

**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. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p.79; 22 U.S.C. 2658; Pub. L. 105-261, 112 Stat. 1920.

■ 5. § 123.4 is amended by revising paragraph (d)(2) to read as follows:

**§ 123.4 Temporary import license exemptions.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(2) At the time of export, in accordance with the Bureau of Customs and Border Protection procedures, the Directorate of Defense Trade Controls (DDTC) registered and eligible exporter, or an agent acting on the filer's behalf, must electronically file the export information using the Automated Export System (AES), and identify 22 CFR 123.4 as the authority for the export and provide, as requested by the Bureau of Customs and Border Protection, the entry document number or a copy of the Bureau of Customs and Border Protection document under which the article was imported.

■ 6. § 123.5(c) is revised to read as follows:

**§ 123.5 Temporary export licenses.**

\* \* \* \* \*

(c) Any temporary export license for hardware that is used, regardless of whether the hardware was exported directly to the foreign destination or returned directly from the foreign destination, must be endorsed by the Bureau of Customs and Border Protection in accordance with the procedures in § 123.22 of this subchapter.

■ 7. § 123.22 is revised to read as follows:

**§ 123.22 Filing, retention, and return of export licenses and filing of export information.**

(a) Any export, as defined in this subchapter, of a defense article controlled by this subchapter, to include defense articles transiting the United States, requires the electronic reporting of export information. The reporting of the export information shall be to the Bureau of Customs and Border Protection using the Automated Export System (AES) or directly to the Directorate of Defense Trade Controls (DDTC). Any license or other approval authorizing the permanent export of hardware must be filed at a U.S. Port before any export. Licenses or other approvals for the permanent export of technical data and defense services shall be retained by the applicant who will send the export information directly to DDTC. Temporary export or temporary

import licenses for such items need not be filed with the Bureau of Customs and Border Protection, but must be presented to the Bureau of Customs and Border Protection for decrementing of the shipment prior to departure and at the time of entry. The Bureau of Customs and Border Protection will only decrement a shipment after the export information has been filed correctly using the AES. Before the export of any hardware using an exemption in this subchapter, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically provide export information using the AES (see paragraph (b) of this section). In addition to electronically providing the export information to the Bureau of Customs and Border Protection before export, all the mandatory documentation must be presented to the port authorities (*e.g.*, attachments, certifications, proof of AES filing; such as the External Transaction Number (XTN) or Internal Transaction Number (ITN)). Export authorizations shall be filed, retained, decremented or returned to DDTC as follows:

(1) Filing of licenses and documentation for the permanent export of hardware. For any permanent export of hardware using a license (*e.g.*, DSP-5, DSP-94) or an exemption in this subchapter, the exporter must, prior to an AES filing, deposit the license and provide any required documentation for the license or the exemption with the Bureau of Customs and Border Protection, unless otherwise directed in this subchapter (*e.g.*, § 125.9). If necessary, an export may be made through a port other than the one designated on the license if the exporter complies with the procedures established by the Bureau of Customs and Border Protection.

(2) Presentation and retention by the applicant of temporary licenses and related documentation for the export of unclassified defense articles. Licenses for the temporary export or temporary import of unclassified defense articles need not be filed with the Bureau of Customs and Border Protection, but must be retained by the applicant and presented to the Bureau of Customs and Border Protection at the time of temporary import and temporary export. When a defense article is temporarily exported from the United States and moved from one destination authorized on a license to another destination authorized on the same or another temporary license, the applicant, or an agent acting on the applicant's behalf, must ensure that the Bureau of Customs and Border Protection decrements both

temporary licenses to show the exit and entry of the hardware.

(b) Filing and reporting of export information. (1) Filing of export information with the Bureau of Customs and Border Protection. Before exporting any hardware controlled by this subchapter, using a license or exemption, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically file the export information with the Bureau of Customs and Border Protection using the Automated Export System (AES) in accordance with the following timelines:

(i) Air or truck shipments. The export information must be electronically filed at least 8 hours prior to departure.

(ii) Sea or rail Shipments. The export information must be electronically filed at least 24 hours prior to departure.

(2) Emergency shipments of hardware that cannot meet the pre-departure filing requirements. Bureau of Customs and Border Protection may permit an emergency export of hardware by truck (*e.g.*, departures to Mexico or Canada) or air, by a U.S. registered person, when the exporter is unable to comply with the SED filing timeline in paragraph (b)(1)(i) of this section. The applicant, or an agent acting on the applicant's behalf, in addition to providing the export information electronically using the AES, must provide documentation required by the Bureau of Customs and Border Protection and this subchapter. The documentation provided to the Bureau of Customs and Border Protection at the port of exit must include the External Transaction Number (XTN) or Internal Transaction Number (ITN) for the shipment and a copy of a notification to DDTC stating that the shipment is urgent and why. The original of the notification must be immediately provided to DDTC. The AES filing of the export information when the export is by air must be at least two hours prior to any departure from the United States; and, when a truck shipment, at the time when the exporter provides the articles to the carrier or at least one hour prior to departure from the United States, when the permanent export of the hardware has been authorized for export:

(i) In accordance with § 126.4 of this subchapter, or

(ii) On a valid license (*i.e.*, DSP-5, DSP-94) and the ultimate recipient and ultimate end user identified on the license is a foreign government.

(3) Reporting of export information on technical data and defense service. When an export is being made using a DDTC authorization (*e.g.*, technical data license, agreement or a technical data