

Port of Chicago – Pipeline



U.S. Customs and
Border Protection

**Pipeline 10-08A
November 5, 2010**

To: Customs Brokers, Importers, and Others Concerned

Subject: Department of State Export and Import Requirements – Amended

This Pipeline is being amended to clarify recent guidance establishing uniform national procedures when claiming a license exemption for commodities controlled under International Traffic in Arms Regulations (ITAR).

The instructions are by no means inclusive of all requirements identified in the International Traffic in Arms Regulations (ITAR).

Persons not familiar with DOS, Directorate of Defense Trade Controls (DDTC) import and export regulations are encouraged to read the International Traffic in Arms Regulations (ITAR), 22CFR Parts 120-130. The DOS/DDTC is the controlling and ultimate authority for international movement of United States Munitions List (USML) defense articles.

REQUIREMENTS APPLICABLE TO BOTH IMPORTS AND EXPORTS

The Port of Chicago will process all USML requirements for cargo shipments at the CBP facility in Rosemont, Illinois. The Document Analysis Unit will review license exemptions and decrement temporary licenses submitted with entries. The Export Control Desk officer will lodge permanent licenses and decrement temporary licenses for export. Defense articles hand-carried by arriving or departing passengers will be processed at Passenger Terminal 5, O'Hare International Airport in accordance with Chicago Pipeline 07-28. All ITAR requirements apply to hand-carried as well as cargo shipments.

Photocopies and facsimiles of "licenses" and "license amendments" are not acceptable. Applicants will print D-Trade licenses and amendments on their office printer and must ensure the approving licensing officer's digital signature is present for the form to be considered valid.

Upon initial presentation of a D-Trade temporary license, CBP will decrement the first line, write "original" on the first page of the license and affix a CBP stamp. The stamped initial page and the following pages constitute the "original" license and must be presented for all license transactions. Printing additional copies for import/export transactions is not authorized. The applicant may add subsequent amendments approved by DOS without obtaining a CBP stamp.

The License Amendment must be approved by DOS and is to be attached to and made an integral part of the approved license to which it applies. DSP-6, 62, and 74 are the new amendment forms. The DSP-119 may be used to amend DDTC licenses. The exporter will present the approved DSP- 6 to the CBP facility where the DSP-05 is lodged, or permanently attach the approved DSP- 62 or DSP- 74 to the temporary license for subsequent presentation to CBP at time of entry or export decrementation.

A DSP-61 temporary import license is required for USML defense articles arriving in the U.S. by virtue of them crossing the border, whether for transit to another country or any other reason, intentional or unintentional, unless a license exemption is applicable. When a shipment is transiting the U.S. from the port of arrival to the port of exit, or the shipment is remaining on board an aircraft arriving from foreign and exiting to foreign, the DSP-61 should be presented at the port of exit. The CBP officer at the port of exit will decrement those items being imported and subsequently exported on the reverse of the DSP-61.

Shipments of defense articles not complying with the provisions of the ITAR are subject to seizure action described in 22CFR127. This includes not applying for a license, the license not covering the defense articles, or the importer/exporter failing to accomplish all associated procedural requirements for a license or license exemption.

Obtaining a Carnet **does not** release your obligation to comply with U.S. Government import/export controls. The Carnet **is not a license** nor does it indicate DOS approval for the movement of defense articles. The license must be attached to the Carnet and presented to CBP for decrementation at the time the Carnet is validated.

EXPORT REQUIREMENTS

Exportations of defense articles must be reported to CBP electronically through the Automated Export System (AES) and identify the port of exit. The port of exit is defined as the port where the cargo is laden aboard the exporting conveyance for air or ocean transportation, or where it crosses the border for land transportation. Chicago is not the port of exit for any truck, rail, or containerized modes of transportation.

Shipments of defense articles must not be tendered to the exporting carrier until all these conditions are met:

- The Export Control Desk receives and lodges the permanent export license.
- The export license is decremented either electronically (DSP-05 permanent licenses) or manually by CBP (DSP-61, 73, 85 and 94 licenses.)

- AES acceptance is obtained, which must be at least 8 hours prior to the scheduled departure of the air carrier.

When the filer's AES system is down, USML articles cannot be tendered to the exporting carrier until the system is restored or acceptance is obtained through AES-Direct or another filer's system. When the national system is down, the exporter must not tender USML shipments to the exporting carrier until the system is restored.

The exporter must incorporate the following Destination Control Statement (DCS) as an integral part of the air waybill and the invoice whenever defense articles on the U.S. Munitions List are to be exported. For consolidated shipments the statement can be on the House AWB, but must also be annotated on the Master AWB where it is visible to carrier personnel.

“These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end-user]. They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of in any other country, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.”

The Postmaster processes shipments exported through the U.S. Postal Service where the defense articles are mailed. The shipment must comply with all export provisions identified in the ITAR. The export has to be reported in AES and the AES legend (ITN) is to be annotated on Postal Form PS 2976-A. AES is filed using port code 8000 for all mail shipments.

Lodging of Licenses

DSP-05 licenses must be lodged with CBP prior to AES acceptance and tendering the shipment to the exporting carrier. The DSP-05 may be lodged at any CBP port; however the AES filing must report the actual port of exit where the shipment is laden aboard the exporting conveyance. CBP will return the license to DOS once it is exhausted or expired.

The Export Control Desk will validate an applicant's receipt stating that a permanent license was tendered to CBP in Chicago for lodging. It will be mailed only if a self-addressed stamped envelope is provided.

DSP-61 and DSP-73 temporary licenses are not lodged with CBP. The applicant retains the license, presents it to CBP for decrementation, and returns expired or exhausted licenses to DOS.

License Decrementation

The DSP-5 permanent licenses are reported in AES and are decremented electronically by the AES filer.

Temporary licenses (DSP-61s and DSP-73s) are reported in AES and the exporter must present the license, MAWB (and HAWB if applicable) with the AES Internal Transaction Number (ITN) annotated, and the invoice providing a complete list and description of the defense item(s) including quantity and U.S. dollar value, to the Export Control Desk for manual decrementation.

Authorizations to export under DSP-94 are also reported in AES and decremented manually at the Export Control Desk.

License Exemptions

The ITAR permits the temporary export of defense articles without a license under certain specified conditions. All ITAR license exemptions must be reported to CBP at the port of exit through an accepted AES filing at least 8 hours before the shipment is tendered to the exporting air carrier.

When claiming a 22 CFR 123.4 license exemption, the exporter must report the complete CBP entry number (filer code and number – 11 characters total) in the Import Entry Number field in the AES transmission and identify the exemption in the DDTC Exemption Number field. Once an exemption is applied, then the DDTC Registration Number of the exporter is mandatory. CBP may request a copy of the import entry document to verify that the exemption was declared. If the entry document does not cite the appropriate license exemption, the shipment will be detained for failing to meet the conditions of the license exemption. If it is determined that a violation has occurred then the exporter or the exporter's authorized agent will be required to make a disclosure to DDTC for the violation and obtain a permanent export license (DSP-5) prior to the FP&F procedures and release of the merchandise.

IMPORT REQUIREMENTS

Remote Location Filing (RLF) is not authorized for defense articles.

Licenses

Temporary DOS licenses authorizing importation or re-importation must be attached to the CBP entry and presented to the Document Analysis Unit for manual decrementation.

A DSP-61 license is required for the temporary import (for repair, modification, overhaul, etc.) of foreign made goods as well as goods originally sold under the Foreign Military Sales (FMS) program and previously exported under the authority of a DSP-94.

A DSP-73 license must be presented for all defense articles previously exported under that license and now subsequently being re-imported into the US.

The presence of a DSP-61 or 73 license does not affect the requirement for entry or the dutiability of temporarily imported merchandise of foreign manufacture.

All entries/carnets associated with a DOS license or license exemption, whether ABI or non-ABI, should be placed into the designated "DOS" entry box at the CBP Rosemont facility for proper CBP review. Placing the entry/carnet package in an envelope or carnet pouch, which would be returned to the filer after review/release, is encouraged to protect the submitted documents.

When there is a difference with the value or quantity of the items listed on the license against those items that are actually included in the entry/carnet, a worksheet/coversheet identifying/explaining those differences should be presented with the entry/carnet. Clarification should also be provided in those instances where non-licensable items are co-mingled with defense items in the same shipment. Otherwise, the incorrect quantities and values may be decremented on the license and could also result in a CBP rejection for clarification.

All entries for USML articles imported under license are intended to be "documents required" and presented to CBP with the license. This entry review process supports regulatory and enforcement responsibilities entrusted to CBP by other federal agencies. An officer must review paper entry documents of defense articles to ensure the terms of the importation comply with ITAR requirements.

Entries of ITAR controlled commodities are often released paperless without the proper presentation of either the temporary import or temporary export licenses, or the ITAR exemption statement. The result is the lack of proof of legal importation of ITAR controlled goods, leading to the possibility of seizure of the commodities. Importers or their designated filers will submit a paper CBP Form 3461 for all entries that involve a temporary import license (DSP-61) or a temporary export license (DSP-73) issued by the DDTC prior to release. The temporary import or temporary export license will be presented for decrementation along with all other documents necessary for entry at the time entry is made. The shipment is released once the CBP officer perforates or signs the entry packet.

CBP will not validate DOS licenses if the defense articles are no longer in CBP custody. Once delivery to the consignee has occurred, the defense articles are regarded as being imported in violation of the ITAR and are subject to liquidated damages against the importer's bond.

Shippers re-importing US-made defense articles under a DOS license or license exemption will, in addition to classifying them as 9801-9802 "products of the United States when returned after having been exported..." annotate on the invoice the actual HTSUS classification category of the item.

License Exemptions

Filers must notate the import entry documents with the proper statements as required for the exemption. Defense articles claiming a 22 CFR 123.4 license exemption must state on the CBP Form 3461 "This shipment is being imported in accordance with and under the authority of 22 CFR 123.4 (a) (identify subsection)." Brokers whose software does not allow for the full statement to be inserted may use "Imported in accordance with and under the authority of 22 CFR 123.4(a) (identify subsection)".

At the time of export of these shipments, the exporter or his agent must file the Electronic Export Information (EEI) in the Automated Export System (AES) and provide on the invoice the import entry document number on which the exemption was first declared. The CBP officer may request a copy of the import entry document to verify that the exemption was declared. For this reason, at the time of entry, the broker should provide a copy of the CBP Form 3461 to the importer to have available at the time of export. If the entry document does not cite the appropriate license exemption, the shipment will be detained for failing to meet the conditions of the license exemption. If it is determined that a violation has occurred, then the exporter or the exporter's authorized agent will be required to make a disclosure to the DDTC for the violation and obtain a permanent export license (DSP-5) prior to the FP&F procedures and release of the merchandise.

FOREIGN MILITARY SALES (FMS) PROGRAM

Shipments sold under the FMS program are authorized by a properly executed DSP-94 authorization to export. The original DSP-94 and related Letter of Offer and Acceptance (LOA), with all amendments attached, modifications, and any relevant continuation sheets must be lodged with CBP at the port of exit shown in Block 3 prior to attempting export and AES reporting.

Exportation may occur at any CBP port. The exporter must report the transaction to AES and present the LOA, invoice, and AWB annotated with the AES Internal Transaction Number (ITN) to the CBP officer at the port of exit for manual decrementation. If the DSP-94 is lodged at another port, the officer will contact

that port to complete decrementation. CBP will return expired or exhausted DSP-94s to DOS.

FMS shipments traveling on DSP-94s must have their MAWB annotated with the following statement "This shipment is being exported under the authority of a Department of State form DSP-94. It covers FMS Case (*Case Identifier*), expiration date _____. 22 CFR 126.6 applicable. The U.S. Government point of contact is _____, telephone number _____."

If you have any questions on the information in this pipeline, please contact Supervisory CBP Officer Tomica Craig at (847) 928-3008 for imports or Supervisory CBP Officer Alma Reyther at (847) 928-5711 for exports.



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