

UNITED STATES REGULATIONS ON EXPORT OF MILITARY SALES

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UNITED STATES REGULATIONS ON EXPORT OF MILITARY SALES

ENABLING LEGISLATION

1. Section 38 of the Arms Export Control Act (22 U.S.C. 2778)
2. The Export Administration Act
3. The Atomic Energy Act

DEPARTMENT WITH MANDATE

Department of State

AGENCIES

1. Directorate of Defense Trade Controls – Department of State
2. Technology Security Administration – Department of Defense
3. Bureau of Export Administration – Department of Commerce



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UNITED STATES REGULATIONS ON EXPORT OF MILITARY SALES

GOVERNING REGULATION

International Traffic in Arms Regulations (ITAR) is found in Subchapter M, [Title 22, Code of Federal Regulations, Parts 120 through 130 \(22 CFR 120-130\)](#)

GENERAL AUTHORITY AND ELIGIBILITY

Section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to control the export and import of defense articles and defense services. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 11958, as amended. By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Deputy Assistant Secretary (DAS) for Defense Trade Controls and Managing Director (MD) of Defense Trade Controls, Bureau of Political-Military Affairs.

The DAS—Defense Trade Controls is responsible for oversight of the defense trade controls function. The MD—Defense Trade Controls is responsible for the Directorate of Defense Trade Controls, which oversees the subordinate offices.

Eligibility. Only U.S. persons (as defined in §120.15) and foreign governmental entities in the United States may be granted licenses or other approvals.



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INITIAL STEP

§ 122.1 Registration requirements.

Any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the Directorate of Defense Trade Controls. For the purpose of this subchapter, engaging in the business of manufacturing or exporting defense articles or furnishing defense services requires only one occasion of manufacturing or exporting a defense article or furnishing a defense service. Manufacturers who do not engage in exporting must nevertheless register.

Purpose. Registration is primarily a means to provide the U.S. Government with necessary information on who is involved in certain manufacturing and exporting activities. Registration does not confer any export rights or privileges. It is generally a precondition to the issuance of any license or other approval under this subchapter.

Fees: 1 Year \$1,750 2 Years \$3,500



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UNITED STATES REGULATIONS ON EXPORT OF MILITARY SALES

TERMINOLOGY DEFINITIONS

§ 120.6 Defense article.

Defense article means any item or technical data designated in §121.1 of this subchapter.

§ 120.7 Significant military equipment.

(a) *Significant military equipment* means articles for which special export controls are warranted because of their capacity for substantial military utility or capability.

(b) Significant military equipment includes:

- (1) Items in §121.1 of this subchapter which are preceded by an asterisk; and
- (2) All classified articles enumerated in §121.1 of this subchapter.

§ 120.8 Major defense equipment.

Pursuant to section 47(6) of the Arms Export Control Act (22 U.S.C. 2794(6) note), *major defense equipment* means any item of significant military equipment (as defined in §120.7) on the U.S. Munitions List having a nonrecurring research and development cost of more than \$50,000,000 or a total production cost of more than \$200,000,000.



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UNITED STATES REGULATIONS ON EXPORT OF MILITARY SALES

TERMINOLOGY DEFINITIONS - Continues

§ 120.9 Defense service.

Defense service means:

- (1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles;
- (2) The furnishing to foreign persons of any technical data controlled under this subchapter (see §120.10), whether in the United States or abroad; or
- (3) Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice. (See also §124.1.)

§ 120.10 Technical data.

Technical data means, for purposes of this subchapter:

- (1) Information, other than software as defined in §120.10(a)(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation.
- (2) Classified information relating to defense articles and defense services;
- (3) Information covered by an invention secrecy order;
- (4) Software as defined in §121.8(f) of this subchapter directly related to defense articles.



UNITED STATES REGULATIONS ON EXPORT OF MILITARY SALES

§ 120.20 LICENSES

License means a document bearing the word “license” issued by the Directorate of Defense Trade Controls or its authorized designee which permits the export or temporary import of a specific defense article or defense service controlled by this subchapter.

TYPES OF LICENSES

§ 125.2 Exports of unclassified technical data.

A license (DSP–5) is required for the export of unclassified technical data unless the export is exempt from the licensing requirements.

§ 125.3 Exports of classified technical data and classified defense articles.

A request for authority to export defense articles, including technical data, classified by a foreign government or pursuant to Executive Order 12356, successor orders, or other legal authority must be submitted to the Directorate of Defense Trade Controls for approval.

A non transfer and use certificate (Form DSP–83) executed by the applicant, foreign consignee, end-user and an authorized representative of the foreign government involved will be required.



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UNITED STATES REGULATIONS ON EXPORT OF MILITARY SALES

TYPES OF LICENSES – Continues

§ 124.1 Manufacturing license agreements and technical assistance agreements.

Approval. The approval of the Directorate of Defense Trade Controls must be obtained before the defense services described in §120.9(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement to the Directorate of Defense Trade Controls. Such agreements are generally characterized as manufacturing license agreements, technical assistance agreements, distribution agreements, or off-shore procurement agreements, and may not enter into force without the prior written approval of the Directorate of Defense Trade Controls. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with §§124.3 and 125.4(b)(2) of this subchapter. The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services described in §120.9(a) of this subchapter (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from the licensing requirements of this subchapter pursuant to §125.4 of this subchapter). This requirement also applies to the training of any foreign military forces, regular and irregular, in the use of defense articles. Technical assistance agreements must be submitted in such cases. In exceptional cases, the Directorate of Defense Trade Controls, upon written request, will consider approving the provision of defense services described in §120.9(a) of this subchapter by granting a license under part 125 of this subchapter. Also, see §126.8 of this subchapter for the requirements for prior approval of proposals relating to significant military equipment.

Classified articles. Copies of approved agreements involving the release of classified defense articles will be forwarded by the Directorate of Defense Trade Controls to the Defense Security Service of the Department of Defense.

Amendments. Changes to the scope of approved agreements, including modifications, upgrades, or extensions must be submitted for approval. The amendments may not enter into force until approved by the Directorate of Defense Trade Controls.



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GENERAL POLICIES & PROVISIONS

§ 126.1 Prohibited exports and sales to certain countries.

General. It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in certain countries. **This policy applies to Belarus, Cuba, Iran, Libya, North Korea, Syria and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g., Burma, China, Haiti, Liberia, Somalia, and Sudan) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States.**

§ 126.8 Proposals to foreign persons relating to significant military equipment.

(a) *Proposals.* Certain proposals to foreign persons for the sale or manufacture abroad of significant military equipment require either the prior approval of, or prior notification to, the Directorate of Defense Trade Controls.

(1) Sale of significant military equipment: The prior approval of the Directorate of Defense Trade Controls is required before a U.S. person may make a proposal or presentation designed to constitute a basis for a decision on the part of any foreign person to purchase significant military equipment on the U.S. Munitions List whenever all the following conditions are met:

- (i) The value of the significant military equipment to be sold is \$14,000,000 or more; and
- (ii) The equipment is intended for use by the armed forces of any foreign country other than a member of the North Atlantic Treaty Organization, Australia, New Zealand, or Japan; and
- (iii) The sale would involve the export from the United States of any defense article or the furnishing abroad of any defense service including technical data; and
- (iv) The identical significant military equipment has not been previously licensed for permanent export or approved for sale under the Foreign Military Sales Program of the Department of Defense, to any foreign country.



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UNITED STATES REGULATIONS ON EXPORT OF MILITARY SALES

GENERAL POLICIES & PROVISIONS – Continues

(2) Sale of significant military equipment: The Directorate of Defense Trade Controls must be notified in writing at least thirty days in advance of any proposal or presentation concerning the sale of significant military equipment whenever the conditions specified in paragraphs (a)(1)(i) through (iii) of this section are met and the identical equipment has been previously licensed for permanent export or approved for sale under the FMS Program to any foreign country.

(3) Manufacture abroad of significant military equipment: The prior approval of the Directorate of Defense Trade Controls is required before a U.S. person may make a proposal or presentation designed to constitute a basis for a decision on the part of any foreign person to enter into any manufacturing license agreement or technical assistance agreement for the production or assembly of significant military equipment, regardless of dollar value, in any foreign country, whenever:

- (i) The equipment is intended for use by the armed forces of any foreign country; and
- (ii) The agreement would involve the export from the United States of any defense article or the furnishing abroad of any defense service including technical data.



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UNITED STATES REGULATIONS ON EXPORT OF MILITARY SALES

GENERAL POLICIES & PROVISIONS – Continues

(b) *Definition of proposal or presentation.* The terms proposal or presentation (designed to constitute a basis for a decision to purchase and to enter into any agreement) mean the communication of information in sufficient detail that the person communicating that information knows or should know that it would permit an intended purchaser to decide either to acquire the particular equipment in question or to enter into the manufacturing license agreement or technical assistance agreement. For example, a presentation which describes the equipment's performance characteristics, price, and probable availability for delivery would require prior notification or approval, as appropriate, where the conditions specified in paragraph (a) of this section are met. By contrast, the following would not require prior notification or approval: 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 military equipment.

(c) *Satisfaction of requirements.*

- (1) The requirement of this section for prior approval is met by any of the following:
- (i) A written statement from the Directorate of Defense Trade Controls approving the proposed sale or agreement or approving the making of a proposal or presentation.
 - (ii) A license issued under §125.2 or §125.3 of this subchapter for the export of technical data relating to the proposed sale or agreement to the country concerned.
 - (iii) A temporary export license issued under §123.5 of this subchapter relating to the proposed sale or agreement for a demonstration to the armed forces of the country of export.



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UNITED STATES REGULATIONS ON EXPORT OF MILITARY SALES

GENERAL POLICIES & PROVISIONS – Continues

(c) Satisfaction of requirements.

(iv) With respect to manufacturing license agreements or technical assistance agreements, the application for export licenses pursuant to the two preceding subparagraphs must state that they are related to possible agreements of this kind.

(2) The requirement of this section for prior notification is met by informing the Directorate of Defense Trade Controls by letter at least 30 days before making the proposal or presentation. The letter must comply with the procedures set forth in paragraph (d) of this section and must identify the relevant license, approval, or FMS case by which the identical equipment had previously been authorized for permanent export or sale. The Directorate of Defense Trade Controls will provide written acknowledgement of such prior notification to confirm compliance with this requirement and the commencement of the 30-day notification period.

(d) Procedures. Unless a license has been obtained pursuant to §126.8(c)(1)(ii) or (iii), a request for prior approval to make a proposal or presentation with respect to significant military equipment, or a 30-day prior notification regarding the sale of such equipment, must be made by letter to the Directorate of Defense Trade Controls. The letter must outline in detail the intended transaction, including usage of the equipment involved and the country (or countries) involved. Seven copies of the letter should be provided as well as seven copies of suitable descriptive information concerning the equipment.



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UNITED STATES REGULATIONS ON EXPORT OF MILITARY SALES

CONGRESSIONAL NOTIFICATIONS

Congressional notifications for technical assistance and manufacturing license agreements are directed in ITAR 124.11. There are two types of Congressional notifications mandated by Section 36 of the Arms Export Control Act that are handled by DDTC: 36(c) notifications for value and 36(d) notifications for the manufacture of SME abroad. Additionally, Department of State, PM/RSAT handles 36(b) notifications with Department of Defense for Foreign Military Sales (FMS) cases.

Congressional Notification Thresholds

36(c) Notification. The applicant must be providing for the export of major defense equipment (MDE) defense articles or a total value on a contract that exceeds:

NATO member countries, Australia, New Zealand and Japan.
MDE sales in excess of \$25 million
Defense articles/defense services in excess of \$100 million

All other countries.
MDE sales in excess of \$14 million
Defense articles/defense services in excess of \$50 million



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UNITED STATES REGULATIONS ON EXPORT OF MILITARY SALES CONGRESSIONAL NOTIFICATIONS – Continues

36(d) Notification. Any technical assistance agreement or manufacturing license agreement that involves the manufacture abroad of SME shall be notified regardless of value.

Congressional Notification Process

What follows is a step-by-step explanation of the process for notifying agreements that meet the threshold for 36(c) or 36(d).

Upon receipt of an agreement requiring Congressional notification, it will be initially staffed similar to any other agreement, but it will require full staffing for both technical and political review.

After all staffed positions are received, a Congressional notification number (different from agreement case number) is assigned and then the case undergoes a review by the State Department's internal offices for legislative, legal, and public affairs, plus federal budgetary and national security offices prior to being officially sent to Congress.

Once completed the legislative liaison in the State Department coordinates with Hill staffers to facilitate the certification's review by Congress. This coordination is dependent upon Congressional schedule and availability at the time, which can result in a waiting period, especially if it arrives when Congress is not in session.

Once the case has been "notified" to Congress, it will be issued either 15 or 30 calendar days later depending on the country (unless Congress has enacted a joint resolution prohibiting the agreement):

NATO member countries, Australia, New Zealand and Japan = 15 calendar days from the notification date

All other countries = 30 calendar days from the notification date



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§ 127.3 Penalties for violations

- Any person who willfully:
- (a) Violates any provision of section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779), or any undertaking specifically required by part 124 of this subchapter; or
- (b) In a registration, license application or report required by §38 or §39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or by any rule or regulation issued under either section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be subject to a fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).

CONTACT INFORMATION

Directorate of Defense Trade Controls – Response Team (202)663-1282

Office of Defense Trade Controls Licensing

Director - Susan M. Clark – Acting (202)663-2023

Deputy Director – Terry L. Davis (202)663-2739

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