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CA-926

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NO.

TO : ALL AMERICAN DIPLOMATIC POSTS

HANDLING INDICATOR

ACTION COPY

ACTION TAKEN

FROM : Department of State

DATE: FEB 12 10 35 AM '69

SUBJECT: Amendments to Regulations on International Traffic in Arms

REF : 7 FAM 751; State CA-1376, 8/17/67

1. Effective January 24, 1969 the Department's International Traffic in Arms Regulations (22 CFR 121-127) were amended in the Federal Register as outlined in enclosure number 1. This was accomplished after consultation in detail within the Government, and with the leading trade associations representing the majority of companies with whom the Department's Office of Munitions Control (J/PM-MC) has regular communication concerning commercial exports of Munitions List articles.

2. These amendments in the regulations provide:

a. A requirement that issuance of export licenses for significant combat equipment be conditioned upon the foreign importers furnishing a Consignee Purchaser Transaction Statement (form DSP-83, enclosure number 2) that certifies he will not transfer the articles outside the country approved for export without the Department's permission. Where necessary, similar assurance on the form from the importer's government may be required.

b. A requirement that agreements for the manufacture abroad of significant combat equipment include restrictions against unauthorized third and Nth country retransfers. If such restrictions are not included in the manufacturing agreements, the proposed agreements must be accompanied by an Nth Country Control Statement (form DSP-83a, enclosure no. 3).

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FORM 4-62 DS-323

Drafted by: MC:RHRose:nlh:2/3/69

x8103

Contents and Classification Approved by:

MC:JWSipes

Clearances: J/PM-PJFarley

EA/RA-JMGammon RHR EUR/RPM-WPBlumberg

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3. As will be noted in the new regulation, applicants in the US are responsible for submitting the completed forms DSP-83 to the Department when required. Should a form DSP-83a be required in connection with a foreign manufacturing license agreement, it is expected that the US licensor will obtain the forms, have them executed by the foreign licensees, and submit them to the Department. For these reasons, supplies of these forms are not being transmitted to the posts, but in the unlikely event that posts should need any, they should be requested by Operations Memorandum from MC.

4. Should foreign consignees, licensees or host governments query posts concerning the implementation of these new procedures, posts may point out that this is an action which is a clarification and tightening up of munitions controls, for the most part simply reflecting in the published regulations specific requirements which were already being administratively applied under the Department's general authority to regulate international traffic in arms. These amendments respond both to the Department's desire to perfect its export controls, and to continuing Congressional interest in assuring that arms exported to another country or produced abroad under license do not then go to some other recipient or area of tension contrary to USG desires or interests. These are not radically new measures, but a codification, clarification and formal notice of the standards and requirements which govern the Department's consideration and approval of applications for export licenses and foreign manufacturing license agreements. Similar controls are already in effect by the Department of Commerce.

5. Embassies located in countries which purchase significant quantities of arms, ammunition, and implements of war from US commercial sources should consider bringing these new regulations to the attention of host governments to forestall any surprise reactions. Discussions should be in low-key and should emphasize the facts stated in paragraph 4 above.

6. The International Traffic in Arms regulations are in the process of being further revised and amended. After they are published in the Federal Register, the regulations will be reprinted in Volume 10 of the Foreign Affairs Manual, instead of Volume 7.

ROGERS

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Enclosure:
Amendment
Form DSP-83
Form DSP-83a

U. S. DEPARTMENT OF STATE
OFFICE OF MUNITIONS CONTROLNth COUNTRY CONTROL
STATEMENT

1. FOREIGN LICENSEE NAME AND ADDRESS

NAME _____
STREET
AND NUMBER _____
CITY _____
COUNTRY _____

GENERAL INSTRUCTIONS

This form must be submitted by the foreign licensee shown in Item 1 to the United States Department of State, Office of Munitions Control, to whom the manufacturing license agreement described in Item 3 has been submitted. All items on this form must be completed. The signature required in Item 4 must be that of a responsible official who is authorized to bind the foreign licensee to the commitments in this statement. (Reference: Title 22, Code of Federal Regulations, Part 124.)

2. REQUEST

We request that this statement be considered a part of the application for approval of a proposed manufacturing license agreement filed by _____
(United State manufacturer or licensor)
as specifically described in Item 3.

3. AGREEMENT FOR FOREIGN MANUFACTURE

We have negotiated a manufacturing license agreement with the firm named in Item 2, which we understand must be approved by the Department of State before it may become effective under United States law. The agreement was negotiated on _____, between _____ and _____
(Date) (Foreign firm (licensee))
_____ and provides for the manufacture in the _____
(U.S. firm (licensor)) (Country)
of the following: (List licensed articles).

4. Nth COUNTRY CONTROL CERTIFICATION

We certify that all of the facts contained in this statement are true and correct to the best of our knowledge and belief and we do not know of any additional facts which are inconsistent with the above statement. Except as may be otherwise specifically authorized by prior written approval of the United States Department of State, we agree that any contract or other transfer arrangements with a recipient of the licensed articles (enumerated in Item 3) in any country within the licensed sales territory will include the following provision:

"The recipient shall obtain the approval of the United States Government prior to entering into a commitment for the transfer of the licensed article by sale or otherwise to another recipient in the same or any other country in the world".

SIGN HERE
IN INK

(Signature of official of firm named in Item 1)

TYPE OR
PRINT

(Name and title of person signing this document)

(Date of signing)

The making of any false statement, the concealment of any material fact, or failure to file required information may result in denial of participation in United States exports. Notarial is not required.

1. Ultimate consignee name and address

NAME _____

STREET AND NUMBER _____

CITY _____

COUNTRY _____

REFERENCE (if desired) _____

be completed. Where the information required is unknown or the item does not apply, write in the appropriate words "UNKNOWN" or "NOT APPLICABLE." The signatures required in Items 6 and 7 must be those of responsible officials who are authorized to bind the ultimate consignee and purchaser to the commitments in this statement. If more space is needed, attach an additional copy of this form or sheet of paper signed as in Items 6 and 7.

We request that this statement be considered a part of the application for export license (DSP-5)

filed by _____
U.S. exporter or U.S. person with whom we have placed our order (*order party*)
for export to us of the commodities described in Item 3.

We have placed an order with the person named in Item 2 for the following commodities in the quantity and value indicated below:

[illegible]

a. The nature of our usual business is _____

b. (If the commodities are for resale) The nature of our customer's usual business is _____

(Reproduction of this form is permissible; provided that content, format, size, and color of paper are the same.)

Please continue form and sign certification on reverse side

(Continue additional information here.)

6. CERTIFICATION OF ULTIMATE CONSIGNEE (This item is to be completed by the ultimate consignee only)

We certify that all of the facts contained in this statement are true and correct to the best of our knowledge and belief and we do not know of any additional facts which are inconsistent with the above statement. We shall promptly send a supplemental statement to the person named in Item 2, disclosing any change of facts or intentions set forth in this statement which occurs after the statement has been prepared and forwarded. Except as specifically authorized by prior written approval of the United States Department of State, we will not reexport, resell, or otherwise dispose of any commodities listed in Item 3 above: (1) outside the country named in Item 1 above, or (2) to any person if there is reason to believe that it will result, directly or indirectly, in disposition of the commodities contrary to the representations made in this statement or contrary to United States Export Regulations.

SIGN HERE

IN INK

TYPE OR

PRINT

Signature of official of firm named in Item 1.
(See instructions on front of form)

Name and title of person signing this document

Date of
signing

7. CERTIFICATION OF PURCHASER (This item is to be completed only: (1) where the purchaser is not the same as the ultimate consignee; or (2) where the ultimate consignee is unknown.)

We certify that all of the facts contained in this statement are true and correct to the best of our knowledge and belief and we do not know of any additional facts which are inconsistent with the above statement. Except as specifically authorized by prior written approval of the United States Department of State, we will not reexport, resell, or otherwise dispose of any commodities listed in Item 3 above: (1) outside the country named in Item 1 above, or (2) to any person if there is reason to believe that it will result, directly or indirectly, in disposition of the commodities contrary to the representations made in this statement or contrary to United States Export Regulations.

TYPE OR

PRINT

Name of purchaser firm, if different than name in Item 1

SIGN HERE

IN INK

Signature of official of firm. (See instructions on front of form)

TYPE OR

PRINT

Date signed

Name and title of person signing this document

8. CERTIFICATION OF FOREIGN GOVERNMENT--NON RETRANSFER ASSURANCE (This item is to be completed only upon request of the Department of State. See Part 123 of the International Traffic in Arms Regulations - 22 C.F.R. 123).

The Government of _____ hereby certifies that it will not authorize the re-export, resale, or other disposition of the commodities listed in Item 3 above outside the country named in Item 1 above, without prior written approval by the United States Government.

SIGN HERE

IN INK

Signature of Government official

Date signed

TYPE OR

PRINT

(Name and title of government official signing this certification)

(Affix seal)

SPECIFIC INSTRUCTIONS

Item 1 - Ultimate Consignee must be person abroad who is actually to receive the material for end use. A bank, freight forwarding agent, or other intermediary is not acceptable as an ultimate consignee.

Item 2 - Give name of company with which order was placed.

Item 3 - Describe commodities in detail wherever possible, giving particulars such as name (basic ingredients, composition), type, size, gauge, grade, model number, military nomenclature, federal stock number, name-plate data, etc.

Item 4 - Complete "b" only if the commodity is purchased for resale.

Item 5 - Supply any other information not appearing elsewhere on the form such as other parties to the transaction, etc.

Item 6 - Only an official of the ultimate consignee named in Item 1 should complete this Item. Be certain to sign statement in ink as well as type or print name and title of person signing document.

Item 7 - It is necessary to complete this Item only if the purchaser is not the same as the ultimate consignee shown in Item 1 or if the ultimate consignee is unknown. Be sure to type or print the name of purchaser. This space must be signed in ink by an official of the purchasing firm. The name and title of person signing this Item must be typed or printed.

Item 8 - It is not necessary to complete this Item unless the US exporter has been requested by the Department of State to obtain a non-retransfer assurance from the foreign importer's government. Such a request will not be made where either the ultimate consignee or purchaser is a governmental agency.

The making of any false statement, the concealment of any material fact, or failure to file required information may result in denial of participation in United States exports. Notarial is not required.

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

SUBCHAPTER M—INTERNATIONAL TRAFFIC IN ARMS

[Dept. Reg. 108.600]

PART 123—LICENSING CONTROLS

PART 124—LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

Miscellaneous Amendments

Parts 123 and 124 of Title 22 of the Code of Federal Regulations are amended as set forth below.

1. In Part 123, § 123.21 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 123.21 Country of ultimate destination.

(d) Applications for export (form DSP-5) of significant combat equipment* (and letter applications in cases of significant classified combat equipment) submitted to the Office of Munitions Control shall be accompanied by a "Consignee-Purchaser Transaction Statement" (form DSP-83) which must be submitted by the foreign importer to the U.S. applicant for export license. The transaction statement shall provide that, except as specifically authorized by prior written approval of the Department of State, the ultimate consignee (and purchaser if not the same as the ultimate consignee) will not reexport, resell or otherwise dispose of the articles enumerated in the application outside the country named as the location of the ultimate consignee. The Office of Munitions Control reserves the right to require a Consignee-Purchaser Transaction Statement with respect to the export of any U.S. Munitions List article.

(e) In applications for export where a Consignee-Purchaser Transaction Statement is required and where both the ultimate consignee and the purchaser are nongovernmental entities, the Department of State may require a Non-Transfer Assurance (form DSP-83, Item 8) from the appropriate authority of the foreign importer's government. The Non-Transfer Assurance shall provide that the foreign importer's government undertakes not to authorize the reexport, resale or other disposition of the articles enumerated in the application without obtaining the prior written consent of the U.S. Government.

* Significant combat equipment shall include the articles (not including technical data) enumerated in categories I (a), (b), and (c) (in quantity); II (a) and (b); III(a) (excluding ammunition for firearms in category I); IV (a), (c), and (d); V(b) (in quantity); VI(a) (limited to combatant vessels as defined in § 121.12(a)), (b) (inclusive only of turrets and gun mounts, missile systems, and special weapons systems) and (e); VII (a), (b), (c), and (f); VIII (a), (b), (c), GEMS as defined in (k), and inertial systems as defined in I; XII(a); XIV (a), (b), (c), and (d); XVI; and XVII.

2. In Part 124, § 124.04 is amended by adding new subparagraphs (7) and (8) to paragraph (a) reading as follows:

§ 124.04 Required information in agreements.

(a) * * *

(7) With respect to all manufacturing license agreements, a statement that "no export, sale, transfer, or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government".

(8) With respect to manufacturing license agreements for significant combat

equipment,² the Department may require that the prospective foreign licensee furnish an "Nth Country Control Statement" (form DSP-83a) to the Office of Munitions Control. The Nth Country Control Statement shall provide that the licensee agrees to ensure that any contract or other transfer arrangement with a recipient of the licensed article in any country within the licensed sales territory will include the following provision: "The recipient shall obtain the approval of the U.S. Government prior to entering into a commitment for the transfer of the licensed article by sale or otherwise to another recipient in the same or any other country in the world".

(i) At the option of the parties, the obligation on the licensee as provided in the Nth Country Control Statement (form DSP-83a) may be included in the manufacturing license agreement.

(ii) The Office of Munitions Control reserves the right to require an Nth Country Control Statement (form DSP-83a) or a similar undertaking in the license agreement, at the option of the parties, in connection with the foreign manufacture of any U.S. Munitions List article.

Effective Date. These amendments are effective upon publication in the FEDERAL REGISTER.

(Sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934; secs. 101 and 105, E.O. 10973, 3 C.F.R. 1959-1963 Comp.; sec. 6, Departmental Delegation of Authority No. 104, 26 F.R. 10608, as amended, 27 F.R. 9925, 28 F.R. 7231; Re-delegation of Authority No. 104-3-A, 28 F.R. 7231)

Dated: January 14, 1969.

[SEAL]

DEAN RUSK,
Secretary of State.

[F.R. Doc. 69-972; Filed, Jan. 23, 1969;
8:51 a.m.]

² Significant combat equipment shall include the articles enumerated in categories I (a), (b) and (c) (in quantity); II (a) and (b); III(a) (excluding ammunition for firearms in category I); IV (a), (c) and (d); V(b) (in quantity); VI (a) (limited to combatant vessels as defined in § 121.12(a)), (b) (inclusive only of turrets and gun mounts, missile systems, and special weapons systems) and (e); VII (a), (b), (c) and (f); VIII (a), (b), (c), GEMS as defined in (k), and inertial systems as defined in (1); XII(a); XIV (a), (b), (c) and (d); XVI; and XVII.