

Sec. 126.4 Shipments by or for United States Government Departments or Agencies.

(a) A license is not required for the temporary import, temporary export, or permanent export, of any defense article, including technical data, when:

(1) The import or export is by a U.S. Government department or agency, solely for its official end-use and the defense articles will not be exported to any foreign person; and

(2) the exporter completes an Electronic Export Information (EEI) in accordance with paragraph (j) of this section.

DTAG changes or comments:

Added “departments”

Changed provided to “exported” consistent with ITAR definitions

Spelled out EEI – Electronic Export Information

(b) A license is not required for the temporary import, temporary export, or permanent export to any country, including 126.1 destinations as approved under 126.3, of any defense article, including technical data, when:

(1) The import or export is for a U.S. Government department or agency, solely for its official end-use and the defense articles will not be exported to any foreign person; and

(2) the exporter obtains written directive from the department or agency disclosure authority identifying any restrictions on the release of the item(s) or stating that no restrictions apply; and

(3) the exporter completes an EEI in accordance with paragraph (j) of this section; and

(4) the export is done via:

(i) the U.S. Postal Service, or

(ii) U.S. freight forwarders registered with the Directorate of Defense Trade Controls, or

(iii) a licensed customs broker who is subject to a background investigation and have passed a comprehensive examination administered by U.S. Customs and Border Protection.

DTAG changes or comments:

Modified language to include 126.1 countries authorized pursuant to 126.3.

Moved the EEI requirement to the end of the exemption, changed a “letter” to a “written directive”.

DTAG recommends DDTC publish a list of registered freight forwarders on its website to comply with the requirement above

(c) A license is not required for the temporary import, temporary export, or permanent export to any country, including 126.1 destinations as approved under 126.3, of any defense article, including technical data, when:

(1) the import or export is for a U.S. Government agency, solely for its official end-use and the defense article(s) will not be exported to any foreign person; and

(2) the defense article(s) is provided pursuant to a valid and effective contract between the exporter and a U.S. Government department or agency; and

(3) the exporter completes an EEI in accordance with paragraph (j) of this section; and

(4) the export is done via:

(i) the U.S. Postal Service, or

(ii) U.S. freight forwarders registered with the Directorate of Defense Trade Controls, or

(iii) a licensed customs broker who is subject to a background investigation and have passed a comprehensive examination administered by U.S. Customs and Border Protection.

DTAG changes or comments:

DTAG added this to clarify that a valid / effective contract between the exporter and the USG is sufficient written directive to allow for the use of this exemption.

(d) A license is not required for the performance of a defense service in support of a U.S. Government department or agency when:

(1) the service is provided pursuant to a contract between the exporter and the U.S. Government; or

(2) the service is performed in conjunction with the U.S. Government.

DTAG modified this language to allow for industry to provide defense services to foreign persons in support of the USG department or agency, otherwise as proposed this exemption contradicted the definition of a defense service.

Suggested removing the additional requirement for a letter since the contract would allow for the service.

(e) A license is not required for the performance of defense services and/or the temporary import, temporary export, or permanent export of any defense article, including technical data, by or on behalf of a U.S. Government department or agency for an end-use in support of and authorized by any cooperative project agreement entered into by any USG department or agency which meets the following requirements:

(1) the foreign consignee and / or foreign end-users are identified in the cooperative project agreement; and

(2) the exporter is under contract in furtherance of the cooperative project to the U.S. Government agency; and

(3) the exporter obtains certification by way of the contract or written directive from the department or agency foreign disclosure authority identifying any restrictions on the release of the item(s) or stating that no restrictions apply.

(4) the exporter has completed an EEI in accordance with paragraph (j) of this section; and

DTAG added defense services to this exemption to allow for specific authorization of services and removal of the requirement of Section 27 of the AECA otherwise it limits industries ability to use this exemption if the MOU is with NASA or Department of Homeland Security – as an example. Additionally, as written – Section 27 of the AECA limits the use of this exemption to NATO / DOD programs only.

(f) A license is not required for the performance of any defense service for or on behalf of a U.S. Government department or agency for an end-use in support of any foreign assistance authorized by law and subject to control by the President by other means which meets all of the following requirements:

(1) the exporter is under contract in furtherance of the foreign assistance to the U.S. Government agency; and

(2) the exporter obtains certification by way of the contract or written directive from the department or agency foreign disclosure authority, identifying:

(i) any restrictions on the release of the item(s) or stating that no restrictions apply; and

(ii) the foreign consignee(s) and foreign end user(s); and

(3) the exporter has completed an EEI in accordance with paragraph (j) of this section

DTAG made clarifying changes to allow for a contract or “written directive” rather than “a letter”.

(g) A license is not required for the permanent export of defense articles, excluding technical data or the performance of a defense service on defense articles of a foreign government at the direction of the U.S. Department of Defense, in support of a Cross Servicing Agreement when:

- (1) The written directive of the Department of Defense meets all of the following requirements:
 - (i) the exporter claiming this exemption is identified;
 - (ii) the reason for the export is identified;
 - (iii) the defense article or defense service (scope and duration, not more than one year, are defined) to be exported is specifically identified;
 - (iv) the foreign recipients of the defense article are completely identified; and
- (2) Technical data shall not be transferred and training shall not be provided to any foreign person; and
- (3) The export does not require Congressional certification (See § 123.15); and
- (4) The exporter has completed an EEI in accordance with paragraph (j) of this section; and
- (5) The export is not to a country proscribed in § 126.1 of this subchapter.

(h) A license is not required for the temporary import, temporary export, or permanent export, of any defense article, including technical data, when:

- (1) the exporter is supporting a contractor providing defense articles to a U.S. Government department or agency in accordance with section (b) or (c), though the subcontractor is not directly contracted with the U.S. Government; and
- (2) the export is solely for the benefit of the U.S. Government and will not be provided to any foreign person; and
- (3) the exporter obtains certification by way of the contract or written directive from the department or agency foreign disclosure authority identifying any restrictions on the release of the item(s) or stating that no restrictions apply; and
- (4) the exporter completes an EEI in accordance with paragraph (j) of this section

(i) A license is not required for the temporary import, temporary export, or permanent export, of any defense article, including technical data, when:

(1) the export is to a contractor providing intelligence, operational, or other support to overseas operations of a U.S. Government department or agency outside of the U.S. and will not be provided to any foreign person; and

(2) the export is in support of a contract with the U.S. Government; and

(3) the exporter obtains certification by way of the contract or a written directive from the department or agency foreign disclosure authority identifying any restrictions on the release of the item(s) or stating that no restrictions apply.

(4) the exporter completes an EEI in accordance with paragraph (j) of this section

(j) An Electronic Export Information (EEI) must be filed in the Automated Export System (AES) in accordance with Section 123.22(b)(3)(iii) this subchapter. The Internal Transaction Number (ITN) must be properly annotated on shipping documents and, in addition, shipment documents (bill of lading or commercial invoice) will include the following statement: “Property of (insert USG Agency or Service). Property will not enter the trade of the country to which it is shipped. No export license required per 22 CFR 126.4. USG POC: (insert name & phone number).”

(k) This section does not authorize any department or agency of the U.S. Government to make any export or certify use of an exemption under this section which is otherwise prohibited by other administrative provisions or by any statute. Likewise, these exemptions do not apply when a U.S. Government agency acts as a transmittal agent on behalf of a private individual or firm, either as a convenience or in satisfaction of security requirements.

(l) The approval of the Directorate of Defense Trade Controls must be obtained before defense articles previously exported pursuant to exemptions under this section are permanently re-transferred (e.g., property disposal of surplus defense articles abroad) unless (i) the transfer is pursuant to a grant, sale, lease, loan or cooperative project under the Arms Export Control Act or a sale, lease or loan under the Foreign Assistance Act of 1961, as amended, or (ii) the defense articles have been rendered useless for military purposes beyond the possibility of restoration.

(m) Use of exemptions under this section require that the user properly register in accordance with Part 122 of this regulation and be eligible in accordance with §§ 120.1(c) and (d) of this subchapter.

(n) Exporters may use only U.S. freight forwarders who are either registered with the Directorate of Defense Trade Controls or licensed customs brokers who are subject to a background investigation and have passed a comprehensive examination administered by U.S. Customs and Border Protection.

Additional DTAG comments:

Define “foreign assistance” under Part 120

Define “cross-servicing agreement” under Part 120

Define “cooperative project agreement” under Part 120