

exemption provided in this subchapter), the DDTC registered exporter will retain the license or other approval and provide the export information electronically to DDTC as follows:

(i) Technical data license. Prior to the permanent export of technical data licensed using a Form DSP-5, the applicant shall electronically provide export information using the system for direct electronic reporting to DDTC of export information and self validate the original of the license. When the initial export of all the technical data authorized on the license has been made, the license must be returned to DDTC. Exports of copies of the licensed technical data should be made in accordance with existing exemptions in this subchapter. Should an exemption not apply, the applicant may request a new license.

(ii) Manufacturing License and Technical Assistance Agreements. Prior to the initial export of any technical data and defense services authorized in an agreement the U.S. agreement holder must electronically inform DDTC that exports have begun. In accordance with this subchapter, all subsequent exports of technical data and services are not required to be filed electronically with DDTC except when the export is done using a U.S. Port. Records of all subsequent exports of technical data shall be maintained by the exporter in accordance with this subchapter and shall be made immediately available to DDTC upon request. Exports of technical data in furtherance of an agreement using a U.S. Port shall be made in accordance with § 125.4 of this subchapter and made in accordance with the procedures in paragraph (b)(3)(iii) of this section.

(iii) Technical Data and Defense Service Exemptions. In any instance when technical data is exported using an exemption in this subchapter (e.g., §§ 125.4(b)(2), 125.4(b)(4), 126.5) from a U.S. port, the exporter is not required to report using AES, but must, effective January 18, 2004, provide the export data electronically to DDTC. A copy of the electronic notification to DDTC must accompany the technical data shipment and be made available to the Bureau of Customs and Border Protection upon request.

**Note to paragraph (b)(3)(iii):** Future changes to the electronic reporting procedure will be amended by publication of a rule in the **Federal Register**. Exporters are reminded to continue maintaining records of all export transactions, including exemption shipments, in accordance with this subchapter.

(c) Return of Licenses. All licenses issued by the Directorate of Defense

Trade Controls (DDTC) must be returned to the DDTC in accordance with the following: (1) License filed with the Bureau of Customs and Border Protection). The Bureau of Customs and Border Protection must return to the DDTC any license when the total value or quantity authorized has been shipped or when the date of expiration is reached, whichever occurs first.

(2) Licenses not filed with the Bureau of Customs and Border Protection. Any license that is not filed with the Bureau of Customs and Border Protection (e.g., oral or visual technical data releases or temporary import and export licenses retained in accordance with paragraph (a)(2) of this section), must be returned by the applicant to the DDTC no later than 60 days after the license has been expended (e.g., total value or quantity authorized has been shipped) or the date of expiration, whichever occurs first.

■ 8. § 123.24 is revised to read as follows:

**§ 123.24 Shipments by U.S. Postal Service.**

(a) The export of any defense hardware using a license or exemption in this subchapter by the U.S. Postal Service must be filed with the Bureau of Customs and Border Protection using the Automated Export System (AES) and the license must be filed with the Bureau of Customs and Border Protection before any hardware is actually sent abroad by mail. The exporter must certify the defense hardware being exported in accordance with this subchapter by clearly marking on the package "This export is subject to the controls of the ITAR, 22 CFR (identify section for an exemption) or (state license number) and the export has been electronically filed with the Bureau of Customs and Border Protection using the Automated Export System (AES)."

(b) The export of any technical data using a license in this subchapter by the U.S. Postal Service must be notified electronically directly to the Directorate of Defense Trade Controls (DDTC). The exporter, using either a license or exemption, must certify, by clearly marking on the package, "This export is subject to the controls of the ITAR, 22 CFR (identify section for an exemption) or (state license number)." For those exports using a license, the exporter must also state "The export has been electronically notified directly to DDTC." The license must be returned to DDTC upon completion of the use of the license (see § 123.22(c)).

**PART 124—AGREEMENTS, OFFSHORE PROCUREMENT AND OTHER DEFENSE SERVICES**

■ 9. The authority citation for part 124 continues to read as follows:

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

■ 10. § 124.3 is amended by revising paragraph (a) to read as follows:

**§ 124.3 Exports of technical data in furtherance of an agreement.**

(a) Unclassified technical data. The Bureau of Customs and Border Protection or U.S. Postal authorities shall permit the export without a license of unclassified technical data if the export is in furtherance of a manufacturing license or technical assistance agreement which has been approved in writing by the Directorate of Defense Trade Controls (DDTC) and the technical data does not exceed the scope or limitations of the relevant agreement. The approval of the DDTC must be obtained for the export of any unclassified technical data that may exceed the terms of the agreement.

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**PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES**

■ 11. The authority citation for part 125 continues to read as follows:

**Authority:** Sections 2 and 38, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2668.

■ 12. § 125.6 is revised to read as follows:

**§ 125.6 Certification requirements for exemptions.**

(a) To claim an exemption for the export of technical data under the provisions of this subchapter (e.g., §§ 125.4 and 125.5), the exporter must certify that the proposed export is covered by a relevant section of this subchapter, to include the paragraph and applicable subparagraph. Certifications consist of clearly marking the package or letter containing the technical data "22 CFR [insert ITAR exemption] applicable." This certification must be made in written form and retained in the exporter's files for a period of 5 years (see § 123.22 of this subchapter).

(b) For exports that are oral, visual, or electronic the exporter must also complete a written certification as indicated in paragraph (a) of this section and retain it for a period of 5 years.