

DSCA 00-11
Implementation of Changes to the International Traffic in Arms
Regulation (ITAR), Part 126.6
23 August 2000

In reply refer to
I-00/009264-PMD
23 August 2000

Memorandum For Deputy Under Secretary of the Army (International Affairs)
Attn: SAUS-IA-DSZ
Department of the Army
Director, Navy International Programs Office
Department of the Navy
Deputy Under Secretary of the Air Force
(International Affairs)
Department of the Air Force
Director, Defense Logistics Agency
Director, National Imagery and Mapping Agency
Director, Defense Threat Reduction Agency
Director, Defense Reutilization and Marketing Service
Director, Defense Information Systems Agency
Director, Defense Logistics Information Service
Deputy Director For Security Assistance, Defense Finance and
Accounting Service -- Denver Center

Subject: Implementation of Changes to the International Traffic in Arms
Regulation (ITAR), Part 126.6 (DSCA 00-11)

The ITAR has been updated to reflect new licensing exemption requirements for exporting defense articles, technical data, and services using the Foreign Military Sales (FMS) process. This change was published as a Final Rule in the Federal Register, Vol. 65, No.141, 21 Jul 00 and is effective 1 Sep 00. The attached Security Assistance Management Manual incorporates this new policy. Significant changes include:

- a. Eliminates the requirement for licenses and Technical Assistance Agreements (TAAs) to export defense services by a contractor under Foreign Military Sales (FMS) programs.
- b. Limits licensing exemptions to defense articles, technical data, or defense services exported during the time limits established on the Letter of Offer and Acceptance (LOA) and the implementing US Government contracts.
- c. Allows both prime and subcontractors to utilize these exemptions.
- d. Requires that contracts for the FMS acquisition of defense services must state the FMS case identifier, identify the foreign recipients of the defense services, and disclose the US or

foreign parties that may be involved in the transfer and their roles/responsibilities (to the extent known at the time of contract award).

e. Requires that the prime and subcontractor(s) must be registered with the Office of Defense Trade Control to transfer defense services under this exemption.

This change will be incorporated in the automated version of the SAMM found in the Defense Acquisition Deskbook as SAMM E-Change 17. The DSCA point of contact for licensing requirements is Col. Kevin O'Connor, (703) 604-0243. Our point of contact for the SAMM is Beth Baker, (703) 604-6612.

/Signed/
Tome H. Walters, Jr.
Lieutenant General, USAF
Director

Attachment

Interim SAMM Change

SAMM Change
To Incorporate ITAR Changes (Federal Register 21 Jul 00)
Effective 1 Sep 00

Paragraph 50303 is deleted in its entirety and replace as follows:

50303 -- Shipments of FMS Purchased Materiel Through Country Representatives or Freight Forwarders.

A. Policy. The Department of State policies and procedures for the permanent export of classified and unclassified defense articles and services purchased on a government-to-government basis under the FMS program are set forth in the International Traffic in Arms Regulation (ITAR) at section 126.6 (22 Code of Federal Regulations § 126.6).

B. Country/Freight Forwarder Requirements. Section 126.6 of the ITAR provides for use of Form DSP-94 (Table 503-1) for shipments using commercial carriers. To make use of DSP-94, freight forwarders must be registered with the Office of Defense Trade Control (DTC), file a letter with DTC from the foreign embassy or government appointing them as forwarding agent for that government's shipments, and file a statement with DTC assuming full responsibility for compliance with the ITAR.

C. Procedures. Procedures in Section 126.6 of the ITAR are quoted below for information:

126.6. Foreign-Owned Military Aircraft and Naval Vessels, and the Foreign Military Sales Program.

(a) General. A license from the Office of Defense Trade Controls is not required if:

- (1) The article or technical data to be exported was sold, leased, or loaned by the Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended; and
- (2) The article or technical data is delivered to representatives of such a country or organization in the United States; and
- (3) The article or technical data is to be exported from the United States on a military aircraft or naval vessel of that government or organization or via the Defense Transportation Service (DTS).

(b) Foreign Military Aircraft and Naval Vessels. A license is not required for the entry into the United States of military aircraft or naval vessels of any foreign state if no overhaul, repair, or modification of the aircraft or naval vessel is to be performed.

However, Department of State approval for overflight (pursuant to the 49 U.S.C.1508) and naval visits must be obtained from the Bureau of Politico-Military Affairs, Office of International Security Operations.

(c) Foreign Military Sales Program. A license from the Office of Defense Trade Controls is not required if the defense article or technical data or a defense service to be transferred was sold, leased or loaned by the Department of Defense to a foreign country or international organization under the Foreign Military Sales (FMS) Program of the Arms Export Control Act pursuant to an Letter of Offer and Acceptance (LOA) authorizing such transfer which meets the criteria stated below:

- (1) Transfers of the defense articles, technical data or defense services using this exemption may take place only during the period which the FMS Letter of Offer and Acceptance (LOA) and implementing USG FMS contracts and subcontracts are in effect and serve as authorization for the transfers hereunder in lieu of a license. After the USG FMS contracts and subcontracts have expired and the LOA no longer serves as such authorization, any further provision of defense articles, technical data or defense services shall not be covered by this section and shall instead be subject to other authorization requirements of this subchapter; and
- (2) The defense article, technical data or defense service to be transferred are specifically identified in an executed LOA, in furtherance of the Foreign Military Sales Program, signed by an authorized Department of Defense Representative and an authorized representative of the foreign government, and
- (3) The transfer of the defense article and related technical data is effected during the duration of the relevant Letter of Offer and Acceptance (LOA), similarly a defense service is to be provided only during the duration of the USG FMS contract or subcontract and not to exceed the specified duration of the LOA, and
- (4) The transfer is not to a country identified in S 126.1 of this subchapter, and
- (5) The U.S. person responsible for the transfer maintains records of all transfers in accordance with Part 122 of this subchapter, and
- (6) For transfers of defense articles and technical data,
 - (i) The transfer is made by the relevant foreign diplomatic mission of the purchasing country or its authorized freight forwarder, provided that the freight forwarder is registered with the Office of Defense Trade Controls pursuant to Part 122 of this subchapter, and
 - (ii) At the time of shipment, the District Director of Customs is provided an original and properly executed DSP-94 accompanied by a copy of the LOA and any other documents required by U.S. Customs in carrying out their responsibilities. The Shippers Export Declaration or, if authorized, the outbound manifest, must be annotated "This shipment is being exported under the authority of Department of State Form DSP-94. It covers FMS Case [insert case

identification], expiration [insert date]. 22 CFR 126.6 applicable. The U.S. Government point of contact is _____, telephone number _____,” and

(iii) If classified hardware and related technical data are involved the transfer must have the requisite USG security clearance and transportation plan and be shipped in accordance with the Department of Defense National Industrial Security Program Operating Manual, or

(7) For transfers of defense services,

(i) A contract or subcontract between the U.S. person(s) responsible for providing the defense service and the USG exists that

(A) Specifically defines the scope of the defense service to be transferred;

(B) Identifies the FMS case identifier;

(C) Identifies the foreign recipients of the defense service;

(D) Identifies any other U.S. or foreign parties that may be involved and their roles/responsibilities, to the extent known when the contract is executed;

(E) Provides a specified period of duration in which the defense service may be performed, and

(ii) The U.S. person(s) identified in the contract maintain a registration with the Office of Defense Trade Controls for the entire time that the defense service is being provided. In any instance when the U.S. registered person(s) identified in the contract employs a subcontractor, the subcontractor may only use this exemption when registered with DTC, and when such subcontract meets the above stated requirements, and

(iii) In instances when the defense service involves the transfer of classified technical data, the U.S. person transferring the defense service must have the appropriate USG security clearance and a transportation plan, if appropriate, in compliance with the Department of Defense National Industrial Security Program Operating Manual, and

(iv) The U.S. person responsible for the transfer reports the initial transfer, citing this section of the ITAR, the FMS case identifier, contract and subcontract number, the foreign country, and the duration of the service being provided to the Office of Defense Trade Controls using DTC's Direct Shipment Verification Program.