.

(f) A statement that reads as follows: "The.....will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(g) A statement reading as follows: "Within 30 days the.....will furnish the Department of State with one copy of the signed agreement (or amendment) as finally concluded; will advise the Department of its termination not less than 60 days prior to expiration, including information on the continuation of any rights or flow of technical data to the foreign party; and if a decision is made not to conclude the proposed agreement, will so advise the Department within 60 days."

(Dept. Reg. 108.605, 34 FR 12036, July 17, 1969, as amended by Dept. Reg. 108.646, 36 FR 20941, Nov. 2, 1971)

**Title 22—Foreign Relations****§ 124.12 Agreement disapproval and revocation, suspension or amendment of approval.**

(a) A manufacturing license or technical assistance agreement may be disapproved, and a previously granted approval of such an agreement may be revoked, suspended or amended by the Department of State without prior notice whenever the Department deems such action to be advisable in furtherance of (1) World peace; (2) The security of the United States; (3) The foreign policy of the United States; (4) Whenever the Department of State believes that 22 U.S.C. 2778 or any regulation contained in this subchapter, has been violated; or (5) Whenever a party to the agreement has been debarred under § 127.07 of this chapter or suspended under § 127.08 of this chapter or whenever an order of debarment or suspension has been made applicable to such a party under § 127.09 of this chapter, or whenever a person who has been debarred or suspended has a significant interest in the transaction.

(b) Whenever an agreement is disapproved or a previously granted approval of an agreement is revoked, suspended, or amended, the U.S. party will be advised promptly in writing, of the Department's decision. The reasons therefor will be stated as specifically as security and foreign relations considerations permit.

(c) If written request is made within 30 days after service of an adverse decision by the Department of State, the U.S. party will be accorded an opportunity to present additional information and the case will be reviewed by the Department of State.

(Dept. Reg. 108.744, 42 FR 42852, Aug. 25, 1977)

**EXEMPTIONS****§ 124.20 Offshore procurement.**

Notwithstanding the other provisions in this Part 124, a person in the United States may conclude manufacturing arrangements for U.S. Muni-

**Chapter I—Department of State****§ 125.01**

tions List equipment in a foreign country without prior Department of State approval provided:

(a) The arrangement calls for delivery of equipment only for use of the person in the United States or an agency of the U.S. Department of Defense;

(b) The technical data of U.S. origin to be used in the foreign manufacture is unclassified, and has been licensed for export by the Department of State or is subject to one of the exemptions in §§ 125.10, 125.11, or 125.12 of this subchapter;

(c) The foreign manufacture is pursuant to a contract or purchase order between a person in the United States and a foreign person for delivery of equipment only to the person in the United States or to an agency of the U.S. Government anywhere in the world;

(d) The contract or purchase order between a person in the United States and a foreign person:

(1) Limits the use of the technical data to that required by the contract or purchase order;

(2) Prohibits the disclosure of the data to any other person except duly qualified subcontractors for the equipment within the same country;

(3) Prohibits the acquisition of any rights in the data by any foreign person without the approval of the Department of State; 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 (d); and

(e) The person in the United States provides the Office of Munitions Control, Department of State, with a copy of each subcontract (or Purchase Order) for offshore procurement at the time it is accepted by both persons. Each such subcontract or purchase order must clearly identify the article to be produced.

[Dept. Reg. 108.646, 36 FR 20941, Nov. 2, 1971]

**PART 125—UNCLASSIFIED TECHNICAL DATA AND CLASSIFIED INFORMATION (DATA AND EQUIPMENT)**

- Sec.  
 125.01 Technical Data.  
 125.02 Classified information.  
 125.03 Export of technical data.  
 125.04 Export of unclassified technical data.  
 125.05 Export of classified information (data and equipment).

**EXEMPTIONS**

- 125.10 Shipments by U.S. Government agencies.  
 125.11 General exemptions.  
 125.12 Canadian shipments.  
 125.13 Data on nuclear materials.

**PROCEDURES**

- 125.20 Export of unclassified technical data.  
 125.21 Export of classified information (data and equipment).  
 125.22 Certification requirements.  
 125.23 Filing of licenses for export of unclassified technical data.  
 125.24 Filing of licenses for export of classified information (data and equipment).

**AUTHORITY:** Sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934; secs. 101 and 105, E.O. 10973, 26 FR 10409; sec. 6, Departmental Delegation of Authority No. 104, 26 FR 10608, as amended, 27 FR 9925, 28 FR 7231; and Redelegation of Authority No. 104-3-A, 28 FR 7231.

**SOURCE:** Dept. Reg. 108.605, 34 FR 12037, July 17, 1969, unless otherwise noted.

**NOTE:** Export licenses for technical data may be denied, revoked, suspended, or amended by the Department of State. (See § 123.05 of this subchapter.)

**§ 125.01 Technical data.**

As used in this subchapter the term "technical data" means: (a) Any unclassified information that can be used, or be adapted for use, in the design, production, manufacture, repair, overhaul, processing, engineering, development, operation, maintenance, or reconstruction of arms, ammunition, and implements of war on the U.S. Munitions List; or (b) any technology which advances the state-of-the-art or establishes a new art in an area of significant military applica-

**§ 125.02**

bility in the United States;<sup>1</sup> or (c) classified information as defined in § 125.02.

[Dept. Reg. 108.629, 35 FR 19016, Dec. 16, 1970]

**§ 125.02 Classified information.**

As used in this subchapter, the term "classified information" is either (a) equipment, or (b) information (relating to any arms, ammunition, and implements of war on the U.S. Munitions List) which has been assigned a U.S. security classification as requiring protection in the interest of national defense. (Patent applications covered by a secrecy order fall in the same category as classified information. See § 125.05 (d).) See §§ 125.10 and 125.11 for exemptions.

**§ 125.03 Export of technical data.**

The export controls of this subchapter over technical data (a) apply to the export of unclassified technical data relating to arms, ammunition, and implements of war on the U.S. Munitions List, and (b) classified equipment and classified information relating to arms, ammunition, and implements of war on the U.S. Munitions List as defined in § 125.02. These controls shall apply whenever the information is to be exported by oral, visual, or documentary means. Therefore, an export occurs whenever technical data is *inter alia*, mailed or shipped outside the United States, carried by hand outside the United States, disclosed through visits abroad by American citizens (including participation in briefings and symposia), and disclosed to foreign nationals<sup>2</sup> in the United States (including plant

<sup>1</sup>The initial burden of determining whether the technology in question advances the state-of-the-art or establishes a new art is upon the U.S. party or applicant in consultation with the cognizant agency of the U.S. armed forces.

<sup>2</sup>The term "foreign nationals" as used in this subchapter means "All persons not citizens of, not nationals of, nor immigrant aliens to, the United States" as defined in the Department of Defense Industrial Security Manual. However, certain other foreign persons may be cleared to have access to technical data. See section 3 of the Industrial Security Manual.

**Title 22—Foreign Relations**

visits and participation in briefings and symposia). A license to export technical data shall not be used for foreign production purposes, or for technical assistance in such production, without the specific approval of the Department of State.

**§ 125.04 Export of unclassified technical data.**

(a) *General.* A license issued by the Department of State shall be required for the export of unclassified technical data (as defined in § 125.01 (a) and (b)) unless otherwise expressly exempted in this subchapter (see §§ 125.10 and 125.11).

Unclassified information that does not meet the definition of technical data or can meet the test of an exemption in §§ 125.10 and 125.11 (see especially § 125.11(a)(2)) shall not be the subject of license applications.

(b) *Patents.* A license issued by the Department of State shall be required for the export of unclassified technical data relating to arms, ammunition, and implements of war which exceed the data used to support a domestic or foreign filing of a patent application. The export of technical data supporting the filing and prosecution of patent applications in foreign countries is subject to regulations issued by the U.S. Patent Office under 35 U.S.C. 184.

(c) *Visits.* A license issued by the Department of State shall be required for the export of unclassified technical data relating to arms, ammunition, and implements of war on the U.S. Munitions List which are to be disclosed to foreign nationals either in connection with visits to foreign countries, including foreign diplomatic missions and consular offices in the United States and abroad, by U.S. persons, or in connection with visits to the United States by foreign nationals, unless otherwise expressly exempted in this subchapter (see § 125.11).

[Dept. Reg. 108.605, 34 FR 12037, July 17, 1969, as amended at Dept. Reg. 108.615, 35 FR 3030, Feb. 14, 1970; Dept. Reg. 108.629, 35 FR 19016, Dec. 16, 1970]

## Chapter I—Department of State

## § 125.11

## § 125.05 Export of classified information (data and equipment).

(a) Any request for authority to export classified information (data or equipment) by other than the cognizant department or agency of the U.S. Government shall be submitted to the Department of State for approval. (See §§ 125.10 and 125.11 for exemptions.) The application shall set forth all pertinent information with full details of the proposed transaction. (See § 125.21 for procedure.)

(b) Classified information, as defined in § 125.02, which is approved by the Department of State for export shall be transferred or communicated only in accordance with the requirements of the Department of Defense Industrial Security Manual relating to the transmission of classified information (and any other requirements imposed by cognizant U.S. departments and agencies).

(c) The approval of the Department of State shall be obtained for the export of classified information to be disclosed to foreign nationals either in connection with visits to foreign countries by U.S. persons, or in connection with visits to the United States by foreign nationals, unless the proposed export is expressly exempt under the provisions of this subchapter (see § 125.11). There shall be no release of classified information in any manner or form to any foreign national except as otherwise expressly provided in this subchapter.

(d) All communications relating to a patent application covered by a secrecy order shall be addressed to the U.S. Patent Office. (See 37 CFR 5.11.)

[Dept. Reg. 108.605, 35 FR 12037, July 17, 1969, as amended by Dept. Reg. 108.615, 35 FR 3030, Feb. 14, 1970]

## EXEMPTIONS

## § 125.10 Shipments by U.S. Government agencies.

Exports of technical data by U.S. Government agencies are exempt in accordance with Part 126 of this subchapter. This exemption, however, shall not apply when a U.S. Government agency, on behalf of a private individual or firm, acts as a transmittal

agent either as a convenience or in satisfaction of security requirements.

## § 125.11 General exemptions.

(a) Except as provided in § 126.01, district directors of customs and postal authorities are authorized to permit the export without a license of unclassified technical data as follows:

(1) If it is in published<sup>2</sup> form and subject to public dissemination by being:

(i) Sold at newstands and bookstores;

(ii) Available by subscription or purchase without restrictions to any person or available without cost to any person;

(iii) Granted second class mailing privileges by the U.S. Government; or,

(iv) Freely available at public libraries.

(2) If it has been approved for public release by any U.S. Government department or agency having authority to classify information or material under Executive Order 11652, as amended, and other applicable Executive Orders, and does not disclose the details of design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List.

(3) If the export is in furtherance of a manufacturing license or technical assistance agreement approved by the Department of State in accordance with Part 124 of this subchapter.

(4) If the export is in furtherance of a contract with an agency of the U.S. Government or a contract between an agency of the U.S. Government and foreign persons, provided the contract calls for the export of relevant unclassified technical data, and such data are being exported only by the prime contractor. Such data shall not disclose the details of development, engineering, design, production, or manufacture of any arms, ammunition or implements of war on the U.S. Munitions List. (This exemption does not

<sup>2</sup>The burden for obtaining appropriate U.S. Government approval for the publication of technical data falling within the definition in § 125.01, including such data as may be developed under other than U.S. Government contract, is on the person or company seeking publication.

## § 125.11

permit the prime contractor to enter into subsidiary technical assistance or manufacturing license agreements, or any arrangement which calls for the exportation of technical data without compliance with Part 124 of this subchapter).

(5) If it relates to firearms not in excess of caliber .50 and ammunition for such weapons, except technical data containing advanced designs, processes, and manufacturing techniques.

(6) If it consists of technical data, other than design, development, or production information relating to equipment, the export of which has been previously authorized to the same recipient.

(7) If it consists of operations, maintenance, and training manuals, and aids relating to equipment, the export of which has been authorized to the same recipient.<sup>4</sup>

(8) If it consists of additional copies of technical data previously approved for export to the same recipient; or if it consists of revised copies of technical data, provided, it pertains to the identical Munitions List article, and the revisions are solely editorial and do not add to the content of technology previously approved for export to the same recipient.

(9) If it consists solely of technical data being reexported to the original source of import.

(10) If the export is by the prime contractor in direct support and within the technical and/or product limitations of a "U.S. Government approved project" and the prime contractor so certifies. The Office of Munitions Control, Department of State, will verify, upon request, those projects which are "U.S. Government approved", and accord an exemption to the applicant who applies for such verification and exemption, where appropriate, under this subparagraph.<sup>5</sup>

<sup>4</sup>Not applicable to technical data relating to Category VI(e) and Category XVI.

<sup>5</sup>Classified information may also be transmitted in direct support of and within the technical and/or product limitations of such verified "U.S. Government approved projects" without prior Department of State approval provided the U.S. party so certifies and complies with the requirements of the

## Title 22—Foreign Relations

(11) If the export is solely for the use of American citizen employees of U.S. firms provided the U.S. firm certifies its overseas employee is a U.S. citizen and has a "need to know."<sup>6</sup>

(12) If the export is directly related to classified information, the export of which has been previously authorized to the same recipient, and does not disclose the details of design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List.

(b) *Plant visits.* Except as restricted by the provisions of § 126.01 of this subchapter:

(1) No license shall be required for the oral and visual disclosure of unclassified technical data during the course of a plant visit by foreign nationals provided the data is disclosed in connection with a classified plant visit or the visit has the approval of a U.S. Government agency having authority for the classification of information or material under Executive Order 11652, as amended, and other applicable Executive Orders and the requirements of Section V, paragraph 40(d) of the Industrial Security Manual are met.

(2) No license shall be required for the documentary disclosure of unclassified technical data during the course of a plant visit by foreign nationals provided the document does not contain technical data as defined in § 125.01 in excess of that released orally or visually during the visit, is within the terms of the approved visit request, and the person in the United States assures that the technical data

Department of Defense Industrial Security Manual relating to the transmission of such classified information (and any other requirements of cognizant U.S. Government departments or agencies).

<sup>6</sup>Classified information may also be exported to such certified American citizen employees without prior Department of State approval provided the U.S. party complies with the requirements of the Department of Defense Industrial Security Manual relating to the transmission of such classified information (and any other requirements of cognizant U.S. Government departments or agencies). Such technical data or information (classified or unclassified) shall not be released by oral, visual, or documentary means to any foreign person.

**Chapter I—Department of State****§ 125.21**

will not be used, adapted for use, or disclosed to others for the purpose of manufacture or production without the prior approval of the Department of State in accordance with Part 124 of this subchapter.

(3) No department of State approval is required for the disclosure of oral and visual classified information during the course of a plant visit by foreign nationals provided the visit has been approved by the cognizant U.S. Defense agency and the requirements of section V, paragraph 40(d) of the Defense Industrial Security Manual are met.

[Dept. Reg. 108.605, 35 FR 12037, July 17, 1969, as amended by Dept. Reg. 108.630, 35 FR 19995, Dec. 31, 1970; Dept. Reg. 108.646, 36 FR 20941, Nov. 2, 1971; Dept. Reg. 108.649, 36 FR 22741, Nov. 30, 1971; Dept. Reg. 108.668, 37 FR 14694, July 22, 1972]

**§ 125.12 Canadian shipments.**

District directors of customs and postal authorities are authorized to permit the export of unclassified technical data to Canada without an export license, except when such technical data relate to the following:

(a) Nuclear weapons strategic delivery systems and all specifically designed components, parts, accessories, attachments, and associated equipment therefor;

(b) Nuclear weapons design and test equipment defined in Category XVI;

(c) Naval nuclear propulsion equipment as defined in Category VI(e);

(d) Aircraft as defined in Category VIII(a); and

(e) Submersible and oceanographic vessels and related articles as defined in Category XX (a) through (d).

(This exemption does not authorize the foreign manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List. See Part 124 of this subchapter.)

[Dept. Reg. 108.630, 35 FR 19995, Dec. 31, 1970, as amended by Dept. Reg. 108.646, 36 FR 20941, Nov. 2, 1971]

**§ 125.13 Data on nuclear materials.**

To the extent that technical data, the export of which are controlled by the Atomic Energy Commission under the Atomic Energy Act of 1954, as

amended, are coextensive with technical data related to articles in Category VI(e), Category XVI, and Category XVIII, the provisions of this subchapter shall not apply.

**PROCEDURES****§ 125.20 Export of unclassified technical data.**

(a) *General and visits.* Unless exempted in § 125.10 or § 125.11 of this subchapter, applications for the export or the disclosure of nonexempt unclassified technical data to foreign persons shall be made (by persons in the United States only) to the Department of State on Form DSP-5, accompanied by five copies of the data. In the case of visits, sufficient details of the proposed discussions shall be transmitted in quintuplicate for an adequate appraisal of the data in question.

(b) *Patents.* All requests for filing patent applications in a foreign country, and requests for filing amendments, modifications or supplements thereto, shall be directed to the U.S. Patent Office in accordance with 37 CFR Part 5. If the applicant complies with the regulations of the Patent Office, no approval of the Department of State is required unless the applicant seeks to export technical data exceeding that used to support a patent application in a foreign country. In such case an application shall be required to be submitted on form DSP-5 in accordance with the provisions of paragraph (a) of this section.

[Dept. Reg. 108.615, 35 FR 3030, Feb. 14, 1970, and Dept. Reg. 108.646, 36 FR 20941, Nov. 2, 1971]

**§ 125.21 Export of classified information (data and equipment).**

Unless exempted in § 125.10 or § 125.11, applications (from U.S. citizens only) for approval to export or disclose classified information (data or equipment) to foreign persons shall be submitted to the Department of State on form DSP-85. When the application is for export of classified technical data only it shall be accompanied by five copies of the data to permit an evaluation of whether an export li-

**§ 125.22**

cense may be issued. When the application is for export of classified equipment it shall be accompanied by five copies of suitable descriptive information to permit an evaluation of whether an export license may be issued, and form DSP-83 in the case of significant combat equipment (see footnote 3 to § 123.10 (d) of this subchapter). All classified materials accompanying an application shall be treated as required by the Defense Industrial Security Manual, section I, paragraph 5.

[Dept. Reg. 108.646, 36 FR 20942, Nov. 2, 1971]

**§ 125.22 Certification requirements.**

An exporter in the United States claiming any exemption for the export of technical data in accordance with the provisions of § 125.11, may do so by certifying that the proposed export is covered by the relevant paragraph(s) of that section. Such certification shall be made by marking the package or letter "22 CFR 125.11 \* \* \* applicable," identifying the specific paragraph(s) under which the exemption is claimed.

**§ 125.23 Filing of licenses for export of unclassified technical data.**

DSP-5 licenses authorizing the export of unclassified technical data shall be presented to, and filed with the appropriate district director of customs or postmaster at the time of shipment or mailing. The district director of customs or postmaster shall endorse and transmit the licenses to the Office of Munitions Control, Department of State, in accordance with the instructions contained on the reverse thereof.

[Dept. Reg. 108.615, 35 FR 3030, Feb. 14, 1970]

**§ 125.24 Filing of licenses for export of classified information (data and equipment).**

DSP-85 licenses authorizing the export of classified data or classified equipment shall be forwarded by the Department of State to agents of the Department of Defense (Defense Supply Agency) to arrange for transmission in accordance with the De-

**Title 22—Foreign Relations**

partment of Defense Industrial Security Manual. The Department of State shall forward a copy of the issued license to the applicant for his information. Upon completion of the export transaction the Defense Supply Agency shall return the license to the Department of State with endorsements in accordance with the instructions contained on the reverse thereof.

[Dept. Reg. 108.615, 35 FR 3030, Feb. 14, 1970]

**PART 126—PROHIBITED SHIPMENTS, TEMPORARY SUSPENSION OR MODIFICATION OF REGULATIONS, EXEMPTIONS, AND RELATION TO OTHER PROVISIONS OF LAW****Sec.**

126.01 Prohibited shipments to or from certain countries.

126.02 Temporary suspension or modification of regulations of the subchapter.

126.03 Waiver or exception in hardship cases.

126.04 Shipments by U.S. Government agencies.

126.05 Relation to other provisions of law.

**AUTHORITY:** Sec. 414, as amended, 68 Stat. 848, 22 U.S.C. 1934; secs. 101 and 105, E.O. 10973, 26 FR 10469; sec. 6, Departmental Delegation of Authority No. 104, 26 FR 10608, as amended, 27 FR 9925, 28 FR 7231; Redelegation of Authority No. 104-3-A, 28 FR 7231.

**SOURCE:** Dept. Reg. 108.605, 34 FR 12039, July 17, 1969, unless otherwise noted.

**§ 126.01 Prohibited shipments to or from certain countries.**

The policy of the United States is to deny licenses and other approvals for U.S. Munitions List articles destined for or originating in Albania, Bulgaria, Communist China, Cuba, Czechoslovakia, East Germany, Estonia, Hungary, Latvia, Lithuania, North Korea, Outer Mongolia, Poland, Rumania, Union of Soviet Socialist Republics, any of the area of Viet-Nam which is under *de facto* communist control, and to or from any other area where the shipment of Munitions List articles would not be in furtherance of world peace and the security and foreign policy of the United States. The exemptions provided in the regulations in this subchapter, except § 125.11(a) (1) and (2)

**Chapter I—Department of State****§ 127.01**

of this subchapter, do not apply to shipments destined for or originating in any of this proscribed countries or areas.

**§ 126.02 Temporary suspension or modification of regulations of the subchapter.**

The Director, Office of Munitions Control, Department of State, is authorized to order the temporary suspension or modification of any or all of the regulations of this subchapter in the interest of furthering the objectives of world peace and the security and foreign policy of the United States.

**§ 126.03 Waiver or exception in hardship cases.**

In bona fide cases showing exceptional and undue hardship, the Director, Office of Munitions Control, Department of State, is authorized to make an exception to the regulations of this subchapter after full review.

**§ 126.04 Shipments by U.S. Government agencies.**

(a) The export of articles on the U.S. Munitions List by any department or agency of the U.S. Government is not subject to the provisions of section 414 of the Mutual Security Act of 1954, as amended. A license to export such articles, therefore, is not required when (1) all aspects of a transaction (export, carriage, and delivery abroad) are effected by a U.S. Government agency, or (2) actual transfer of possession of U.S. Government-owned articles is effected in the United States by an agency of the U.S. Government to a foreign government or its carrier and no private person or forwarding agent is involved in the export transaction.

(b) A license shall be required when a private person or forwarding agent is involved in any aspect of an export transaction unless the regulations in this subchapter contain a specific exemption from the need for a license under the particular circumstances of the transaction, or the consignor, consignee, and intermediate consignee (if any) are agencies of the U.S. Government and the export is covered by a U.S. Government Bill of Lading.

(c) This section does not authorize any Government department or agency to export any items listed in § 121.01 of this subchapter which are subject to restrictions by virtue of other statutory provisions.

[Dept. Reg. 108.646, 36 FR 20942, Nov. 2, 1972]

**§ 126.05 Relation to other provisions of law.**

The provisions in this subchapter are in addition to, and are not in lieu of, any other provision of law or regulations respecting commerce in arms, ammunition, and implements of war, and technical data relating thereto.

**PART 127—VIOLATIONS, PENALTIES AND ADMINISTRATIVE REMEDIES****Sec.**

- 127.01 Violations in general.
- 127.02 Misrepresentation and omission of facts.
- 127.03 Criminal penalties.
- 127.04 Penalties for violations relating to Southern Rhodesia.
- 127.05 Authority of district directors of customs.
- 127.06 Seizure and forfeiture in attempts at illegal exports.
- 127.07 Debarment.
- 127.08 Interim suspension.
- 127.09 Applicability of orders.
- 127.10 Civil penalty.

**AUTHORITY:** Sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934; 18 U.S.C. 1001; 22 U.S.C. 401; secs 101 and 105, E.O. 10973, 26 FR 10469; sec 6, Departmental Delegation of Authority No. 104, 26 FR 1068, as amended, 27 FR 9925, 28 FR 7231; and Redelegation of Authority No. 104-3-A, 28 FR 7231. The provisions of Part 127 regarding exports to Southern Rhodesia, issued under E.O. 11322, 32 FR 119; 59 Stat. 620, 22 U.S.C. 287c.

**SOURCE:** Dept. Reg. 108.605, 34 FR 12040, July 17, 1969, unless otherwise noted.

**§ 127.01 Violations in general.**

(a) It is unlawful to export or attempt to export from the United States any article or technical data for which a license or approval is required by this subchapter without first obtaining the required license or written approval from the Department of State.

**§ 127.02**

(b) No person, with knowledge that another person is then subject to an order of debarment, or interim suspension, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to, and written authorization of the Office of Munitions Control:

(1) May apply for, obtain, or use any export control document as defined in § 127.02(b) by, to, or for such debarred or suspended person; or

(2) May order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in, any transaction which may involve any article or technical data for which a license or approval is required by this subchapter, exported or to be exported from the United States, whereby a debarred or suspended person may obtain any benefit therefrom or have any direct or indirect interest therein.

(c) No person may 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.

[Dept. Reg. 108.744, 42 FR 42852, Aug. 25, 1977]

**§ 127.02 Misrepresentation and omission of facts.**

(a) It is unlawful to use any export or intransit control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any article or technical data for which license approval is required by this subchapter. Any false statement, misrepresentation or omission of material fact in an export or intransit 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, the term export or intransit control document includes the following:

- (1) Applications for export or intransit license and supporting documents.
- (2) Shippers export declarations.
- (3) Invoices.

**Title 22—Foreign Relations**

- (4) Declarations of destination.
- (5) Delivery verifications.
- (6) Applications for temporary export license.
- (7) Applications for registration.
- (8) Purchase orders.
- (9) Foreign import certificates.
- (10) Bills-of-lading.
- (11) Air way bills.
- (12) Consignee-purchaser transaction statements.
- (13) Nth country control statements.
- (14) Any other document used in the regulation or control of articles or technical data for which license or approval is required by this subchapter.

[Dept. Reg. 108.605, 34 FR 12040, July 17, 1969, as amended by Dept. Reg. 108.744, 42 FR 42852, Aug. 25, 1977]

**§ 127.03 Criminal penalties.**

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, 2779), or any rule or regulation issued under either section; 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. 2778, 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 fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).

[Dept. Reg. 108.744, 42 FR 42852, Aug. 25, 1977].

**§ 127.04 Penalties for violations relating to Southern Rhodesia.**

Any person subject to the jurisdiction of the United States who, with regard to exports from the United States to Southern Rhodesia, willfully violates any provision of section 1(d), of Executive Order 11322 or any rule or regulation contained in this part, or who willfully in a registration or license application makes any untrue statement of a material fact, or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

**Chapter I—Department of State****§ 127.07**

shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than 10 years, or both.

**§ 127.05 Authority of district directors of customs.**

(a) District directors of customs are authorized to take appropriate action to insure observance of this subchapter as to the exportation, or the attempted exportation of arms, ammunition, and implements of war, and technical data relating thereto, whether authorized by licenses or written approval issued under this subchapter, including but not limited to inspection of loading or unloading of carriers.

(b) Upon the presentation of a license or written approval to a customs officer, authorizing the exportation of arms, ammunition, and implements of war, and technical data relating thereto, the customs officer may require, in addition to such documents as may be required by customs regulations, the production of other relevant documents and information relating to the proposed exportation, including, but not limited to, invoices, orders, packing lists, shipping documents, correspondence, and instructions.

**§ 127.06 Seizure and forfeiture in attempts at illegal exports.**

(a) Any attempt to export or ship from or take out of the United States any articles on the U.S. Munitions List in violation of the provisions of this subchapter shall constitute an offense punishable under section 401 of title 22 of the United States Code. Whenever it is known or there shall be probable cause to believe that any articles on the U.S. Munitions List are intended to be or are being or have been exported or removed from the United States in violation of law, such articles and any vessel, vehicle or aircraft involved in such attempt shall be subject to seizure, forfeiture and disposition as provided in section 401 of title 22 of the United States Code.

(b) Similarly, any attempt to violate any of the conditions under which a Temporary Export or Intransit License was issued pursuant to this subchapter shall also constitute an offense punishable under section 401 of

title 22 of the United States Code, and such articles, together with any vessel, vehicle or aircraft involved in such attempt shall be subject to seizure, forfeiture, and disposition as provided in section 401 of title 22 of the United States Code.

**§ 127.07 Debarment.**

(a) *Debarment orders.* The Director, Bureau of Politico-Military Affairs, is authorized to debar (prohibit) any person from participating directly or indirectly in the export of articles or technical data for which license or approval is required by this subchapter for any of the causes listed below when to do so is important for the maintenance of the regulatory scheme. The following are cause for debarment.

(1) Conviction of a criminal offense as defined in § 127.03.

(2) The violation of 22 U.S.C. 2778 or of any rule or regulation issued thereunder when such a violation is of such character as to provide a reasonable basis to believe and determine that the violator cannot be relied upon to comply with the statute, rules, or regulations in the future, and when such a violation is established in accordance with §§ 128.02 through 128.16 of this chapter.

(3) The violation of any provision of 22 U.S.C. 2778, or of any rule or regulation issued thereunder when, because it is a second or subsequent violation, it impels the belief that the violator cannot be relied upon to comply with the statute, rules or regulations in the future and when the violations are established in accordance with §§ 128.02 through 128.16 of this chapter.

(4) A decision by the Office of Export Administration, Bureau of East-West Trade of the Department of Commerce, to deny, suspend, or revoke export privileges to the person under 15 CFR 388.1 and the Export Administration Act of 1969 or to exclude the person from practice before the Bureau of East-West Trade under 15 CFR 390.2 and the Export Administration Act of 1969, where the Hearing Commissioner makes a further finding that the facts reasonably impel a deci-

**§ 127.06**

sion that they form a reasonable basis for concluding that the person cannot be relied upon to comply in the future with 22 U.S.C. 2778, or with the rules or regulations issued thereunder.

(b) *Motions to vacate or modify.* A person who has been debarred for more than 12 months may petition the Hearing Commissioner to vacate or modify the order of debarment. The petition must be filed with the Hearing Commissioner, and a copy simultaneously filed with the Office of Munitions Control, Department of State. In his discretion, the Hearing Commissioner may require the submission of evidence and arguments, oral or written or both. The Hearing Commissioner, after considering the motion and any evidence and arguments with respect thereto, shall at the earliest practicable date submit his report and recommendations to the Director, Bureau of Politico-Military Affairs, Department of State. The Director may issue an appropriate order disposing of the motion and the moving party will be informed.

[Dept. Reg. 108.744, 42 FR 42852, Aug. 25, 1977]

**§ 127.08 Interim suspension.**

(a) *Interim suspension orders.* The Director of the Office of Munitions Control is authorized to order the interim suspension of any person, prohibiting that person from participating directly or indirectly in the export of any article or technical data for which a license or approval is required by this subchapter, when he believes grounds for debarment as defined in § 127.07 exist, and where and to the extent he finds interim suspension is reasonably necessary to protect world peace or the national security or foreign policy of the United States, pending final disposition of debarment proceedings. The suspended person shall be sent a charging letter as provided in § 128.03 of this chapter. A copy of the interim suspension order will be served upon him in the same manner as provided in § 128.07 of this chapter for service upon him of a charging letter. The interim suspension order may be made effective immediately, without prior notice or hearing. The order will

**Title 22—Foreign Relations**

briefly recite the relevant facts, state the grounds for issuance of the order, and describe the nature and duration of the interim suspension. No person may be suspended for a period exceeding 60 days unless proceedings under §§ 128.02 through 128.16 of this chapter or criminal proceedings are initiated before the expiration of that period.

(b) *Motions to vacate or modify.* A motion or petition to vacate or modify an interim suspension order may be filed at any time with the Hearing Commissioner, and a copy shall be filed with the Office of Munitions Control, Department of State. An oral hearing, if requested, will be held before the Hearing Commissioner at the earliest practicable date. The Hearing Commissioner, after considering the assembled record, will submit his report and recommendations to the Director, Bureau of Politico-Military Affairs, Department of State. The Director will issue an appropriate order disposing of the motion or petition and will promptly inform the respondent accordingly.

(c) *Deferment of action on license applications otherwise prohibited.* Except for the particular application or license which is itself the basis of any investigation or proceeding, no license application filed by any person may be returned without action, held without action, or rejected, solely because such person is under investigation, or because proceedings against him are pending, other than in accordance with the terms of an interim suspension order issued under § 127.08(a).

[Dept. Reg. 108.744, 42 FR 42852, Aug. 25, 1977]

**§ 127.09 Applicability of orders.**

For the purpose of preventing evasion, orders of the Director, Bureau of Politico-Military Affairs, debarring a person under § 127.07, and orders of the Director, Office of Munitions Control, suspending a person under § 127.08, may be made applicable to any other person who may then or thereafter (during the term of the order) be related by affiliation, ownership, control, position of responsibility, or other commercial connection.

## Chapter I—Department of State

## § 128.03

Appropriate notice and opportunity to respond to charges will be given.

[Dept. Reg. 108.744, 42 FR 42852, Aug. 25, 1977]

## § 127.10 Civil penalty.

(a) The Director, Bureau of Politico-Military Affairs, is authorized to impose a civil penalty in an amount not to exceed that authorized by 50 U.S.C. 2405(c) for each violation of 22 U.S.C. 2778, or any regulation, order, license or approval issued thereunder. This civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.

(b) The Office of Munitions Control may make the payment of a civil penalty under this section a prior condition of the issuance, restoration, or continuing validity of any export license.

[Dept. Reg. 108.744, 42 FR 42852, Aug. 25, 1977]

## PART 128—ADMINISTRATIVE PROCEDURES

## Sec.

- 128.01 Exclusion of functions from Administrative Procedure Act.
- 128.02 Hearing Commissioner.
- 128.03 Institution of administrative proceedings.
- 128.04 Default.
- 128.05 Answer and demand for oral hearing.
- 128.06 Discovery.
- 128.07 Prehearing conference.
- 128.08 Hearings.
- 128.09 Proceedings before and report of Hearing Commissioner.
- 128.10 Disposition of proceedings.
- 128.11 Consent orders.
- 128.12 Rehearings.
- 128.13 Appeals.
- 128.14 Proceedings confidential.
- 128.15 Orders containing probationary periods.
- 128.16 Extension of time.
- 128.17 Availability of orders.

AUTHORITY: Sec. 38, 90 Stat. 744 (22 U.S.C. 2778); sec. 601, as amended, 47 Stat. 417 (31 U.S.C. 686); E.O. 11958, (42 FR 4311, Jan. 18, 1977).

SOURCE: 42 FR 42853, Aug. 25, 1977, unless otherwise noted.

## § 128.01 Exclusion of functions from Administrative Procedure Act.

The functions conferred by Section 38 of the Arms Export Control Act are excluded from 5 U.S.C. §§ 553 and 554.

## § 128.02 Hearing Commissioner.

The Hearing Commissioner referred to herein is the Hearing Commissioner, Bureau of East-West Trade, U.S. Department of Commerce, as provided in 15 CFR 388.2. The Hearing Commissioner is authorized to exercise the powers and perform the duties provided for in §§ 128.03 through 128.16.

## § 128.03 Institution of administrative proceedings.

(a) *Charging letters.* The Director, Office of Munitions Control, with the concurrence of the Office of the Legal Adviser, may initiate debarment proceedings in accordance with § 127.07 of this chapter or civil penalties in accordance with § 127.10 of this chapter. The charging letter will state the essential facts constituting the alleged violation, refer to the regulatory or other provisions involved, and give notice that, if the respondent is found to have committed the alleged violation, he may be prohibited from participating in the export of any article or technical data for which a license or approval is required by this subchapter, or that civil penalties may be imposed. The charging letter will require the respondent to answer the charges within 30 days, as provided in § 128.05(a), and that failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he is entitled to an oral hearing if he files a written demand therefor with his answer or within 7 days after service of his answer, and that he may, if he so desires, be represented by counsel of his own choosing. Charging letters may be amended from time to time, upon reasonable notice.

(b) *Service.* A charging letter is served upon a respondent: (1) If he is a resident of the United States, when mailed in a wrapper addressed to him at his last known address, or when left with him or his agent or employee, or when left at his dwelling with some

**§ 128.04**

person of suitable age and discretion than residing therein; or (2) if he is a non-resident of the United States, when served upon him by any of the foregoing means, or if such method of service is not practicable or appropriate by reason of arrangements or understandings between the U.S. Government and the government of the country wherein the respondent resides, when it is tendered for service on him to an official of the government of the country wherein he resides.

**§ 128.04 Default.**

(a) *Failure to answer.* If the respondent fails to answer the charging letter he may be held in default and the case shall be referred to the Hearing Commissioner for consideration in a manner as he may consider appropriate. Any order issued shall have the same effect as an order issued following the disposition of contested charges.

(b) *Petition to set aside defaults.* Any respondent against whom a default order has been issued may apply, upon good cause shown, together with evidentiary data in support thereof, to set aside his default and vacate the order entered thereon. The petition shall be submitted in duplicate to the Director, Bureau of Politico-Military Affairs, U.S. Department of State, 2201 C Street, NW., Washington, D.C. 20520. The Director will refer the petition to the Hearing Commissioner for consideration and recommendation. The Hearing Commissioner will consider the application and may order a hearing and/or require the respondent to submit further evidence in support of his petition. The filing of a petition to set aside a default does not in any manner affect an order entered upon default and such order continues in full force and effect unless a further order is made modifying or terminating it.

**§ 128.05 Answer and demand for oral hearing.**

(a) *When to answer.* The respondent is required to answer the charging letter within 30 days after service.

**Title 22—Foreign Relations**

(b) *Contents of answer.* An answer must be responsive to the charging letter and must fully set forth the nature of the respondent's defense or defenses. In his answer, respondent must admit or deny specifically each separate allegation of the charging letter, unless the respondent is without knowledge, in which case, his answer shall so state and the statement shall operate as a denial. Failure to deny or controvert any particular allegation will be deemed an admission thereof. The answer may set forth such additional or new matter as respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in an answer shall be deemed, waived, and evidence offered thereon by the respondent at a hearing may be refused except upon good cause shown. If the respondent does not demand an oral hearing, he shall transmit, within 7 days after the service of his answer, original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue and, if any such materials be in a language other than English, translations into English shall be submitted at the same time.

(c) *Submission of answer.* The answer, written demand for oral hearing, if any, and supporting evidence required by § 128.05(b) shall be in duplicate and mailed or delivered to the Hearing Commissioner, Bureau of East-West Trade, U.S. Department of Commerce, Washington, D.C. 20230. A copy shall be simultaneously served on the Director, Office of Munitions Control, Department of State, Washington, D.C. 20520.

**§ 128.06 Discovery.**

(a) *Discovery by the respondent.* The respondent, through the Hearing Commissioner, may request from the Office of Munitions Control any relevant information, not privileged, that may be necessary or helpful in preparing a defense. The Office of Munitions Control may supply summaries in place of original documents or may withhold information from discovery.

**Chapter I—Department of State****§ 128.06**

if the interests of national security so require, or if necessary to comply with any statute, executive order or regulation requiring that information not be disclosed. The respondent may request the Hearing Commissioner to request any relevant information, books, records, or other evidence, from any other person or government agency so long as the request is reasonable in scope and not unduly burdensome.

(b) *Discovery by the Office of Munitions Control.* The Office of Munitions Control or the Hearing Commissioner may request from the respondent admissions of facts, answers to interrogatories, the production of books, records, or other relevant evidence, so long as the request is relevant and material, reasonable in scope and not unduly burdensome.

(c) *Subpoenas.* At the request of any party, the Hearing Commissioner may issue subpoenas, returnable before him, requiring the attendance of witnesses and the production of books, records and other documentary or physical evidence determined by the Hearing Commissioner to be relevant and material to the proceedings, reasonable in scope and not unduly burdensome.

(d) *Enforcement of discovery rights.* If the Office of Munitions Control fails to provide the respondent with adequate information to prepare a defense, the Hearing Commissioner may dismiss the charges of his own motion or on motion of the respondent. If the respondent fails to respond with reasonable diligence to the requests for discovery by the Office of Munitions Control or the Hearing Commissioner, the Commissioner, on his own motion or motion of the Office of Munitions Control, and upon such notice to the respondent as the Hearing Commissioner may direct, may strike respondent's answer and declare him in default, or make any other ruling which he deems necessary and just under the circumstances. If a third party fails to respond to requests for information, the Hearing Commissioner shall consider whether the evidence sought is necessary to a fair hearing, and if it is so necessary that a fair hearing may

not be held without it, he shall dismiss the charges.

**§ 128.07 Prehearing conference.**

(a) The Hearing Commissioner may, upon his own motion or upon motion of any party, request the parties or their counsel to a prehearing conference to consider (1) simplification of issues; (2) the necessity or desirability of amendments to pleadings; (3) obtaining stipulations of fact and of documents to avoid unnecessary proof; or (4) such other matter as may expedite the disposition of the proceeding. The Hearing Commissioner will prepare a summary of the action agreed upon or taken at the conference, and will incorporate therein any written stipulations or agreements made by the parties. The conference proceedings may be recorded magnetically or taken by a reporter and transcribed, and filed with the Hearing Commissioner.

(b) If a conference is impracticable, the Hearing Commissioner may request the parties to correspond with him to achieve the purposes of a conference. The Hearing Commissioner shall prepare a summary of action taken as in the case of a conference.

**§ 128.08 Hearings.**

(a) A respondent who had not filed a timely written answer is not entitled to a hearing, and the case may be considered by the Hearing Commissioner as provided in § 128.04(a). If an answer is filed, but no oral hearing demanded, the Hearing Commissioner may proceed to consider the case upon the written pleadings and evidence available, and he may provide for the making of the record in such manner as he deems appropriate. If respondent answers and demands an oral hearing, the Hearing Commissioner, upon due notice, shall set the case for hearing, unless a respondent has raised in his answer no issues of material fact to be determined. If respondent fails to appear at a scheduled hearing, the hearing nevertheless may proceed in his absence, and respondent's failure to appear will not affect the validity of the hearing or any proceedings or action thereafter.

**§ 128.09**

(b) Hearings will be conducted by the Hearing Commissioner in a fair and impartial manner. The rules of evidence prevailing in courts of law do not apply, but allevidentiary material relevant and material to the inquiry will be received and given appropriate weight. Diligent effort shall be made to declassify or to secure unclassified summaries or extracts of classified materials, when not contrary to any statute or security regulation. The Hearing Commissioner will compare an unclassified summary or extract with the related classified materials. If he finds that the summary or extract is supported by the classified materials and omits only so much as remains classified, he may admit the unclassified summary or extract as part of the record, to the extent such summary or extract is relevant and material. The respondent may submit evidence in explanation or contradiction thereof. The respondent is not entitled to inspect classified materials.

(c) The Hearing Commissioner may administer oaths and affirmations. Respondent may be represented by counsel. Unless otherwise agreed by the parties and the Hearing Commissioner, the proceeding will be taken by a reporter or by magnetic recording, transcribed, and filed with the Hearing Commissioner. Respondent may examine the transcript and may obtain a copy upon payment of proper costs.

**§ 128.09 Proceedings before and report of Hearing Commissioner.**

(a) The Hearing Commissioner may conform any part of the proceedings before him to the Federal Rules of Civil Procedure. The record may be made available in any other proceeding involving the same respondent.

(b) The Hearing Commissioner, after considering the record, will prepare a written report. The report will include findings of fact, findings of law, a finding whether a law or regulation has been violated, and the Hearing Commissioner's recommendations and shall be transmitted to the Director, Bureau of Politico-Military Affairs, Department of State.

**Title 22—Foreign Relations****§ 128.10 Disposition of proceeding.**

Where the evidence is not sufficient to support the charges, the Director, Office of Munitions Control, or the Hearing Commissioner, will dismiss the charges. Where the Hearing Commissioner finds that a violation has been committed, his recommendation shall be advisory only, and the Director, Bureau of Politico-Military Affairs will review the record, consider the report of the Hearing Commissioner, and make appropriate disposition of the case. He may issue an order debaring the respondent from participating in the export of articles or technical data on the U.S. Munitions List as provided in § 127.07 of this chapter, or imposing a civil penalty as provided in § 127.10 of this chapter, or take such other action as he deems appropriate. Any debarment order will be effective for the period of time specified therein and may contain such additional terms and conditions as are deemed appropriate. A copy of the order together with a copy of the Hearing Commissioner's report will be served upon the respondent.

**§ 128.11 Consent orders.**

The Office of Munitions Control, and the respondent may, by agreement, submit to the Hearing Commissioner a proposal for the issuance of a consent order. The Hearing Commissioner will review the facts of the case and the proposal and may conduct conferences with the parties and may require the presentation of evidence in the case. If he does not approve the proposal, he will notify the parties and the case will proceed as though no consent proposal had been made. If he approves the proposal, he will report the facts of the case with his recommendations to the Director, Bureau of Politico-Military Affairs. If the Director does not approve the proposal, the case will proceed as though no consent proposal had been made. If he approves the proposal, the Director may issue an appropriate order.

**§ 128.12 Rehearings.**

The Hearing Commissioner may grant a rehearing or reopen a proceeding at any time for the purpose of

## Chapter I—Department of State

## § 128.13

hearing any relevant and material evidence which was not known or obtainable at the time of the original hearing. A request for rehearing or reopening must contain a summary of such evidence, and must explain the reasons why it could not have been presented at the original hearing. The Hearing Commissioner will advise the parties of any further hearing, and will conduct such hearing and submit his report and recommendations in the same manner as provided for the original proceeding as described in § 128.10.

## § 128.13 Appeals.

(a) *Filing of appeals.* An appeal must be in writing, addressed to and filed with the Appeals Board, U.S. Department of Commerce, Washington, D.C. 20230. An appeal from a final order denying export privileges or imposing civil penalties must be filed within 30 days after receipt of a copy of the order.

(b) *Grounds and conditions for appeal.* The respondent may appeal from a debarment or from the imposition of a civil penalty upon the ground (1) that the findings of violation are not supported by any substantial evidence, (2) that prejudicial error of law was committed, or (3) that the provisions of the order are arbitrary, capricious, or an abuse of discretion. The appeal must specify upon which of these grounds the appeal is based and must indicate from which provisions of the order the appeal is taken. An appeal from an order issued upon default will not be entertained if the respondent has failed to seek relief as provided in § 128.04(b).

(c) *Matters considered on appeal.* An appeal will be considered upon the basis of the assembled record, consisting of, but not limited to the charging letter, respondent's answer, the transcript or magnetic recording of the hearing before the Hearing Commissioner, the report of the Hearing Commissioner, the order of the Director, Bureau of Politico-Military Affairs, and any other relevant documents involved in the proceedings before the Hearing Commissioner. The Appeals Board may direct a rehearing and re-

opening before the Hearing Commissioner if it finds that the record is insufficient or that new evidence is relevant and material to the issues and was not known and was not available to the respondent at the time of the original hearing. The Appeals Board may order oral argument before it, but shall not consider facts or arguments relating to the policy embodied in rules or regulations alleged to have been violated.

(d) *Effect of appeals.* The taking of an appeal will not stay the operation of any order.

(e) *Preparation of appeals.* (1) *General requirements.* An appeal shall be clearly marked "Ref: Appeals Board for the U.S. Department of Commerce, Washington, D.C. 20230." and shall be in letter form. The appeal and accompanying material should be filed in duplicate, unless otherwise indicated, and a copy simultaneously served on the Director, Office of Munitions Control, Department of State, Washington, D.C. 20520. If the submission of two copies of all accompanying documents or exhibits would place an undue burden on the petitioner, waiver of this rule may be requested at the time the request is filed.

(2) *Oral presentation.* The Appeals Board may grant the appellant an opportunity for oral argument. The Appeals board will set the time and place for oral argument and will notify the parties, ordinarily at least 10 days before the date set.

(3) *Records.* Records on appeal will be made available for inspection and copying by the appellant or his duly authorized representative, upon written application. The application should be made to the Appeals Board, U.S. Department of Commerce, Washington, D.C. 20230. It must identify the material or information to be inspected or copied, and the purposes for which it is sought.

(f) *Decisions.* All appeals will be considered and decided within a reasonable time after they are filed. An appeal may be granted or denied, in whole or in part, or dismissed at the request of the appellant. The decision of the Appeals Board will be final.

**§ 128.14****§ 128.14 Proceedings confidential.**

Proceedings under this Part are confidential, excepting any orders issued therein. Reports of the Hearing Commissioner and copies of transcripts or recordings of hearings will be available to parties and, to the extent of their own testimony, to witnesses. All records are available to any U.S. Government agency showing a proper interest therein.

**§ 128.15 Orders containing probationary periods.**

(a) *Revocation of probationary periods.* A debarment or interim suspension order may set a probationary period during which the order may be held in abeyance for all or part of the debarment or suspension period, subject to conditions stated therein. The Director, Office of Munitions Control, without notice to any person to be affected thereby, may apply to the Hearing Commissioner for an order revoking probation have been breached. The facts in support of the application will be presented to the Hearing Commissioner who will report thereon, and make a recommendation to the Director, Bureau of Politico-Military Affairs. The Director, Bureau of Politico-Military Affairs will make a determination whether to revoke probation and will issue an appropriate order.

(b) *Hearing—(1) Objections upon notice.* Any person affected by an application upon notice to revoke probation, within the time specified in the notice, may file objections with the Hearing Commissioner.

(2) *Objections to order without notice.* Any person adversely affected by an order revoking probation without notice may request that the order be set aside by filing his objections thereto with the Hearing Commissioner. The request will not stay the effective date of the order or revocation.

(3) *Requirements for filing objection.* Objections filed with the Hearing Commissioner must be submitted in writing and in duplicate, and a copy must be simultaneously served on the Office of Munitions Control, Department of

**Title 22—Foreign Relations**

State. Denials and admissions, as well as the facts of any mitigating circumstances, which the person affected intends to present must be set forth in or accompany the letter of objection and must be supported by evidence. A request for an oral hearing may be made at the time of filing objections.

(4) *Determination.* The application and objections thereto will be referred to the Hearing Commissioner. An oral hearing, if requested, will be conducted at an early convenient date, unless the objections filed raise no issues of material fact to be determined. The Hearing Commissioner will report the facts and make a recommendation to the Director, Bureau of Politico-Military Affairs, who will determine whether the application should be granted or denied and will issue an appropriate order. A copy of the order and of the Hearing Commissioner's report will be furnished to any person affected thereby.

(c) *Effect of revocation on other actions.* The revocation of a probationary period will not preclude any other action concerning a further violation, even where revocation is based on the further violation.

**§ 128.16 Extension of time.**

The Hearing Commissioner, for good cause shown, may extend the time within which to prepare and submit an answer to a charging letter or do any other act required by this Part 128.

**§ 128.17 Availability of orders.**

All debarment orders, orders imposing civil penalties, probationary periods, and interim suspension orders are available for public inspection in the Public Reading Room of the Department of State.

NOTE: The recordkeeping and reporting requirements contained in Subchapter M have been approved by the Office of Management and Budget in accordance with 44 U.S.C. 3509.

## Chapter I—Department of State

## § 130.01

**PART 130—INFORMATION ON POLITICAL CONTRIBUTIONS AND FEES OR COMMISSIONS IN CONNECTION WITH THE SALE OF DEFENSE ARTICLES OR SERVICES**

## Sec.

## 130.01 Definitions.

130.11. Obligation to furnish information to the Office of Munitions Control, Department of State.

130.12. Information to be furnished to the Office of Munitions Control, Department of State.

130.13. Supplementary reports.

130.21. Information to be furnished by vendor to applicant or supplier.

130.22. Information to be furnished to applicant, supplier or vendor by recipient of fee or commission.

130.23. Recordkeeping.

130.31. Confidential business information.

130.32. Other reporting requirements.

130.33. Utilization of and access to reports and records.

**AUTHORITY:** Sec. 604(b), Pub. L. 94-329 (90 Stat. 729) (22 U.S.C. 2779); sec. 212, Pub. L. 94-329 (90 Stat. 729) (22 U.S.C. 2776); secs. 101 and 105, E.O. 10973, 25 FR 10469.

**SOURCE:** Dept. Reg. 108.729, 41 FR 40608, Sept. 20, 1976, unless otherwise noted.

## § 130.01 Definitions.

For the purposes of this part:

(a) "Applicant" means any person who applies to the Office of Munitions Control, Department of State, for any license or approval required under this subchapter for the export of defense articles or defense services valued in an amount of \$100,000 or more which are being sold commercially to or for the use of the armed forces of a foreign country or international organization. This term also includes a person to whom the required license or approval has been given.

(b) "Supplier" means any person who enters into a contract with the Department of Defense for the sale of defense articles or defense services valued in an amount of \$100,000 or more under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

(c) "Vendor" means any distributor or manufacturer who, directly or indirectly, furnishes to an applicant or supplier defense articles valued in an amount of \$100,000 or more which are

end items or major components as defined in § 121.14, or any person who, directly or indirectly, furnishes to an applicant or supplier defense services valued in an amount of \$100,000 or more when such articles or services are to be delivered (or incorporated in defense articles or defense services to be delivered) to or for the use of the armed forces of a foreign country or international organization under:

(1) A sale requiring a license or approval from the Office of Munitions Control, Department of State under this subchapter; or

(2) A sale pursuant to a contract with the Department of Defense under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

(d) "Defense articles" and "defense services" have the meaning given those terms in paragraphs (3), (4) and (7) of section 47 of the Arms Export Control Act (22 U.S.C. 2794 (3), (4), (7)). When used alone with reference to commercial sales, "defense articles" means items on the U.S. Munitions List (§ 121.01) and "defense services" means technical data relating to those items as further defined in § 125.01.

(e) "Political contribution" means any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:

(1) To or for the benefit of, or at the direction of, any foreign candidate, committee, political party, political faction, or government, or government subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; and

(2) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation shall not be regarded as political contributions.

(f)(1) "Fee or commission" means, except as provided in paragraph (f)(2), any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made, directly or

**§ 130.11**

indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:

(i) To or at the direction of any person, irrespective of nationality, whether or not employed by a affiliated with an applicant, a supplier or a vendor; and

(ii) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization.

(2) The term "fee or commission" does not include:

(i) A political contribution or a payment excluded by paragraph (d) of this section from the definition of political contribution;

(ii) A normal salary (excluding contingent compensation) established at an annual rate and paid to a regular employee of an applicant, supplier or vendor;

(iii) General advertising or promotional expenses not directed to any particular sale or purchaser; or

(iv) Payments made, or offered or agreed to be made, solely for the purchase by an applicant, supplier or vendor of specific goods or technical, operational or advisory services, which payments are not disproportionate in amount with the value of the specific goods or services actually furnished.

(g) "armed forces" means the army, navy, marine, air force and coast guard, as well as the national guard and national police, of a foreign country. This term also includes any military unit or military personnel organized under or assigned to an international organization.

**§ 130.11** Obligation to furnish information to the Office of Munitions Control, Department of State.

(a)(1) Each applicant shall inform the Office of Munitions Control, Department of State, as to whether applicant and/or its vendors have paid, or offered or agreed to pay, in respect of any sale for which a license or approval is requested:

(i) Political contributions in an aggregate amount of \$5,000 or more, or

**Title 22—Foreign Relations**

(ii) Fees or commissions in an aggregate amount of \$100,000 or more.

If so, applicant shall furnish to such office the information specified in § 130.12. The furnishing of such information or an explanation satisfactory to the Director of the Office of Munitions Control why all the information cannot be furnished at that time shall be a condition precedent to the granting of the relevant license or approval.

(2) The requirements of this paragraph shall not apply in the case of an application with respect to a sale for which all information specified in § 130.12 which is required by this section to be reported shall already have been furnished.

(b) Each supplier shall inform the Office of Munitions Control, Department of State, as to whether supplier and/or its vendors have paid, or offered or agreed to pay, in respect of any sale:

(1) Political contributions in an aggregate amount of \$5000 or more, or

(2) Fees or commissions in an aggregate amount of \$100,000 or more.

If so, supplier shall furnish to such office the information specified in § 130.12. The information required to be furnished pursuant to this paragraph shall be so furnished no later than 30 days after the contract award to such supplier, or such earlier date as may be specified by the Department of Defense. For purposes of this paragraph, a contract award includes a purchase order, exercise of an option or other procurement action requiring a supplier to furnish defense articles or defense services to the Department of Defense for the purposes of section 22 of the Arms Export Control Act (22 U.S.C. 2672).

(c) In determining whether an applicant and/or its vendors, or a supplier and/or its vendors, as the case may be, have paid, or offered or agreed to pay, political contributions in an aggregate amount of \$5,000 or more in respect of any sale so as to require a report under this section, there shall be included in the computation of such aggregate amount any political contributions in respect of the sale which are paid, by or on behalf of, or at the direction of, any person to whom the ap-

## Chapter I—Department of State

## § 130.12

plicant, supplier or vendor has paid, or offered or agreed to pay, a fee or commission in respect of the sale. Any such political contributions shall be deemed for purposes of this part to be political contributions by the applicant, supplier or vendor who paid or offered or agreed to pay the fee or commission.

(d) Any applicant or supplier which has informed the Office of Munitions Control under this section that neither it nor its vendors have paid, or offered or agreed to pay, political contributions or fees or commissions in an aggregate amount requiring the information specified in § 130.12 to the furnished shall subsequently furnish such information within 30 days after learning that it and/or its vendors have paid, or offered or agreed to pay, political contributions or fees or commissions in respect of a sale in an aggregate amount which if known to applicant or supplier at the time of its previous communication with the Office of Munitions Control, would have required the furnishing of information under § 130.11 at that time. Any report furnished under this paragraph shall, in addition to the information specified in § 130.12, include a detailed statement of the reasons why applicant or supplier did not furnish the information at the time specified in paragraph (a) or paragraph (b) of this section as applicable.

**§ 130.12 Information to be furnished to the Office of Munitions Control, Department of State.**

(a) Every person required under § 130.11 to furnish information specified in this section in respect of any sale shall furnish to the Office of Munitions Control, Department of State:

(1) The total contract price of the sale to the foreign purchaser;

(2) The name, nationality, address and principal place of business of the applicant or supplier, as the case may be, and, if applicable, its employer and title;

(3) The name, nationality, address and principal place of business, and, if applicable, employer and title of each foreign purchaser, including the ultimate end user, involved in the sale;

(4) Except as provided in paragraph (c), a statement setting forth with respect to such sale:

(i) the amount of each political contribution paid, or offered or agreed to be paid, and/or the amount of each fee or commission paid, or offered or agreed to be paid;

(ii) The date or dates on which each reported amount was paid, or offered or agreed to be paid;

(iii) The recipient(s) of each such amount paid, or intended recipient(s) if not yet paid;

(iv) the person(s) who paid, or offered or agreed to pay such amount; and

(v) The aggregate amounts of political contributions and of fees or commissions, respectively, which shall have been reported.

(b) In responding to paragraph (a)(4) of this section, the statement shall:

(1) With respect to each payment reported, state whether such payment was in cash or in kind, and if in kind, include a description and valuation thereof (where precise amounts are not available because a payment has not yet been made, an estimate of the amount offered or agreed to be paid shall be provided);

(2) With respect to each recipient, state:

(i) Its name;

(ii) Its nationality;

(iii) Its address and principal place of business;

(iv) Its employer and title; and

(v) Its relationship, if any, to applicant, supplier, or vendor, and to any foreign purchaser or end user.

(c) In submitting a report required by § 130.11, the detailed information specified in paragraphs (a)(4) and (b) of this section need not be included in the case of payments which do not exceed:

(1) \$2,500 in the case of political contributions; and,

(2) \$50,000 in the case of fees or commissions.

In lieu of reporting detailed information with respect to such payments the aggregate amount thereof shall be reported, identified as miscellaneous political contributions or miscella-

**§ 130.13**

neous fees or commissions, as the case may be.

(d) Every person required to furnish the information specified in paragraphs (a) and (b) of this section shall respond fully to each subdivision of those paragraphs and, where the correct response is "none" or "not applicable," shall so state.

**§ 130.13 Supplementary reports.**

(a) Every applicant or supplier who is required under § 130.11 to furnish the information specified in § 130.12 shall submit a supplementary report in connection with each sale in respect of which applicant or supplier has previously been required to furnish information if:

(1) Any political contributions aggregating \$2,500 or more or fees or commissions aggregating \$50,000 or more not previously reported are paid, or offered or agreed to be paid by applicant or supplier or any vendor;

(2) Subsequent developments cause the information initially reported to be no longer accurate or complete (as in the case where a payment actually made is substantially different in amount from a previously reported estimate of an amount offered or agreed to be paid); or

(3) Where additional details are requested by the Office of Munitions Control with respect to any miscellaneous payment or payments reported under § 130.12(c).

(b) Supplementary reports shall be sent to the Office of Munitions Control, Department of State, within 30 days after the payment, offer or agreement reported therein or, when requested by the Office of Munitions Control, within 30 days after such request, and shall include:

(1) Any information specified in § 130.12 required or requested to be reported and which was not previously reported; and

(2) The Munitions control license number(s), if any, and the Department of Defense contract numbers(s), if any, related to the sale.

**§ 130.21 Information to be furnished by vendor to applicant or supplier.**

(a) Every applicant or supplier:

**Title 22—Foreign Relations**

(1) In order to determine whether it is obliged under § 130.11 to furnish the information specified in § 130.12 with respect to a sale; and

(2) Prior to furnishing such information to the Office of Munitions Control, Department of State, shall obtain from each vendor, if any, from or through whom the applicant acquired defense articles or defense services forming the whole or a part of the sale, and such vendor shall, except as provided in paragraph (e), forthwith furnish to such applicant or supplier upon the latter's request, a timely statement containing a full disclosure by the vendor of all political contributions or fees or commissions paid, or offered or agreed to be paid, by vendor with respect to such sale. Such disclosure shall include responses to all the information pertaining to vendor required to enable applicant or supplier, as the case may be, to comply fully with §§ 130.11 and 130.12.

(b) At the time of making its request of a vendor under paragraph (a) of this section, the applicant or supplier shall also request the vendor to furnish from time to time such supplementary reports as may be necessary to enable the applicant or supplier, as the case may be, to comply fully with §§ 130.11, 130.12 and 130.13. Each vendor shall, except as provided in paragraph (e), furnish such supplementary reports in a timely manner.

(c) Applicant or supplier shall include any political contributions and any fees or commissions paid, or offered or agreed to be paid, by each vendor in determining whether applicant or supplier is required under § 130.11 to furnish information specified in § 130.12, and if so required, shall include the information furnished by each vendor in providing the information specified.

(d) Any vendor which has been requested by an applicant or supplier to furnish an initial statement under paragraph (a) of this section shall, except as provided in paragraph (e), furnish such statement in a timely manner and not later than 20 days of receipt of such request.

(e) If the vendor believes that furnishing information to an applicant or

**Chapter I—Department of State****§ 130.23**

supplier in a requested statement would unreasonably risk injury to the vendor's commercial interests, the vendor may furnish in lieu of the statement an abbreviated statement disclosing only the aggregate amount of all political contributions and the aggregate amount of all fees or commissions which have been paid, or offered or agreed to be paid, by the vendor with respect to the sale. Any abbreviated statement furnished to an applicant or supplier under this paragraph shall be accompanied by a certification that the requested information has been reported by the vendor directly to the Office of Munitions Control, Department of State. The vendor shall simultaneously report fully to the Office of Munitions Control all information which the vendor otherwise would have been required to report to the applicant or supplier under this section. Each such report shall clearly identify the sale with respect to which the reported information pertains.

(f)(1) If upon the 25th day after the date of its request to vendor, applicant or supplier has not received from vendor the initial statement required by paragraph (a) of this section, the applicant or supplier shall submit to the Office of Munitions Control a signed statement attesting to:

(i) The manner and extent of applicant's or supplier's attempt to obtain from vendor the initial statement required under paragraph (a) of this section;

(ii) Vendor's failure to comply with this section; and

(iii) The amount of time which has elapsed between the date of applicant's or supplier's request and the date of the signed statement;

(2) The failure of a vendor to comply with this section shall not relieve any applicant or supplier otherwise required by § 130.11 to submit a report to the Office of Munitions Control, Department of State, from submitting such a report.

**§ 130.22 Information to be furnished to applicant, supplier or vendor by recipient of fee or commission.**

(a) Every applicant or supplier, and each vendor thereof:

(1) In order to determine whether it is obliged under §§ 130.11 or 130.21 to furnish information specified in § 130.12, with respect to a sale; and

(2) Prior to furnishing such information shall obtain from each person, if any, to whom it has paid, or offered or agreed to pay, a fee or commission in respect of such sale a timely statement containing a full disclosure by such person of all political contributions paid, or offered or agreed to be paid, by it or on its behalf, or at its direction, in respect of such sale. Such disclosure shall include responses to all the information required to enable the applicant, supplier or vendor, as the case may be, to comply fully with §§ 130.11, 130.12 and 130.21.

(b) In obtaining information under paragraph (a) of this section, the applicant, supplier or vendor, as the case may be, shall also require each person to whom a fee or commission is paid, or offered or agreed to be paid, to furnish from time to time such reports of its political contributions as may be necessary to enable the applicant, supplier or vendor, as the case may be, to comply fully with §§ 130.11, 130.12, 130.13 and 130.21.

(c) The applicant, supplier or vendor, as the case may be, shall include any political contributions paid, or offered or agreed to be paid, by or on behalf of, or at the direction of, any person to whom it has paid, or offered or agreed to pay, a fee or commission in determining whether applicant supplier or vendor is required by §§ 130.11, 130.13 or 130.21 to furnish information specified in § 130.12.

**§ 130.23 Recordkeeping.**

Each applicant, supplier and vendor shall maintain a record of any information it was required to furnish or obtain under this part and all records upon which its reports are based for a period of not less than six years following the date of the report to which they pertain.

**§ 130.31****§ 130.31 Confidential business information.**

(a) Any applicant, supplier or vendor who is required to furnish information under this part may identify any information furnished hereunder which it considers confidential business information. No person, including any applicant or supplier, shall publish, divulge, disclose or make known in any manner, or to any extent, not authorized by law or regulation any information so identified by a vendor or other person.

(b) For purposes of this section, "confidential business information" means commercial or financial information which by law is entitled to protection from disclosure. (See e.g., 5 U.S.C. 552(b) (3) and (4); 18 U.S.C. 1905; 22 U.S.C. 2778(e); Rule 26(c)(7), Federal Rules of Civil Procedure).

**§ 130.32 Other reporting requirements.**

The submission of reports under this part does not relieve any person of any requirements to furnish information to any federal, state or municipal agency, department or other instru-

**Title 22—Foreign Relations**

mentality as required by law, regulation or contract.

**§ 130.33 Utilization of and access to reports and records.**

(a) All information reported and records maintained under this part shall be made available, upon request, for utilization by standing committees of the Congress and subcommittees thereof, and by United States Government agencies, in accordance with section 39(d) of the Arms Export Control Act (22 U.S.C. 2779(d)), and reports based upon such information shall be submitted to Congress in accordance with sections 36(a)(8) and 36(b)(1) of that Act (22 U.S.C. 2776(a)(8) and (b)(1)).

(b)(1) All reports and records identified by an applicant, supplier or vendor as confidential business information under § 130.31 shall be protected against disclosure in their utilization to the extent provided by law.

(2) Nothing in this section shall preclude the furnishing of information to foreign governments for law enforcement or regulatory purposes under international arrangements between the United States and any foreign government.

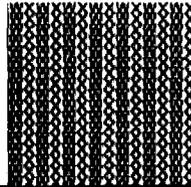


(DEPARTMENT OF STATE USE ONLY)

SEAL

License hereby granted to applicant to export from United States to destination indicated the described commodity now in U. S. territory in the quantity given, provided commodity bears no U. S. military security classification

signature



LICENSE VALID FOR 12 MONTHS FROM ABOVE DATE

(DO NOT REPRODUCE THIS LICENSE (121.20(c))

LICENSE NO.

UNITED STATES OF AMERICA DEPARTMENT OF STATE APPLICATION/LICENSE FOR PERMANENT EXPORT OF UNCLASSIFIED IMPLEMENTS OF WAR AND RELATED UNCLASSIFIED TECHNICAL DATA

Form with fields: 1. Date Prepared, 2. PM/MC Applicant Code, 3. Country of Ultimate Destination, 4. Probable Port of Exit From U. S., 5. Applicant's Name, Address, ZIP Code, Tel. No., 6. Names and telephone numbers of U. S. Government personnel familiar with the commodity, 7. Name, State and telephone number of applicant contact if U. S. Government needs additional information, 8. QUANTITY, 9. COMMODITY (Follow instructions carefully), 10. MUNITIONS LIST CATEGORY, 11. VALUE, 12. TOTAL VALUE: \$, 13. Source or manufacturer of commodity, 14. Specific purpose for which the material is required, including specific program/end item, 15. Name and address of seller in United States, 16. Name and address of consignor in United States, 17. Name and address of foreign consignee, 18. Name and address of foreign end-user, 19. Name and address of foreign intermediate consignee, 20. This application represents: ONLY completely new orders, ONLY the unshipped balance of license no., NOTE: APPLICATION CAN NOT INCLUDE BOTH, 21. The IDENTICAL commodity was licensed to the country in block 3 under license no., was licensed to other countries under license no., never licensed for this applicant., 22. If commodity is being provided under a Foreign Military Sales (FMS) or Grand Aid (GAD) program, state which and give the case no., 23. In this transaction, applicant is: government, agent/manufacturer, freight forwarder, 24. LICENSE TO BE SENT TO: NAME, STREET, CITY AND STATE, ZIP CODE, 25. APPLICANT'S STATEMENT (SEE INSTRUCTIONS) I, hereby apply for a license to complete the transaction described above, warrant the truth of all statements made herein, and acknowledge, understand and will comply with the provisions of Title 22 CFR 121-128 and any conditions and limitations imposed.

67295

**CONDITIONS OF ISSUANCE**

1. A license to export articles on the US Munitions List is issued under the conditions cited in 22 CFR 121-128, including the provision, as applicable, that:
  - A. It shall not be construed as implying US Government approval or commitment to authorize future exports of any article (equipment or technical data) on the Munitions List, or any US Government commitment with regard to any proposed manufacturing license or technical assistance agreements which may result from an authorized export.
  - B. If a license is issued for technical data only it does not authorize the export of any equipment; if a license is issued for equipment only it does not authorize the export of any technical data unless specifically covered by an exemption in 22 CFR 125.11.
  - C. The applicant's commitments to the US Government are being met.
2. The issuance of this license does not release the licensee from complying with other requirements of US law and regulations.
3. The prior written approval of the Department of State must be obtained before US Munitions List articles exported from the US under license may be resold, diverted, transferred, transhipped, reshipped, or reexported to, or used in any country other than that described on the license as the country of ultimate destination.

**RETURN OF LICENSE**

This license must be returned to the Office of Munitions Control, Department of State, Washington, DC 20520 when: (1) the total value authorized has been shipped; (2) the applicant states there will be no further shipments; (3) the date of expiration is reached; or (4) when requested by the Office of Munitions Control.

**CUSTOMS AND POSTAL ENDORSEMENT**

Indicate below which ITEM on the face of the license is BEING EXPORTED and maintain a CONTINUING BALANCE of the remaining value:

QUANTITY	COMMODITY	SHIPMENT VALUE	DATE	SED NO.	OFFICER INITIALS	PORT OF EXIT NAME OR NO.
<b>TOTAL AUTHORIZED:</b>						
<b>REMAINING BALANCE:</b>						
<b>REMAINING BALANCE:</b>						
<b>REMAINING BALANCE:</b>						



## INSTRUCTIONS FOR THE USE OF THE YELLOW SHIPPER'S EXPORT DECLARATION

(Commerce Form 7525-V)

(Follow Carefully to Avoid Delay at Shipping Point)

## I. GENERAL PROVISIONS OF LAW AND REGULATIONS

(a) Vessels shall not be cleared for foreign ports until export declarations covering the cargo, or its parts, have been delivered to customs at the point of exportation by the owners, shippers, or consignors thereof. Similar provisions apply to exportations by rail, air, vehicle, or ferry. A declaration shall not be used to effect any exportation after the expiration date of the export license referred to therein except as specifically authorized by export regulations.

(b) A declaration presented to a Customs Director or Postmaster and used to effect an exportation of any commodity for which a validated export license or a general license is required, constitutes a representation by the exporter (1) that all statements made and information set forth in the declaration have been furnished by him or on his behalf for the purpose of effecting an exportation of the commodity described in the declaration; (2) that the exportation of the commodity described in the declaration is authorized under the general or validated export license identified in the declaration; (3) that the statements contained in the declaration are identical in all respects with the contents of the validated export license or the terms, provisions, and conditions of the applicable general license; and (4) that all other terms, provisions, and conditions of the export control regulations applicable to the exportation have been met.

(c) It is unlawful under United States laws and regulations for any person, whether or not situated in the United States, knowingly to make any false or misleading representation, statement, or certification, or to falsify or conceal any material fact, whether directly to the Bureau of International Commerce, the Bureau of the Census, any district director of customs, or an official of any other United States agency, or indirectly through any other person or foreign government agency or official, for the purpose of or in connection with effecting an exportation from the United States, or the reexportation, transshipment or diversion of any such exportation, or the issuance, or maintenance in effect of any document relating to export control, or in the course of an investigation or other action instituted under the authority of the Export Administration Act of 1969 or any regulation, order, or license issued thereunder shall be fined not more than \$10,000 or imprisoned not more than one year, or both. For a second or subsequent offense, the offender shall be fined not more than \$20,000, or imprisoned not more than five years, or both. (Export Administration Act of 1969, Sec. 6. 83 Stat. 844, 50 U.S.C. App. 2405).

(d) Commodities which are intended to be, or are being, or have been, exported in violation of the export control law and the regulations promulgated thereunder, are subject to seizure, detention, condemnation, and sale under the Act of July 15, 1917, Ch. 30, Title VI, Sec. 1, 40 Stat. 223, 22 U.S.C. Sec. 401, as amended.

(e) It is a criminal offense for any person to knowingly make to the Bureau of the Census or the Bureau of International Commerce any false or misleading statement or representation relating to information on the Shipper's Export Declaration, subject to a maximum penalty of \$10,000 fine or imprisonment for 5 years, or both (18 U.S.C. Sec. 1001).

(f) Shipper's export declarations must also be filed for shipments between the United States and Puerto Rico, and from the United States or Puerto Rico to American Samoa and the Virgin Islands of the United States.

(g) For instructions regarding the use of this form for parcel-post exportations, see current United States Postal Manual, Chapter 9. One copy of the declaration should be mailed by postmaster to: Export Document Control, Foreign Trade Statistics Unit, Bureau of the Census, Room 308 - Building 66, Jeffersonville, Indiana 47130.

## II. SHIPPER'S EXPORT DECLARATIONS (Commerce Form 7525-V)

(a) Must be made in duplicate for shipments by vessel, air, rail, car, vehicle, and ferry for all merchandise shipped to foreign countries, including Canada, where that country is not the final destination. For shipments finally destined to Canada, and between the United States and Puerto Rico and from the United States or Puerto Rico to American Samoa or the Virgin Islands the declarations must be made in duplicate. Under export control regulations, additional copies may be required by the Bureau of International Commerce. (Commerce Form 7525-V should not be filed for merchandise shipped in-transit through the United States from one foreign country to another. In lieu thereof, "Shipper's Export Declaration for In-transit Goods" on Commerce Form 7513 should be filed.)

(b) For shipments to foreign countries, the exporter or his forwarding agent (fully authorized by a general power of attorney, or by specific power of attorney in item 18, of the export declaration form) or a duly authorized officer or employee of either must sign the original copy of the declaration in the space provided for signature. The name of the corporation or firm and the capacity of the signer (secretary, export manager, etc.) must be set out in the line captioned "For" in item 19. Oath is not required on the declaration, but the provisions of law and export control regulations applicable to false representations, as indicated in paragraph (c) and (e), above, are fully applicable.

(c) Designation of agent must be in writing and signed by the exporter on declaration or in separate document providing similar authorization, which shall be filed in the agent's office and available on demand. Export control regulations define a "forwarding agent" as a person authorized by a named exporter to perform for the exporter actual services which facilitate exportation of the commodities described in the declaration, such as preparing the declaration, attending to clearance of the shipment by submission of documents to the Customs Director or export control officers, securing cargo space on delivering the commodities to the exporting carrier, obtaining bills of lading in connection with the exportation, and attending to the formalities of consular invoices, certificates of origin, and other like documents; but such person need not be regularly engaged in the freight forwarding business.

(d) An authenticated declaration evidences the existence of a validated export license or an exportation permitted by an applicable general license. It is a violation of the export control law and regulations for any person to receive, use, alter, or assist in or permit the use or alteration of, any export declaration which has been authenticated by a Customs Director in connection with the exportation of any commodity under a general or validated export license, for the purpose of facilitating or effecting any exportation other than that set forth in such declaration and in accordance with the terms, provisions, and conditions thereof. Any person receiving an authenticated declaration showing evidence of unauthorized change, alteration, or amendment may not take any action to facilitate the exportation, but must report the facts to the nearest Customs Director and surrender the declaration to such Director.

(e) In the case of exportations subject to the export control law and regulations, the original and two copies (or additional copies if required or authorized by export control regulations) of the declaration submitted to the Customs Director at the point of exit by the exporter, his named duly authorized forwarding agent (or a duly authorized officer or employee of either) will be authenticated by Customs. The Customs Director will retain the original and one copy, and will return one (or more where required or authorized) authenticated copy to the exporter or such agent. One copy so returned shall be delivered by the exporter, or his agent, to the exporting carrier for attachment to the outward manifest. The additional copy or copies, when required or authorized, shall be used by the exporter in conformity with export control regulations. All copies not used shall be returned to the Customs Director. The statistical (manifest) copy of the declaration will be forwarded by the Director to the Bureau of the Census. Customs Directors will not authenticate a declaration which has been altered, changed, or amended, except as and to the extent authorized by the export control regulations.

(f) For shipments by rail, truck, or other vehicle requiring more than one rail car, truck, or other vehicle, separate declarations are required for the merchandise carried aboard each such rail car, truck, or other vehicle.

(g) Shipper's Export Declarations are for use solely for official purposes authorized by the Secretary of Commerce. Use for unauthorized purposes is not permitted. In accordance with the provisions of the Export Administration Act and the Foreign Trade Statistics Regulations, information from the export declarations will be published or disclosed only when the Secretary has determined that the withholding thereof is contrary to the national interest.

## III. EXPLANATION OF TERMS

Item 1. "United States Port of Export" - Insert United States Customs port of exportation in terms of Schedule D, "Classification of U.S. Customs Districts and Ports for U.S. Foreign Trade Statistics."

Item 2. "Method of Transportation" - Check whether exported by vessel (including ferry), air, or other means of transportation. If "Other," specify, i.e., rail, truck, etc.

Item 2a. "Exporting Carrier" - In addition to checking the method of transportation in item 2, specify here the name of the exporting carrier. If vessel, give name of ship, flag, and number or name of pier at which the goods were laden. If air, give name of airline. If "Other" (rail, vehicle, etc.), give name of carrier and identification by number or other designation.

Item 3. "Exporter" - Exporter named shall be the licensee named in the validated export license or person entitled to make the exportation under applicable general license in conformity with export control regulations.

Item 4. "Agent of Exporter" - State name of duly authorized forwarding agent of named exporter. See paragraph II (c).

Item 5. "Ultimate Consignee" - Ultimate consignee (whether by sale in U.S. or abroad, or by consignment) shall be person named as ultimate consignee in validated export license or authorized to be ultimate consignee under applicable general license in conformity with export control regulations.

Item 6. "Intermediate Consignee" - Intermediate consignee shall be person named as such in validated export license or authorized to act as such under applicable general license and in conformity with export control regulations. If none, state "none." Intermediate consignee should be inserted if known at time of exportation.

Item 7. "Foreign Port of Unloading" - Foreign port of unloading (i.e., foreign port at which the merchandise will be unloaded, from the exporting carrier specified in item 2a) should be shown for vessel and air shipments only.

Item 8. "Place and Country of Ultimate Destination" - The final place and country of destination, not the place of transshipment, should be shown in the space provided for "Place and Country of Ultimate Destination." Special care should be taken to give the final place and country of destination for goods shipped through Canada, United Kingdom, Canal Zone, Chile, Peru, or other seaboard countries for transshipment to other countries, such as through Chile or Peru, destined for Bolivia.

## IV. DESCRIPTION OF ARTICLES, QUANTITIES, AND VALUES

Column 9. - Insert marks and numbers.

Column 10. - Insert number and kinds of packages, description of commodities, export license number, and expiration date, or general license symbol. Commodities must be described by nature and quantity in sufficient detail to permit verification of the Schedule B commodity numbers assigned. The description of the articles must be definite and complete, preferably the common commercial name of the specific article, and must conform with that set forth in the validated export license or with the requirements of the applicable general license. General terms such as "dry goods," "groceries," etc., are not sufficient. Catalog numbers or other characteristic trade identifications should be used where they will aid such description. Identification by trademark or brand name should be avoided where possible.

Column 11. - Insert gross weight in pounds for vessel and air shipments only.

Column 12. - Specify whether of domestic or foreign origin. Exports of domestic merchandise include commodities which are the growth, produce, or manufacture of the United States. Exports of foreign merchandise include commodities of foreign origin which entered the United States as imports, and which, at the time of exportation, are in the same condition as when imported. Commodities of foreign origin which have been changed in the United States from the form in which they were imported, or which have been enhanced in value by further manufacture in the United States, are considered as "domestic" commodities.

The above definition of the distinction between domestic and foreign merchandise is intended only for use in reporting column (12) on this export declaration and is intended for statistical purposes only.

Column 13. - Insert the Schedule B commodity code number. (See Instruction VII (a) below.)

Column 14. - Insert the net quantity in Schedule B unit. State the unit of quantity shown, i.e., pounds, square yards, etc.

Column 15. - Insert the dollar value at time and place (U.S. port) of export (omit cents figures). Value stated should be the selling price, or cost if not sold, including inland freight, insurance, and other charges to border point, seaport, or exporting airport. Ocean freight, marine insurance, and other charges incurred beyond the U.S. port of exportation should be excluded.

Item 16. - For convenience of exporter, to be inserted if desired.

Item 17. - To be inserted by Customs Director.

## V. SIGNATURES

Items 18 and 19 - See paragraphs II (b) and II (c) of these instructions.

## IV. FOREIGN TRADE STATISTICS REGULATIONS - EXPORT CONTROL REGULATIONS

For more detailed information regarding the preparation of the export declaration, refer to the Foreign Trade Statistics Regulations (Title 15, Ch. I, Part 30, Code of Federal Regulations), copies of which may be purchased from the Bureau of the Census, Washington, D.C. 20233. Information concerning export control law and regulations may be obtained from the Bureau of International Commerce, Washington, D.C. 20230, or from the Department of Commerce Field Offices.

## VII. SCHEDULE B AND BLANKS

(a) Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, local Directors of Customs, and the Department of Commerce Field Offices.

(b) Shipper's Export Declaration blanks may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, local Directors of Customs, and Department of Commerce Field Offices located in principal cities. They may be printed by private parties provided they conform to the official form in size, wording, color, and quality (weight) of paper stock, and arrangement. An authenticated Shipper's Export Declaration may not be reproduced in any form.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 - Price \$1.00 per pad.

Stock Number 0301-2365

GPO : 1972 O - 481-456





Single copies of GAO reports are available free of charge. Requests (except by Members of Congress) for additional quantities should be accompanied by payment of \$1.00 per copy.

Requests for single copies (without charge) should be sent to:

U.S. General Accounting Office  
Distribution Section, Room 1518  
441 G Street, NW.  
Washington, DC 20548

Requests for multiple copies should be sent with checks or money orders to:

U.S. General Accounting Office  
Distribution Section  
P.O. Box 1020  
Washington, DC 20013

Checks or money orders should be made payable to the U.S. General Accounting Office. NOTE: Stamps or Superintendent of Documents coupons will not be accepted.

**PLEASE DO NOT SEND CASH**

To expedite filling your order, use the report number and date in the lower right corner of the front cover.

GAO reports are now available on microfiche. If such copies will meet your needs, be sure to specify that you want microfiche copies.

**AN EQUAL OPPORTUNITY EMPLOYER**

**UNITED STATES  
GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548**

**OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300**

**POSTAGE AND FEES PAID  
U. S. GENERAL ACCOUNTING OFFICE**



**SPECIAL FOURTH CLASS RATE  
BOOK**