

Border Protection and the Bureau of Immigration and Customs Enforcement, both of which are now part of the Department of Homeland Security.

In addition, Part 123 is amended in § 123.4 to clarify the procedure for electronic filing of export information and the accompanying documentation. Also, in Part 123, the title of § 123.22 is amended to better reflect the requirements and now reads, "Filing, retention, and return of export licenses and filing of export information." Section 123.22 also has been reformatted to address the specific requirements of the new procedures, to include in paragraph (a) filing and retention of licenses authorized by the DDTC; paragraph (b) filing and reporting of export information; and, paragraph (c) return of licenses.

From time-to-time, exports are required of licensed hardware when the applicant is unable to provide the export information in the mandated timelines. Section 123.22, paragraph (b)(2) provides that the Bureau of Customs and Border Protection may permit the license holder, or an agent acting on the filer's behalf, to electronically file urgent shipments in a shorter time period, provided certain conditions are met.

While all exports of hardware, regardless of the type of approval (*e.g.*, license, agreement, or exemption) controlled by the ITAR will require filing of the export information using AES, exports of technical data and defense services made using a license, agreement or exemption shall be electronically reported directly to DDTC. Section 123.22 has been amended accordingly. Reporting to DDTC of the export data electronically for licensed technical data (DSP-5) and defense services (MLA and TAA) will be mandatory January 18, 2004 to require initial reporting and reporting in any instance where the exporter is using a U.S. port. This delay, and the further delay related to reporting exports using exemptions, should permit sufficient time for implementation of the AES. Guidelines for use of the DDTC export data system will be published on the DDTC Web site (<http://www.pmdtc.org>).

Section 123.24 is also amended to require, for shipments of U.S. Munitions List hardware by the U.S. Postal Service, the electronic filing of export information using the AES and the filing of the license with the Bureau of Customs and Border Protection at a U.S. Port. Shipments of technical data in furtherance of a license or agreement by mail shall be reported directly to DDTC.

Section 124.3(a) has been amended to eliminate the requirement that the U.S.

party to a manufacturing license or technical agreement certify on an SED that the export of unclassified technical data being exported does not exceed the scope of the agreement and any limitations imposed pursuant to this part. This requirement is no longer needed because unclassified technical data exports will no longer be reported using an SED.

Section 125.6 is amended to change the requirement that an exporter, claiming an exemption for the export of technical data under the provisions of sections 125.4 and 125.5, certify on the SED that the proposed export is covered by one of those sections. Section 125.6 will now require that this certification be made by marking the package or letter containing the technical data. The exporter must retain this certification for a period of 5 years. For exports of technical data that are oral, visual or electronic, the certification must still be completed and retained for 5 years.

Finally, section 125.8 is being removed and reserved for future use.

**Regulatory Analysis and Notices:** This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It is not a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effect on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13123. The reporting or record-keeping actions required from the public under the rule require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB has approved all such actions required under this rule, which are done under four information collections; the Department of State is responsible for three (OMB control numbers 1405-0003, 1405-0093, and 1405-0148), and the Department of Commerce is responsible for one (OMB control number 0607-0152).

## List of Subjects

### 22 CFR 120

Arms and munitions, Classified information, Exports.

### 22 CFR 123

Arms and munitions, Exports.

### 22 CFR 124

Arms and munitions, Exports, Technical assistance.

### 22 CFR 125

Arms and Munitions, Exports.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Parts 120, 123, 124 and 125 are amended as follows:

## PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

**Authority:** Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, and 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105-261, 112 Stat. 1920.

■ 2. § 120.28 is amended by revising paragraphs (b) introductory text and (b)(1) to read as follows:

### § 120.28 Listing of forms referred to in this subchapter.

\* \* \* \* \*

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

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

\* \* \* \* \*

■ 3. § 120 is amended by adding § 120.30 to read as follows:

### § 120.30. The Automated Export System (AES).

The Automated Export System (AES) is the Department of Commerce, Bureau of Census, electronic filing of export information. The AES shall serve as the primary system for collection of export data for the Department of State. In accordance with this subchapter U.S. exporters are required to report export information using AES for all hardware exports. Exports of technical data and defense services shall be reported directly to the Directorate of Defense Trade Controls (DDTC). Also, requests for special reporting may be made by DDTC on a case-by-case basis, (*e.g.*, compliance, enforcement, congressional mandates).

## PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 4. The authority citation for part 123 continues to read as follows: