

**PART 129—REGISTRATION AND LICENSING OF BROKERS**

■ 8. The authority citation for part 129 is revised to read as follows:

**Authority:** Sec. 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778).

**§ 129.7 [Amended]**

■ 9. Section 129.7 is amended by removing paragraph (e).

**§ 129.8 [Amended]**

■ 10. Section 129.8 is amended by removing paragraph (c).

Dated: August 18, 2010.

**Ellen O. Tauscher,**

*Under Secretary, Arms Control and International Security, Department of State.*

[FR Doc. 2010–21451 Filed 8–26–10; 8:45 am]

**BILLING CODE 4710–25–P**

**DEPARTMENT OF STATE****22 CFR Part 125**

[Public Notice: 7135]

RIN 1400–AC59

**Amendment to the International Traffic in Arms Regulations: Export Exemption for Technical Data**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is amending the International Traffic in Arms Regulations (ITAR) to clarify an exemption for technical data. The clarification is that the exemption covers technical data, regardless of media or format, sent or taken by a U.S. person who is an employee of a U.S. corporation or a U.S. Government agency to a U.S. person employed by that U.S. corporation or to a U.S. Government agency outside the United States.

**DATES:** *Effective Date:* This rule is effective August 27, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Director Charles Shotwell, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2792 or Fax (202) 261–8199; E-mail [DDTCResponseTeam@state.gov](mailto:DDTCResponseTeam@state.gov). ATTN: Regulatory Change, Section 125.4.

**SUPPLEMENTARY INFORMATION:** On November 24, 2009, the Department published a Notice of Proposed Rulemaking (NPRM) to add language clarifying 22 CFR 125.4(b)(9) to allow technical data, including classified information, and regardless of media or format, sent or taken by a U.S. person who is an employee of a U.S.

corporation or a U.S. Government agency, to a U.S. person employed by that U.S. corporation or to a U.S. Government agency outside the United States under certain specified circumstances reflected in 22 CFR 125.4(b)(9)(i) through (iii) (74 FR 61292). This amendment will add after the word “information” the words “and regardless of media or format.” Also, the words “sent by a U.S. corporation to a U.S. person employed by that corporation overseas or to a U.S. Government agency” has been replaced by “sent or taken by a U.S. person who is an employee of a U.S. corporation or a U.S. Government agency to a U.S. person employed by that corporation or to a U.S. Government agency outside the United States.” Thus, the exemption will explicitly allow hand carrying technical data by a U.S. person employed by a U.S. corporation or a U.S. Government agency to a U.S. person employed by that U.S. corporation or to a U.S. Government agency outside the United States, as long as certain criteria in §§ 125.4(b)(9) and 125.4(b)(9)(i)–(iii) are met. The word “overseas” will be replaced by “outside the United States” at §§ 125.4(b)(9), 125.4(b)(9)(i), 125.4(b)(9)(ii), and 125.4(b)(9)(iii). Also, § 125.4(b)(9)(iii) will be amended to add the words “or taken” after the word “sent.” As stated in 22 CFR 125.4(a), this exemption does not apply to exports to proscribed destinations under 22 CFR 126.1.

The Proposed Rule had a comment period ending January 25, 2010. Nine parties filed comments by January 25 recommending changes. Having thoroughly reviewed and evaluated the comments and the recommended changes, the Department has determined that it will, and hereby does, adopt the Proposed Rule, with minor edits, and promulgates it as a Final Rule. The Department’s evaluation of the written comments and recommendations follows:

**Comment Analysis**

One commenting party recommended that “sent or taken” be changed to “sent, taken or accessed.” This recommendation was deemed not necessary since it is implied the U.S. person who is an employee of a U.S. corporation or the U.S. person who is an employee of a U.S. Government agency taking the technical data outside of the United States may access the technical data.

One commenting party inquired whether a U.S. corporation (manufacturer) could use the exemption to send (orally or via e-mail) technical

data to an employee of a U.S. Government agency outside the United States, as well as what steps the U.S. manufacturer would take to ensure that 22 CFR 125.4(b)(9)(i)–(ii) are met. The U.S. corporation (in compliance with 22 CFR part 122) is able to use the exemption to send (orally or via e-mail) technical data to a U.S. person employed by a U.S. Government agency outside the United States, so long as the U.S. company takes reasonable precautions to ensure that conditions in 22 CFR 125.4(b)(9)(i) through (ii) are met:

1. The technical data will be used outside of the United States solely by U.S. persons; and

2. The U.S. person outside of the United States is employed by a U.S. Government agency.

Two commenting parties recommended that it be explicit that the technical data could be for “personal use” by the U.S. person claiming the exemption. That recommendation was not adopted since it introduced uncertainty about uses beyond those related to employment.

One commenting party pointed out that when technical data is exported from a U.S. port using an exemption, the ITAR does not require the report of such an export using the Automated Export System (AES); instead, the exporter is to provide electronic notification directly to the Directorate of Defense Trade Controls (DDTC) (*see* 22 CFR 123.22(b)(3)(iii)). The commenting party recommended that if the system to electronically file directly to DDTC is not going to be implemented, then DDTC should arrange for AES to be the reporting mechanism. The commenting party also recommended that if classified technical data is being exported under the provisions of the Department of Defense National Industrial Security Program Operating Manual, an Electronic Export Information should be filed within AES. For exports of technical data using exemptions, there is no system to electronically file directly to DDTC. DDTC is reviewing carefully the possibility of having all exports of technical data using an exemption be reported using an Electronic Export Information within Census Bureau’s Automated Export System.

Two commenting parties recommended the exemption at § 125.4(b)(9) be expanded so the exporter would be a U.S. person who is an employee of any entity, organization, or group incorporated or organized to do business in the United States. Also, the recipient would be a U.S. person employed by that entity, organization,

or group. Consequently, another recommendation is to revise § 125.4(b)(9)(ii) to state “the U.S. person outside the United States is an employee of the U.S. Government or is directly employed by the same U.S. entity, organization, or group and not by a foreign subsidiary; and \* \* \*.” The commenting party recommended that the exemption include accredited institutions of higher learning in the United States in order to facilitate research. This recommendation was not adopted because the Department prefers narrowing this exemption to an exporter that is a U.S. person who is an employee of a U.S. corporation or a U.S. Government agency, and a recipient outside the United States that is a U.S. person employed by that U.S. corporation or U.S. Government agency. The narrowing of this exemption affords more control of the technical data.

One commenting party recommended the exemption be expanded at § 125.4(b)(9) to include recipients that are a U.S. prime contractor or U.S. subcontractor of that U.S. corporation. Consequently, another recommendation is to revise § 125.4(b)(9)(ii) to state, “If the U.S. person outside the United States is an employee of the U.S. Government or is directly employed by the U.S. corporation and not by a foreign subsidiary, or is directly employed by the U.S. corporation’s U.S. prime contractor or U.S. subcontractor, and not a foreign subsidiary, provided the U.S. prime contractor’s or U.S. subcontractor’s employee is a U.S. person.” Expanding the recipients to a U.S. person employed by the U.S. corporation’s U.S. prime contractor or U.S. subcontractor allows the exemption to become unwieldy as to the recipient responsible for the technical data.

One commenting party recommended the proposed amendment without any changes because it explicitly addressed technical data that is hand carried outside of the United States.

### Regulatory Analysis and Notices

#### *Administrative Procedure Act*

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures contained in 5 U.S.C. 553 and 554.

#### *Regulatory Flexibility Act*

Since this amendment is not subject to 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

#### *Unfunded Mandates Reform Act of 1995*

This amendment does not involve a mandate that will result in the

expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

#### *Executive Orders 12372 and 13132*

This proposed amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

#### *Executive Order 12866*

This proposed amendment is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

#### *Executive Order 12988*

The Department of State has reviewed the proposed amendments in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

#### *Executive Order 13175*

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirement of Section 5 of Executive Order 13175 does not apply to this rulemaking.

#### *Paperwork Reduction Act*

This proposed rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

### List of Subjects in 22 CFR Part 125

Arms and munitions, Classified information, Exports.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 125 is amended as follows:

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

■ 1. The authority citation for part 125 is revised to read as follows:

**Authority:** Secs. 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. 2651a.

■ 2. Section 125.4 is amended by revising paragraphs (b)(9) to read as follows:

#### § 125.4 Exemptions of general applicability.

\* \* \* \* \*

(b) \* \* \*

(9) Technical data, including classified information, and regardless of media or format, sent or taken by a U.S. person who is an employee of a U.S. corporation or a U.S. Government agency to a U.S. person employed by that U.S. corporation or to a U.S. Government agency outside the United States. This exemption is subject to the limitations of § 125.1(b) of this subchapter and may be used only if:

(i) The technical data is to be used outside the United States solely by a U.S. person;

(ii) The U.S. person outside the United States is an employee of the U.S. Government or is directly employed by the U.S. corporation and not by a foreign subsidiary; and

(iii) The classified information is sent or taken outside the United States in accordance with the requirements of the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed).

\* \* \* \* \*

Dated: August 18, 2010.

**Ellen O. Tauscher,**

*Under Secretary, Arms Control and International Security, Department of State.*

[FR Doc. 2010–21450 Filed 8–26–10; 8:45 am]

**BILLING CODE 4710–25–P**