Bartlett's
Annotated ITAR™

by James Ellwood Bartlett III

International Traffic in Arms Regulations

22 C.F.R. Chapter I, Subchapter M, Parts 120-130 (2011)

Latest ITAR amendment 77 FR 39392 (July 3, 2012)

Latest editorial revisions Sept. 1, 2012

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Bartlett's Annotated ITAR is a reprint of the International Traffic in Arms Regulations with features added by the author, including a Table of Contents, footnotes, section histories, appendixes containing government guidance and articles of interest, and an Index. Many readers have contributed practice tips and commentary. The text is the same as published in the official version, 22 C.F.R. §§ 120-130 (April 1, 2011) and downloaded from the Government Printing Office (GPO) website, with all amendments published in the FEDERAL REGISTER since April 1, 2011. (Although republished annually with a C.F.R. publication date of 1 April, the actual GPO publication usually occurs in June or July.) The official C.F.R. version, however, does not include any revisions published in the Federal Register after the last official version, which *are* included in this version. Some footnotes in this document refer the reader to statutory changes that are effective, even though they have not yet resulted in changes to the official version of the ITAR.

Errors in the official GPO version are repeated here verbatim, followed by "[sic]", and a footnote explaining the error and the suggested correction except . *"Id."* indicates a repeated footnote. Most typeface, capitalization, and paragraphing errors and inconsistencies are corrected in this version per the U.S. *Government Printing Office Style Manual* without indicating the change from the original. Some words (*e.g.*, "end use", "end user", "reexport", and "retransfer") are alternatively hyphenated and printed solid in the official ITAR version.

 Please email reader comments and practice tips to *JEBartlett@JEBartlett.com*.

Summary of the ITAR: The U.S. Arms Export Control Act (22 U.S.C. 2778), implemented by the ITAR (22 CFR 120-130) and administered by the State Department's Directorate of Defense Trade Controls (DDTC)(ITAR 120.12), prohibits the export (ITAR 120.17) and temporary import (ITAR 120.18) of defense articles (ITAR 120.6) and technical data (ITAR 120.10), the provision of defense services (ITAR 120.9) to foreign persons (ITAR 120.16), and the brokering (ITAR 129.1) of defense articles or services by all persons (ITAR 120.14) in the United States (ITAR 120.13) and by U.S. persons (ITAR 120.15) wherever located, unless approved (ITAR 123.1(a)) in advance by a DDTC-issued export license (ITAR § 120.20; ITAR part 123), agreement (ITAR §§ 120.21, 120.22, 120.23; ITAR part 124), or by qualification for an ITAR exemption (ITAR 123.1(a)). Any person in the USA who manufactures or exports defense articles, furnishes defense services to foreign persons, or brokers defense articles or services must register with DDTC (ITAR 122.1(a), 129.3) and maintain records of regulated activities for 5 years (ITAR 122.5, 123.26). Persons who pay certain fees or commissions to secure the sale of defense articles or services must report those payments to DDTC (ITAR part 130). Violations are punishable by fines, imprisonment, and debarment (ITAR 127.3). Also, 18 U.S.C.A. § 554 prohibits the export of any item from the United States contrary to any law or regulation of the United States, punishable by fine and imprisonment of not more than 10 years.

Last amendment to ITAR: July 3, 2012, Removing 126.1(u), Yemen.
Last editorial revision: Sept. 1, 2012: Updated footnotes; added Index entries.

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PART 120: PURPOSE AND DEFINITIONS

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Authority: Sections 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311, E.O. 13284, 68 FR 4075, 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105-261, 112 Stat. 1920, Pub. L. 111-266.

Source: 58 FR 39283, July 22, 1993, unless otherwise noted.

§ 120.1 General Authorities and Eligibility[1]

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778)[2] authorizes the President to control the export and import[3] of defense articles and defense services.[4] The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 11958,[5] as amended. This subchapter[6] implements that authority. Portions of this subchapter also implement the Defense Trade Cooperation Treaty between the United States and the United Kingdom. (Note, however, that the Treaty is not the source of authority for the prohibitions in part 127, but instead is the source of one limitation on the scope of such prohibitions.) By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Deputy Assistant Secretary of State for Defense Trade and Regional Security and the Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs.

(b) (1) *Authorized officials.* All authorities conferred upon the Deputy Assistant Secretary for Defense Trade Controls or the Managing Director of Defense Trade Controls by this subchapter may be exercised at any time by the Under Secretary of State for Arms Control and International Security or the Assistant Secretary of State for Political-Military Affairs unless the Legal Adviser or the Assistant Legal Adviser for Political-Military Affairs of the Department of State determines that any specific exercise of this authority under this paragraph may be inappropriate.

(2) In the Bureau of Political-Military Affairs, there is a Deputy Assistant Secretary for Defense Trade Controls (DAS—Defense Trade Controls) and a Managing Director of Defense Trade Controls (MD-Defense Trade Controls). The DAS—Defense Trade Controls and the MD—Defense Trade Controls are responsible for exercising the authorities conferred under this subchapter. The DAS—Defense Trade Controls is responsible for oversight of the defense trade controls function. The MD—Defense Trade Controls is responsible for the Directorate of Defense Trade Controls, which oversees the subordinate offices described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section.

(i) The Office of Defense Trade Controls Management and the Director, Office of Defense Trade Controls Management, which have responsibilities related to management of defense trade controls operations, to include the exercise of general authorities in this part 120, and the design, development, and refinement of processes, activities, and functional tools for the export licensing regime and to effect export compliance/enforcement activities;

(ii) The Office of Defense Trade Controls Licensing and the Director, Office of Defense Trade Controls Licensing, which have responsibilities related to licensing or other authorization of defense trade, including references under parts 120, 123, 124, 125, 126, 129 and 130 of this subchapter;

(iii) The Office of Defense Trade Controls Compliance[7] and the Director, Office of Defense Trade Controls Compliance, which have responsibilities related to violations of law or regulation and compliance

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[1] The commercial export of conventional arms is governed principally by the Arms Export Control Act (AECA), which authorizes the President to control the export of arms, ammunition, implements of war and related technical data. The President has delegated that authority to the Secretary of State, and the Secretary has promulgated the International Traffic in Arms Regulations (ITAR), under which a license or other approval is required for exports of defense articles, related technical data and defense services.

[2] See copy at Appendix A.

[3] "The word importation means the bringing of goods within the jurisdictional limits of the United States with the intention to unladen them." United States v. Field Co., 14 U.S.Cust.App., 406 (T.D. 42052, 1927).

[4] 22 U.S.C. § 2778(a)(1) states: "In furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List."

[5] 42 Fed. Reg. 4311 (Jan. 18, 1977).

[6] Practice tip: The word "subchapter" is another way of referring to the entire ITAR in this case. A "subchapter" is not a "part," "section," or a "category." These distinctions are relevant when reading the ITAR. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132).

[7] Practice tip: "Compliance" includes registration, enforcement, and other compliance matters. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132).

therewith, including references contained in parts 122, 126, 127, 128 and 130 of this subchapter, and that portion under part 129 of this subchapter pertaining to registration;

(iv) The Office of Defense Trade Controls Policy and the Director, Office of Defense Trade Controls Policy, which have responsibilities related to the general policies of defense trade, including references under this part 120 and part 126 of this subchapter, and the commodity jurisdiction procedure under this subchapter, including under this part 120.

(c) *Receipt of Licenses and Eligibility*

(1) A U.S. person may receive a license or other approval pursuant to this subchapter. A foreign person may not receive such a license or other approval, except as follows:

(i) A foreign governmental entity in the United States may receive an export license or other export approval;

(ii) A foreign person may receive a reexport or retransfer approval; and

(iii) A foreign person may receive a prior approval for brokering activities. Requests for a license or other approval, other than by a person referred to in paragraphs (c)(1)(i) and (c)(1)(ii) of this section, will be considered only if the applicant has registered with the Directorate of Defense Trade Controls pursuant to part 122 or 129 of this subchapter, as appropriate.

(2) Persons who have been convicted of violating the criminal statutes enumerated in § 120.27 of this subchapter, who have been debarred pursuant to part 127 or 128 of this subchapter, who are subject to indictment or are otherwise charged (e.g., by information) for violating the criminal statutes enumerated in § 120.27 of this subchapter, who are ineligible[8] to contract with, or to receive a license or other form of authorization to import defense articles or defense services from any agency of the U.S. Government, who are ineligible to receive an export license or other approval from any other agency of the U.S. Government, or who are subject to a Department of State policy of denial, suspension or revocation under § 126.7(a) of this subchapter, or to interim suspension under § 127.8 of this subchapter, are generally ineligible to be involved in activities regulated under this subchapter.

(d) The exemptions provided in this subchapter do not apply to transactions in which the exporter, any party to the export (as defined in § 126.7(e) of this subchapter), any source or manufacturer, broker or other participant in the brokering activities, is generally ineligible in paragraph (c) of this section, unless prior written authorization has been granted by the Directorate of Defense Trade Controls.

[58 FR 39283, July 22, 1993, as amended at 68 FR 7417, Feb. 14, 2003; 68 FR 51171, Aug. 26, 2003; 68 FR 57352, Oct. 3, 2003; 70 FR 34653, June 15, 2005; 71 FR 20536, Apr. 21, 2006]

§ 120.2 Designation of Defense Articles and Defense Services

The Arms Export Control Act (22 U.S.C. 2778(a)[9] and 2794(7)[10]) provides that the President shall designate the

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[8] Practice tip: Knowledge of ineligibility may be assumed if party's name is posted on the General Services Administration Excluded Parties List System (EPLS), an electronic, web-based system accessible at http://www.gsa.gov/portal/content/101991 (last viewed Sept. 1, 2012), that identifies those parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and non-financial assistance and benefits. The EPLS keeps the user community aware of administrative and statutory exclusions across the entire government, suspected terrorists, and individuals barred from entering the United States. Users are able to search, view, and download both current and archived exclusions.

[9] 22 U.S.C 2778, CONTROL OF ARMS EXPORTS AND IMPORTS, stating in part:

(a) Presidential control of exports and imports of defense articles and services, guidance of policy, etc.; designation of United States Munitions List; issuance of export licenses; negotiations information

(1) In furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List.

(2) Decisions on issuing export licenses under this section shall take into account whether the export of an article would contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or

articles and services deemed to be defense articles and defense services for purposes of this subchapter[11]. The items so designated constitute the United States Munitions List and are specified in part 121 of this subchapter. Such designations are made by the Department of State with the concurrence of the Department of Defense. For a determination on whether a particular item is included on the U.S. Munitions List see § 120.4(a).

§ 120.3 Policy on Designating and Determining Defense Articles and Services

An article or service may be designated or determined in the future to be a defense article (see § 120.6) or defense service (see § 120.9) if it:

(a) Is specifically designed, developed, configured, adapted, or modified for a military application, and

(i) Does not have predominant[12] civil applications, and

(ii) Does not have performance equivalent[13] (defined by form, fit and function) to those of an article or service used for civil applications; or

(b) Is specifically designed, developed, configured, adapted, or modified for a military application, and has significant military or intelligence applicability such that control under this subchapter is necessary.

The intended use of the article or service after its export (*i.e.,* for a military or civilian purpose) is not relevant in determining whether the article or service is subject to the controls of this subchapter.[14] Any item covered by the U.S. Munitions List must be within the categories of the U.S. Munitions List. The scope of the U.S. Munitions List shall be changed only by amendments made pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778).

§ 120.4 Commodity Jurisdiction[15]

(a) The commodity jurisdiction procedure is used with the U.S. Government if doubt[16] exists as to whether an article[17] or service is covered by the U.S. Munitions List. It may also be used for consideration of a redesignation of an article or service currently covered by the U.S. Munitions List.[18] The Department must provide notice to Congress at least 30 days before any item is removed from the U.S. Munitions List. Upon electronic submission of a Commodity Jurisdiction (CJ) Determination Form (Form DS-4076), the Directorate of Defense Trade Controls shall provide a determination of whether a particular article or service is covered by the U.S. Munitions List. The determination, consistent with §§ 120.2, 120.3, and 120.4, entails consultation among the Departments of State, Defense, Commerce and other U.S. Government agencies and industry in appropriate cases.

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nonproliferation agreements or other arrangements.

(3) In exercising the authorities conferred by this section, the President may require that any defense article or defense service be sold under this chapter as a condition of its eligibility for export, and may require that persons engaged in the negotiation for the export of defense articles and services keep the President fully and currently informed of the progress and future prospects of such negotiations.

[10] 22 U.S.C. § 2794. Definitions . . . (7) "defense articles and defense services" means, with respect to commercial exports subject to the provisions of section 2778 of this title, those items designated by the President pursuant to subsection (a)(1) of such section;

[11] *I.e.,* 22 CFR Chapter I, Subchapter M, which is the entire ITAR.

[12] The word "predominant" is not defined in the ITAR or in published DDTC guidance.

[13] "Performance equivalent" is not defined in the ITAR, but see 120.4(d)(2).

[14] *But see* § 121.1 Cat VIII(e) Note (1)(i) and § 121.1 Cat XIV(n)(4)(ii) where intended end use is relevant for designating USML articles.

[15] Amended by 75 Fed. Reg. 46843-46844 (Aug. 4, 2010).

[16] Practice tip: Caution: DDTC has maintained that even an unambiguously civilian end-item must be treated as ITAR-controlled while the CJ request is pending. To treat it as EAR controlled in the interim, according to DDTC, runs the risk of an enforcement action for unlicensed exports in the interim if DDTC rules that the item is ITAR-controlled. This policy is a severe impediment to the seeking of CJs on civilian items in order to, *e.g.*, avoid issues with Customs officials who might think the civilian item is ITAR-controlled. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132).

[17] The term "defense article" includes ITAR-controlled "technical data" and software. § 120.6.

[18] Practice tip: Other reasons to submit a CJ Request: (1) eliminate confusion among different parts of or personnel within the company; (2) make customers more confident in product that they are buying or having incorporated into their end-item; (3) eliminate concerns regarding the flow of military technology to commercial applications; (4) give comfort to management in high risk transactions; (5) gut reaction that enforcement officials might think an item is controlled although it is not; (6) question a competitor's determination; and/or (7) get a sense for how DDTC interprets a particular issue. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132).

(b) Registration with the Directorate of Defense Trade Controls as defined in part 122 of this subchapter is not required prior to submission of a commodity jurisdiction request. If it is determined that the commodity is a defense article or defense service covered by the U.S. Munitions List, registration is required for exporters, manufacturers, and furnishers of such defense articles and defense services (see part 122 of this subchapter), as well as for brokers who are engaged in brokering activities related to such articles or services.

(c) Requests shall identify the article or service, and include a history of this product's design, development, and use. Brochures, specifications, and any other documentation related to the article or service should be submitted as electronic attachments per the instructions for Form DS-4076.[19]

(d) (1) A determination that an article or service does not have predominant civil applications shall be made by the Department of State, in accordance with this subchapter, on a case-by-case basis, taking into account:

(i) The number, variety and predominance of civil applications;

(ii) The nature, function and capability of the civil applications; and

(iii) The nature, function and capability of the military applications.

(2) A determination that an article does not have the performance equivalent[20], defined by form, fit and function, to those used for civil applications shall be made by the Department of State, in accordance with this subchapter, on a case-by-case basis, taking into account:

(i) The nature, function, and capability of the article;

(ii) Whether the components used in the defense article are identical to those components originally developed for civil use.

NOTE: The *form* of the item is its defined configuration, including the geometrically measured configuration, density, and weight or other visual parameters which uniquely[21] characterize the item, component or assembly. For software, form denotes language, language level and media. The fit of the item is its ability to physically interface or interconnect with or become an integral part of another item.[22] The function of the item is the action or actions it is designed to perform.

(3) A determination that an article has significant military or intelligence applications such that it is necessary to control its export as a defense article shall be made, in accordance with this subchapter, on a case-by-case basis, taking into account:

(i) The nature, function, and capability of the article;

(ii) The nature of controls imposed by other nations on such items (including Wassenaar Arrangement and other multilateral controls), and

(iii) That items described on the Wassenaar Arrangement List of Dual-Use[23] Goods and Technologies shall not be designated defense articles or defense services unless the failure to control such items on the U.S. Munitions List would jeopardize significant national security or foreign policy interests.

(e) The Directorate of Defense Trade Controls will provide a preliminary response within 10 working days of receipt of a complete request for commodity jurisdiction. If after 45 days the Directorate of Defense Trade

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[19] See DDTC website guidance on Commodity Jurisdiction requests at http://www.pmddtc.state.gov/commodity_jurisdiction/index.html (June 26, 2012; last viewed Sept. 1, 2012). Practice tip: Include a Letter of Transmittal ("LOT") with each CJ submittal. Although there is no requirement in the DDTC guidance or on the DS-4076 for a LOT, DDTC often returns electronic CJ submissions without action because the application failed to include a LOT.

[20] "Performance equivalent" is not defined in the ITAR, but see 120.3(a)(ii).

[21] Practice tip: Focus is often whether the item is somehow unique to the military end-item or whether it can be dropped in on a one-for-one replacement basis without modification into a commercial end item. If so, DDTC will usually rule that the interchangeable item is subject to the EAR and will defer to Commerce regarding classification and relevant controls under the EAR. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132.)

[22] Practice tip: If you can find a civilian end-item into which the part will fit and function perfectly without modification, an EAR determination in response to a CJ request is more likely. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132.)

[23] See footnote at § 120.6.

Controls has not provided a final commodity jurisdiction determination, the applicant may request in writing to the Director, Office of Defense Trade Controls Policy that this determination be given expedited processing.

(f) State, Defense and Commerce will resolve commodity jurisdiction disputes in accordance with established procedures. State shall notify Defense and Commerce of the initiation and conclusion of each case.

(g) A person may appeal a commodity jurisdiction determination by submitting a written request for reconsideration to the Managing Director of the Directorate of Defense Trade Controls. The Directorate of Defense Trade Controls will provide a written response of the Managing Director's determination within 30 days of receipt of the appeal. If desired, an appeal of the Managing Director's decision can then be made directly through the Deputy Assistant Secretary for Defense Trade Controls to the Assistant Secretary for Political-Military Affairs.

[58 FR 39283, July 22, 1993, as amended at 71 FR 20536, Apr. 21, 2006]

§ 120.5 Relation to Regulations of Other Agencies

If an article or service is covered by the U.S. Munitions List, its export is regulated by the Department of State, except as indicated otherwise in this subchapter. For the relationship of this subchapter to regulations of the Department of Energy and the Nuclear Regulatory Commission, see § 123.20 of this subchapter. The Attorney General controls permanent imports of articles and services covered by the U.S. Munitions Import List from foreign countries by persons subject to U.S. jurisdiction (27 CFR part 447).[24] In carrying out such functions, the Attorney General shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States. The Department of Commerce regulates the export of items on the Commerce Control List (CCL) under the Export Administration Regulations (15 CFR parts 730 through 799).

[71 FR 20537, Apr. 21, 2006]

§ 120.6 Defense Article[25]

Defense article means any item or technical data designated in § 121.1 of this subchapter. The policy described in § 120.3 is applicable to designations of additional items. This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated in § 121.1 of this subchapter. It does not include basic marketing information on function or purpose

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[24] The U.S. Munitions Import List relates to the portion of Section 38, Arms Export Control Act of 1976, which is concerned with the importation of arms, ammunition and implements of war, and includes procedural and administrative requirements and provisions relating to registration of importers, permits, articles in transit, import certification, delivery verification, import restrictions applicable to certain countries, exemptions, U.S. military firearms or ammunition, penalties, seizures, and forfeitures. All designations and changes in designation of articles subject to import control under Section 414 of the Mutual Security Act of 1954, have the concurrence of the Secretary of State and the Secretary of Defense. 27 CFR 447.2 states, in part:

> (a) All of those items on the U.S. Munitions Import List (see §447.21) which are "firearms" or "ammunition" as defined in 18 U.S.C. 921(a) are subject to the interstate and foreign commerce controls contained in Chapter 44 of Title 18 U.S.C. and 27 CFR Part 478 and if they are "firearms" within the definition set out in 26 U.S.C. 5845(a) are also subject to the provisions of 27 CFR Part 479. Any person engaged in the business of importing firearms or ammunition as defined in 18 U.S.C. 921(a) must obtain a license under the provisions of 27 CFR Part 478, and if he imports firearms which fall within the definition of 26 U.S.C. 5845(a) must also register and pay special tax pursuant to the provisions of 27 CFR Part 479. Such licensing, registration and special tax requirements are in addition to registration under subpart D of this part.

[25] Practice tip: Note on ITAR and EAR jurisdictional/classification terminology: The effort to determine whether an item is subject to the ITAR, *i.e.*, on the USML, is known as a "jurisdictional" analysis. One is asking which agency has jurisdiction – DDTC or BIS. If DDTC, one then asks how the item is classified on the USML, *i.e.*, which Roman numeral "Category" describes the item. The effort to determine where an item is on the CCL as a dual-use item is known as a "classification" analysis. One is asking where an item is classified on the CCL and which ECCN is applicable. However, one gets to the classification analysis only after a jurisdictional determination has been made. Caution: The term "dual-use" is misleading. Some think that if an item is used for both commercial and military applications it is a "dual-use" item and, thus, subject to the EAR, not the ITAR. While this might be a common sense use of the term, the export control meaning of the term approaches the definition from the other direction – if something is controlled under the EAR, *then* it is a "dual-use" item. (15 CFR § 730.3). The term applies to commercial items that also have military applications, not military (*i.e.*, ITAR-controlled) items that also have commercial applications. For example, aircraft engine components specifically designed for a military aircraft engine but also used in civilian aircraft engines are not "dual use" items because they are subject to the jurisdiction of the ITAR. Whereas, aircraft parts for civil aircraft are dual-use because they could be used on military aircraft or for other military applications. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132).

or general system descriptions.[26]

§ 120.7 Significant Military Equipment

(a) *Significant military equipment* means articles for which special export controls are warranted because of their capacity for substantial military utility or capability.

(b) Significant military equipment includes:

(1) Items in § 121.1 of this subchapter which are preceded by an asterisk; and

(2) All classified articles enumerated in § 121.1 of this subchapter.

[58 FR 39283, July 22, 1993, as amended at 62 FR 67275, Dec. 24, 1997]

§ 120.8 Major Defense Equipment

Pursuant to section 47(6) of the Arms Export Control Act (22 U.S.C. 2794(6)[27] note [sic][28]), *major defense equipment* means any item of significant military equipment (as defined in § 120.7) on the U.S. Munitions List having a nonrecurring research and development cost of more than $50,000,000 or a total production cost of more than $200,000,000.

§ 120.9 Defense Service[29]

(a) *Defense service* means:

(1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles;[30]

(2) The furnishing to foreign persons of any technical data controlled under this subchapter (see § 120.10), whether in the United States or abroad; or

(3) Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice. (See also § 124.1.)

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[26] *See also* § 121.1 Cat. XXI(a), which includes in § 121.1 "any article . . . which has substantial military application and which has been specifically designed or modified for military purposes."

[27] 22 U.S.C. 2794. ("Definitions . . . (6) "major defense equipment" means any item of significant military equipment on the United States Munitions List having a nonrecurring research and development cost of more than $50,000,000 or a total production cost of more than $200,000,000; . . . .").

[28] So in original, but that section is not a note.

[29] Obtain DDTC approval before providing a defense service. See part 124.

[30] The assistance does need not to involve technical data, U.S. or foreign origin, to be classified as defense services. *See* U.S. State Dept. Consent Agreement, IN THE MATTER OF ANALYTICAL METHODS, INC. 5 (Jan. 23, 2009), *available at* http://www.pmddtc.state.gov/compliance/consent_agreements/pdf/AnalyticalMethods_ConsentAgreement.pdf (last viewed Sept. 1, 2012), stating in part:

> (6) The Respondent acknowledges and accepts that . . .
>
> . . . .
>
> (b) the furnishing of defense services to foreign persons – regardless of whether the underlying defense article(s) is of U.S. or foreign origin – is appropriately subject to the Department's control under the ITAR, even when no technical data is involved (*e.g.,* all the information relied upon in furnishing defense services to a foreign government or foreign person is in the public domain); . . . .
>
> (7) Respondent further acknowledges . . . .
>
> . . . .
>
> (e) that software designated as dual-use can be used to provide an ITAR regulated defense service and can become an ITAR regulated defense article when adapted or modified for a military application; . . . .

See generally Alan G. Kashdan & Andres A. Castrillon, *The Broad Scope Of ITAR-Controlled 'Defense Services'-Lessons Learned From The Analytical Methods Case,* 6 Int'l Gov't Contractor 53, July 2009. (examining the unauthorized export of defense services in the DDTC settlement with Analytical Methods, Inc., and when TAAs may be required for providing defense services to foreign persons using dual-use products and technologies—even if no export of U.S.-origin, ITAR-controlled products or technology is involved; and the "creation" of defense articles when non-defense items are modified for a military purpose).

(b) [Reserved]

[62 FR 67275, Dec. 24, 1997]

§ 120.10 Technical Data[31]

(a) *Technical data* means, for purposes of this subchapter:

(1) Information, other than software as defined in § 120.10(a)(4) which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation.

(2) Classified information relating to defense articles and defense services;

(3) Information covered by an invention secrecy order;[32]

(4) Software as defined in § 121.8(f) of this subchapter directly related to defense articles;

(5) This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in § 120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.[33]

(b) [Reserved]

[58 FR 39283, July 22, 1993, as amended at 61 FR 48831, Sept. 17, 1996; 71 FR 20537, Apr. 21, 2006]

§ 120.11 Public Domain

(a) *Public domain* means information which is published and which is generally accessible or available to the public:

(1) Through sales at newsstands and bookstores;

(2) Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;

(3) Through second class mailing privileges granted by the U.S. Government;

(4) At libraries open to the public or from which the public can obtain documents;

(5) Through patents[34] available at any patent office;

(6) Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States;

(7) Through public release (*i.e.,* unlimited distribution) in any form (*e.g.,* not necessarily in published form) after approval by the cognizant U.S. Government department or agency[35] (see also § 125.4(b)(13) of this

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[31] Practice tip: When a non-U.S. company orders an ITAR-controlled part from a U.S. supplier, the non-U.S. company's specifications will frequently list various acceptance test data (e.g., Certificate of Compliance with specifications, thermal analysis, stress analysis, etc.) as deliverables. Such information qualifies as technical data as defined in ITAR § 120.10. The deliverable data should therefore be specifically itemized in the non-U.S. company's purchase order, assigned a value, and covered in the U.S. suppliers' DSP-5 export license application. (Contributor: Gary Stanley, Esq., 202-686-4854, gstanley@glstrade.com).

[32] If a secrecy order has been placed on a U.S. patent application, the application (including any technical data contained therein) may not be exported from the United States or filed in a foreign country unless authorized under the secrecy order. 37 CFR 5.11(d), 5.5.

[33] Practice tip: Caution: What begins as marketing discussions or general system descriptions can easily slip into discussions of information required for the use of a defense article. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132.)

[34] *But see* § 125.2(b) regarding data "exceeds that which is used to support a domestic filing of a patent application."

[35] The cognizant agency is DoD Office of Security Review, 1155 Defense Pentagon, Washington, DC 20301-1155. *See* 32 CFR Part 250 and DoD Instruction 5230.29, SECURITY AND POLICY REVIEW OF DOD INFORMATION FOR PUBLIC RELEASE (Jan. 8, 2009), http://www.dtic.mil/whs/directives/corres/pdf/523029p.pdf (last viewed Sept. 1, 2012) stating in part:

2. SUBMISSION PROCEDURES

a. Detailed Procedures. The following procedures apply to all information required to be submitted to OSR for clearance:

subchapter);

(8) Through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. *Fundamental research* is defined[36] to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if:

(i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or

(ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

(b) [Reserved]

§ 120.12 Directorate of Defense Trade Controls

Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, Washington, D.C. 20522-0112.[37]

[71 FR 20537, Apr. 21, 2006]

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(1) Requests
(a) Paper submissions of packages. A minimum of three hard copies of material, in its final form, shall be submitted, together with a signed DD Form 1910, "Clearance Request for Public Release of Department of Defense Information," to the Chief, Office of Security Review, 1155 Defense Pentagon, Washington, DC 20301-1155.
(b) Electronic submissions of packages. One soft copy of the material, in its final form (Microsoft Word), shall be submitted, together with a signed DD Form 1910, by e-mail to secrev1@whs.mil.
(2) Material submitted for review shall be approved by the Head of the DoD Component or an authorized representative as may be delegated in writing to indicate approval of the material proposed for public release.
(3) All information submitted for review to OSR must first be coordinated within the originating DoD Component to ensure that it reflects the organization's policy position; does not contain classified, controlled unclassified, or critical information requiring withholding; and is reviewed for operations security in accordance with References (h) and (i).
(4) Only the full and final text of material proposed for release shall be submitted for review. Notes, outlines, briefing charts, etc., may not be submitted as a substitute for a complete text. OSR reserves the right to return draft or incomplete documents without action.
(5) Abstracts to be published in advance of a complete paper, manuscript, etc., require clearance. Clearance of an abstract does not fulfill the requirement to submit the full text for clearance before its publication. If an abstract is cleared in advance, that fact, and the OSR case number assigned to the abstract, shall be noted on the DD Form 1910 or other transmittal when the full text is submitted.
b. Other Requirements. The requirements of References (d) and (j) shall apply to the processing of information proposed for submission to Congress.
c. Web Site Publication. Information intended for placement on Web sites, or other publicly accessible computer servers, which are available to anyone, without access controls, requires review and clearance for public release if it meets the requirements of paragraph 1 of Enclosure 3. Web site clearance questions should be directed to the component's Web site manager. Review and clearance for public release is not required for information to be placed on DoD Web sites or computer servers that restrict access to authorized users.
d. Basic Research. Submitters shall comply with DoD guidance on basic scientific and technical research review in DoDI 5230.27 (Reference (n)).

[36] *Compare* National Security Decision Directive 189 (Sep. 21, 1985), stating in part: "Fundamental research means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons." Practice tip: There is an open debate about whether the exemption includes only the "results" of fundamental research, or also includes the information required to conduct such research. *See* Sense of the Senate provision in S.2198, sec. 401, "It is the sense of the Senate that the use of technology by an institution of higher education in the United States should not be treated as an export of such technology for purposes of section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2404) and any regulations prescribed thereunder, as currently in effect pursuant to the provisions of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), or any other provision of law, if such technology is so used by such institution for fundamental research." Compare to the opposite position stated by DoD in 71 FR 46434, 46436 (14 Aug. 2006). (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132.)

[37] DDTC website, http://www.pmddtc.state.gov/about/contact_information.html (updated Sept. 28, 2011; last viewed Sept. 1, 2012), lists the mailing addresses.

§ 120.13 United States

United States, when used in the geographical sense, includes the several states, the Commonwealth of Puerto Rico, the insular possessions of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, any territory or possession of the United States, and any territory or possession over which the United States exercises any powers of administration, legislation, and jurisdiction.[38]

§ 120.14 Person

Person means[39] a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities.[40] If a provision in this subchapter does not refer exclusively to a foreign person (§ 120.16) or U.S. person (§120.15), then it refers to both.

§ 120.15 U.S. Person

U.S. person means a person (as defined in § 120.14 of this part) who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20)[41] or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3)[42]. It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity. It does not include any foreign person as defined in § 120.16 of this part.

[71 FR 20537, Apr. 21, 2006]

§ 120.16 Foreign Person

Foreign person means any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (*e.g.*, diplomatic missions).[43]

[71 FR 20537, Apr. 21, 2006]

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[38] *Compare* 19 U.S.C. 1401(h): "The term "United States" includes all Territories and possessions of the United States except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam" (from Tariff Act of 1930, for determining the Customs territory of the United States).

[39] *Compare* 1 U.S.C. § 1 ("The words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.)

[40] *Compare* 1 U.S.C. § 5 ("The word "company" or "association", when used in reference to a corporation, shall be deemed to embrace the words "successors and assigns of such company or association", in like manner as if these last-named words, or words of similar import, were expressed.")

[41] 8 U.S.C. 1101(a)(20) states: "The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." [Commonly referred to as "green card" holders.]. *But see United States v. Yakou,* 393 F.3rd 231 (D.C. Cir. 2005) (defendant's lawful permanent residence status changed when he left the United States, and thus he was not a "U.S. person" under AECA or ITAR).

[42] 8 U.S.C. 1324b(a)(3) states:

Protected individual" defined. As used in paragraph (1), the term "protected individual" means an individual who—

(A) is a citizen or national of the United States [Practice tip: Thus, even if one is a dual citizen of the US and another country, one is still a "US Person" and not a "Foreign Person." ITAR-controlled data can be released to such US Persons without a license.], or

(B) is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 1160(a) or 1255a (a)(1) of this title, is admitted as a refugee under section 1157 of this title, or is granted asylum under section 1158 of this title; but does not include

(i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and

(ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

[43] Practice tip: Although a U.S. person who is "seconded to" a foreign company or otherwise represents a foreign person is not defined as a foreign person in 120.16, see 22 U.S.C. 2778(g)(6): "The President may require a license (or other form of authorization) before any item on the United States Munitions List is sold or otherwise transferred to the control or possession of a foreign person or a person acting on behalf of a foreign person."

§ 120.17 Export

(a) *Export* means:

(1) Sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a person whose personal knowledge includes technical data; or

(2) Transferring registration, control or ownership to a foreign person of any aircraft, vessel, or satellite covered by the U.S. Munitions List, whether in the United States or abroad; or

(3) Disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy, any agency or subdivision of a foreign government (*e.g.*, diplomatic missions); or

(4) Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad;[44] or

(5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.

(6) A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. However, for certain limited purposes (see § 126.1 of this subchapter), the controls of this subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.

(b) [Reserved]

§ 120.18 Temporary[45] Import[46]

Temporary import means bringing into the United States from a foreign country any defense article that is to be returned to the country from which it was shipped or taken, or any defense article that is in transit to another foreign destination.[47] Temporary import includes withdrawal of a defense article from a customs bonded warehouse or foreign trade zone for the purpose of returning it to the country of origin or country from which it was shipped or for shipment to another foreign destination. Permanent imports are regulated by the Attorney General under the direction of the Department of Justice's Bureau of Alcohol, Tobacco, Firearms, and Explosives (see 27 CFR parts 447, 478, 479, and 555).

[71 FR 20537, Apr. 21, 2006]

§ 120.19 Reexport or Retransfer[48]

Reexport or retransfer means the transfer of defense articles or defense services to an end use, end user or destination not previously authorized by license, written approval, or exemption pursuant to this subchapter.

§ 120.20 License

License means a document bearing the word "license" issued by the Directorate of Defense Trade Controls or its authorized designee which permits the export or temporary import of a specific defense article or defense service controlled by this subchapter.

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[44] This section is roughly equivalent to the definitions of "deemed export" and "deemed reexport" in the Export Administrations Regulations, 15 CFR § 734.2(b)(2)(ii) and § 734.2(b)(5), which state the release of controlled technology to a foreign national "is deemed to be an export to the home country or countries of the foreign national," and "any release of technology or source code to a foreign nationals of another country is a deemed reexport to the home country or countries of the foreign national." See also ITAR § 125.2(c) requiring licenses for disclosures of technical data to foreign persons.

[45] The word "temporary" is not defined in ITAR, but see §§ 123.4 and 123.5, which limit temporary imports to 4 years.

[46] Temporary imports use the DSP-61 license or § 123.4 exemption.

[47] "Temporary Export" has no similar definition in the ITAR. Practice tip: Nowhere in the USML is there a reference to the country of origin of defense articles. Thus, wholly foreign-made articles are still "defense articles" if they were, e.g., specifically designed or modified for a military end-item (or are information directly related to such end-items). Whether the defense articles require a license from DDTC for a particular transaction is a different question. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132.)

[48] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012).

[71 FR 20537, Apr. 21, 2006]

§ 120.21 Manufacturing License Agreement

An agreement (*e.g.*, contract) whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates:

(a) The export of technical data (as defined in § 120.10) or defense articles or the performance of a defense service; or

(b) The use by the foreign person of technical data or defense articles previously exported by the U.S. person. (See part 124 of this subchapter).

§ 120.22 Technical Assistance Agreement

An agreement (*e.g.*, contract) for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included under this section, provided production rights or manufacturing know-how are not conveyed. Should such rights be transferred, § 120.21 is applicable. (See part 124 of this subchapter).

§ 120.23 Distribution Agreement

An agreement (*e.g.*, a contract) to establish a warehouse or distribution point abroad for defense articles exported from the United States for subsequent distribution to entities in an approved sales territory (see part 124 of this subchapter).

§ 120.24 Port Directors

Port Directors of U.S. Customs and Border Protection means the U.S. Customs and Border Protection Port Directors at the U.S. Customs and Border Protection Ports of Entry (other than the port of New York, New York, where their title is the *Area Directors*).

[70 FR 50959, Aug. 29, 2005]

§ 120.25 Empowered Official

(a) *Empowered Official* means a U.S. person who:

(1) Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and

(2) Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and

(3) Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and

(4) Has the independent authority to:

(i) Enquire [sic] into any aspect of a proposed export or temporary import by the applicant, and

(ii) Verify the legality of the transaction and the accuracy of the information to be submitted; and

(iii) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

(b) [Reserved]

§ 120.26 Presiding Official

Presiding Official means a person authorized by the U.S. Government to conduct hearings in administrative

proceedings.

§ 120.27 U.S. Criminal Statutes

(a) For purposes of this subchapter, the phrase *U.S. criminal statutes* means:

(1) Section 38 of the Arms Export Control Act (22 U.S.C. 2778);

(2) Section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410);

(3) Sections 793,[49] 794,[50] or 798[51] of title 18, United States Code (relating to espionage involving defense or classified information) or § 2339A[52] of such title (relating to providing material support to terrorists);

(4) Section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16);[53]

(5) Section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. 1705);[54]

(6) Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1)[55] or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd-2)[56];

(7) Chapter 105 of title 18, United States Code (relating to sabotage);[57]

(8) Section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(b))[58];

(9) Sections 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2077,[59] 2122,[60] 2131,[61] 2134,[62] 2272,[63] 2274,[64] 2275,[65] and 2276[66]);

(10) Section 601 of the National Security Act of 1947 (relating to intelligence identities protection; 50 U.S.C. 421);[67]

(11) Section 603(b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5113(b) and (c))[68];

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[49] 18 USC § 793. Gathering, transmitting, or losing defense information.
[50] 18 USC § 794. Gathering or delivering defense information to aid foreign government.
[51] 18 USC § 798. Disclosure of classified information.
[52] 18 USC § 2339A. Providing material support to terrorists.
[53] 50 App. USC § 16. Offenses; punishment; forfeitures of property.
[54] 50 USC § 1705. Penalties
[55] 15 USC § 78dd-1. Prohibited foreign trade practices by issuers.
[56] 15 USC § 78dd-2. Prohibited foreign trade practices by domestic concerns.
[57] 18 USC §§ 2151-2157. Chapter 105. Sabotage. **§ 2151.** Definitions
§ 2152. Fortifications, harbor defenses, or defensive sea areas
§ 2153. Destruction of war material, war premises, or war utilities
§ 2154. Production of defective war material, war premises, or war utilities
§ 2155. Destruction of national-defense materials, national-defense premises, or national-defense utilities
§ 2156. Production of defective national-defense material, national-defense premises, or national-defense utilities
§ 2157. Repealed. Pub.L. 103-322, Title XXXIII, § 330004(13), Sept. 13, 1994, 108 Stat. 2142
[58] 50 U.S.C. 783(b). Receipt of, or attempt to receive, classified information by foreign agent.
[59] 42 USC § 2077. Unauthorized dealings in special nuclear material.
[60] 42 USC § 2122. Prohibitions governing atomic weapons.
[61] 42 USC § 2131. License required.
[62] 42 USC § 2134. Medical, industrial, and commercial licenses. [Authorization to issue licenses to persons for use of facilities for use in medical therapy.]
[63] 42 USC § 2272. Violation of specific sections. [Penalties for violations of Atomic Energy Act.]
[64] 42 USC § 2274. Communication of Restricted Data.
[65] 42 USC § 2275. Receipt of Restricted Data.
[66] 42 USC § 2276. Tampering with Restricted Data.
[67] 50 USC 421. Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources. [Intelligence Identities Protection Act (IIPA), which prohibits disclosure of information by persons having or having had access to classified information that identifies covert agent.] Significant cases: *In re Grand Jury Subpoena, Judith Miller*, C.A.D.C.2006, 438 F.3d 1141, 370 U.S.App.D.C. 4, ordered unsealed 493 F.3d 152, 377 U.S.App.D.C. 179; *Wilson v. Libby*, C.A.D.C.2008, 535 F.3d 697, 383 U.S.App.D.C. 82, rehearing en banc denied, certiorari denied 129 S.Ct. 2825, 174 L.Ed.2d 552 (IIPA was not "comprehensive remedial scheme," . . . . rather, the IIPA was pure criminal statute, that only authorized criminal prosecution of those who intentionally disclosed identity of covert agent.)
[68] 22 USC § 5113(b) and (c). Section 5113, Pub.L. 99-440, Title VI, § 603, Oct. 2, 1986, 100 Stat. 1114, related to enforcement of this

and [sic][69]

(12) Section 371 of title 18, United States Code[70] (when it involves conspiracy to violate any of the above statutes).

(13) Sections 3, 4, 5, and 6 of the Prevention of Terrorist Access to Destructive Weapons Act of 2004,[71] relating to missile systems designed to destroy aircraft (18 U.S.C. 2332g),[72] prohibitions governing atomic weapons (42 U.S.C. 2122),[73] radiological dispersal services (18 U.S.C. 2332h),[74] and variola virus (18 U.S.C. 175b).[75]

(b) [Reserved]

[58 FR 39283, July 22, 1993, as amended at 71 FR 20537, Apr. 21, 2006]

§ 120.28 Listing of Forms Referred To in This Subchapter[76]

The forms referred to in this subchapter are available from the following government agencies:

(a) Department of State, Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, Washington, DC 20522-0112.

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chapter and penalties for noncompliance. Sections 5113 was repealed by Pub.L. 103-149, § 4(a)(1), (2), Nov. 23, 1993, 107 Stat. 1504, in which President certified to Congress that interim government, elected on nonracial basis through free and fair elections, had taken office in South Africa. On June 8, 1994, the President so certified, see section 4(a)(2) of Pub.L. 103-149, set out as a note under 22 USC § 5001.

[69] So in original. The "and" should be placed after item (12), the penultimate statute in the list.

[70] 18 USC § 371. Conspiracy to commit offense or to defraud United States

[71] Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458 §§ 6903 – 6906.

[72] 18 USC § 2332g. Missile systems designed to destroy aircraft. (Unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use an explosive or incendiary rocket or missile.)

[73] 42 USC § 2122. Prohibitions governing atomic weapons. (a) It shall be unlawful, except as provided in section 2121 of this title [42 USC § 2121, Authority of Commission], for any person knowingly, inside or outside of the United States, to participate in the development of, manufacture, produce, transfer, acquire, receive, possess, import, export, or use, or possess and threaten to use, any atomic weapon.

[74] 18 USC § 2332h. Radiological dispersal devices. (Unlawful for any person to knowingly produce, construct, acquire, transfer, possess, import, export, possess, or threaten to use any weapon that is designed or intended to release dangerous radiation or any device capable of endangering human life.)

[75] 18 USC § 175b. Possession by restricted persons. No restricted person shall ship or transport in or affecting interstate or foreign commerce, or possess in or affecting interstate or foreign commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce. . . .

[76] Not mentioned in the ITAR, but available for use, are the DSP-6 and DSP-119. The DTrade form DSP-6, "Application for Amendment to a DSP-5 License", is available at http://www.pmddtc.state.gov/DTRADE/pureedge/dt2/DSP-6v4.0_prod.xfdl. See DDTC publication, "Guidelines for Completion of a Form DSP-6 Application for Amendment of a DSP-5 License, Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data" (undated 8-page document), *available at* http://www.pmddtc.state.gov/DTRADE/pureedge/docs/D-TradeDSP-6_Instructions.pdf (undated) (last viewed Sept. 1, 2012), stating in part:

> The Form DSP-6 is used to request an amendment to a DSP-5 license authorized by the Directorate of Defense Trade Controls (DDTC) for the permanent export of UNCLASSIFIED defense articles (*i.e.* unclassified hardware and/or unclassified technical data). In accordance with 22 CFR §123.25, DDTC will consider approval of an amendment to a DSP-5 license for the following reasons:
>
> 1. Addition of a U.S. freight forwarder or U.S. consignor.
> 2. An obvious typographical error, the correction of which is supported by the documentation submitted with the original license request.
> 3. A change in the U.S. source or manufacturer of the commodity or a change in part number of the equipment originally authorized for export. When changing part numbers the requester must certify that the change will not result in an enhancement, upgrade, or change to the capability of the commodity originally authorized for export (see Block 9).
> 4. A change of foreign intermediate freight forwarder when that entity is transporting the equipment and will not process the defense article in any manner or use it in any way (e.g., integrate, modify).
> 5. A change in location of the license applicant or its subsidiary(s).
> 6. A change to a license due to an acquisition or merger.
>
> Requests for changes due to change in location or because of an acquisition or merger (*i.e.*, numbers 5 and 6 above) cannot be made until the registered applicant(s) have, in accordance with 22 CFR 122, amended the information contained in their Statement of Registration (DS-2032). .... The DSP-119, "Application for Amendment to License for Export or Temporary Import of Classified or Unclassified Defense Articles and Related Classified Technical Data, " is available at http://www.pmddtc.state.gov/forms/DSP119.htm (last viewed Sept. 1, 2012). As of October 1, 2009, the DSP-119 is the only form accepted through the Electronic Licensing Entry System ("ELLIE," DDTC's legacy partial-electronic system. You must be a member of ELLIE in order to participate.) This form may only be used to amend the DSP-85. All other amendments must be submitted through DTrade2.

(1) Application/License for permanent export of unclassified defense articles and related technical data (Form DSP-5).

(2) Statement of Registration (Form DS-2032).

(3) Application/License for temporary import of unclassified defense articles (Form DSP-61).

(4) Application/License for temporary export of unclassified defense articles (Form DSP-73).

(5) Non-transfer and use certificate (Form DSP-83).

(6) Application/License for permanent/temporary export or temporary import of classified defense articles and related classified technical data (Form DSP-85).[77]

(7) Authority to Export Defense Articles and Defense Services sold under the Foreign Military Sales program (Form DSP-94).

(8) Commodity Jurisdiction (CJ) Determination Form (Form DS-4076).

(b) Department of Commerce, Bureau of Industry and Security:

(1) International Import Certificate (Form BIS-645P/ATF-4522)[78].

(2) Electronic Export Information filed via the Automated Export System.

(3) Department of Defense, Defense Security Cooperation Agency: Letter of Offer and Acceptance (DD Form 1513).

(c) Department of Defense, Defense Security Cooperation Agency: Letter of Offer and Acceptance.

[58 FR 39283, July 22, 1993, as amended at 68 FR 61100, Oct. 27, 2003; 71 FR 20537, Apr. 21, 2006; 75 FR 46844, Aug. 4, 2010; 76 FR 45197, July 28, 2011; 77 FR 22670, Apr. 17, 2012]

§ 120.29 Missile Technology Control Regime

(a) For purposes of this subchapter, *Missile Technology Control Regime (MTCR)* means the policy statement between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;[79]

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[77] Per DDTC announcement on May 13, 2011, at http://pmddtc.state.gov/, DDTC no longer accepts the multi-page DSP-85 license application paper form. Submissions must be now be made using the DSP-85 downloadable and fillable form, and mailed or delivered to DDTC. No changes have been made to the content of the form itself. Download the form at: http://pmddtc.state.gov/licensing/documents/DSP_85.pdf (May, 2010) (last viewed Sept. 1, 2012).

[78] This section amended by 77 FR 22668 (Apr. 17, 2012), removing reference to DSP-53. This amendment ended DDTC's former practice of accepting DSP-53 submissions. Supplementary information in the notice stated, in part:

> The Arms Export Control Act authorizes the President to control the import and export of defense articles. Executive Order 11958, as amended, delegated the authority to regulate permanent and temporary exports and temporary imports of defense articles to the Secretary of State, and delegated the authority to regulate permanent imports of defense articles to the Attorney General. The International Import Certificate Form BIS-645P/ATF-4522/DSP-53 is identified as a form issued by the Department of Commerce's Bureau of Industry & Security (BIS); the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE); and the Department of State's Directorate of Defense Trade Controls (DDTC). It is meant to standardize procedures used to facilitate international trade. DDTC receives a few hundred DSP-53 submissions a year, and typically they are submitted by persons claiming the temporary import licensing exemption available at § 123.4, but who need documentation of U.S. Government approval of the temporary import. The Department of State's DSP-61 (Application/License for Temporary Import of Unclassified Defense Articles) is the primary means by which the Department exercises its authority to control the temporary import of defense articles. Therefore, DDTC revises § 123.4 to implement its decision to no longer accept submissions of the International Import Certificate (DSP-53). For temporary imports of defense articles meeting the conditions of the exemption at § 123.4, but for which the foreign exporter requires documentation, the U.S. importer will be required to obtain a DSP-61. BATFE and BIS will continue to adjudicate International Import Certificate submissions for items under their jurisdiction. DDTC also revises § 123.3 to specify that a DSP-61 is accepted to support the use of a temporary import exemption but not in satisfaction of requirements for a permanent import. . . .

[79] As a subscriber to the Missile Technology Control Regime (MTCR), the United States acts in accordance with the Guidelines for Sensitive Missile Transfers. These guidelines are meant to limit the risks of proliferation of weapons of mass destruction by controlling transfers that could contribute to their delivery systems. The Guidelines form the basis for controlling transfers to any destination beyond the government's jurisdiction, all delivery systems (other than manned aircraft) capable of delivering weapons of mass destruction, and

(b) The term *MTCR Annex* means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

(c) *List of all items on the MTCR Annex.* Section 71(a) of the Arms Export Control Act (22 U.S.C. § 2797) refers to the establishment as part of the U.S. Munitions List of a list of all items on the MTCR Annex, the export of which is not controlled under section 6(l) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(l)), as amended. In accordance with this provision, the list of MTCR Annex items shall constitute all items on the U.S. Munitions List in § 121.16 of this subchapter.

§ 120.30 The Automated Export System (AES)

The Automated Export System (AES) is the Department of Commerce, Bureau of Census, electronic filing of export information.[80] The AES shall serve as the primary system for collection of export data for the Department of State. In accordance with this subchapter U.S. exporters are required to report export information using AES for all hardware exports. Exports of technical data and defense services shall be reported directly to the Directorate of Defense Trade Controls (DDTC). Also, requests for special reporting may be made by DDTC on a case-by-case basis, (*e.g.*, compliance, enforcement, congressional mandates).

[68 FR 61100, Oct. 27, 2003]

§ 120.31 North Atlantic Treaty Organization

North Atlantic Treaty Organization (NATO) is comprised of the following member countries:[81] Albania, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, The Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, United Kingdom, and the United States.

[77 FR 22670, Apr. 17, 2012]

§ 120.32 Major Non-NATO Ally

Major non-NATO ally means a country that is designated in accordance with § 517 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321k) as a major non-NATO ally for purposes of the Foreign Assistance Act of 1961 and the Arms Export Control Act (22 U.S.C. 2751 et seq.) (22 U.S.C. 2403(q)). The following countries have been designated as major non-NATO allies: Afghanistan,[82] Argentina, Australia, Bahrain, Egypt, Israel, Japan, Jordan, Kuwait, Morocco, New Zealand, Pakistan,[83] the Philippines, Thailand, and Republic of Korea. Taiwan

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equipment and technology relevant to missiles whose performance in terms of payload and range exceed certain parameters. The MTCR is an informal and voluntary association of countries which share the goals of non-proliferation of unmanned delivery systems capable of delivering weapons of mass destruction, and which seek to coordinate national export licensing efforts aimed at preventing their proliferation. The MTCR was originally established in 1987 by Canada, France, Germany, Italy, Japan, the United Kingdom and the United States. Since that time, the number of MTCR partners has increased to a total of 34 countries, all of which have equal standing within the Regime. The MTCR was initiated partly in response to the increasing proliferation of weapons of mass destruction (WMD), *i.e.,* nuclear, chemical and biological weapons. *See generally* http://www.mtcr.info/english/index.html (last viewed Sept. 1, 2012).

[80] *See generally* http://www.aesdirect.gov/ (last viewed Sept. 1, 2012). The Automated Export System (AES), is the instrument used for collecting export trade information. "The data collected from this source is compiled by the U.S. Census Bureau and functions as the basis for the official U.S. export trade statistics. These statistics are used to determine the balance of international trade, and are also designated for use as a principal economic indicator. Title 13, United States Code (U.S.C.), Chapter 9, Section 301 authorizes the Census Bureau to collect, compile and publish export trade data. Title 15, Code of Federal Regulations (CFR), Part 30, contains the regulatory provisions for preparing and filing the AES record. These data are used in the development of U.S. Government policies that affect the economy. These data also enable U.S. businesses to develop practical export marketing strategies as well as provide a means for the assessment of the impact of exports on the domestic economy. These data collected from the AES record are also used for export control purposes under Title 50, U.S.C., Export Administration Act, to detect and prevent the export of certain items by unauthorized parties or to unauthorized destinations or end users." 76 FR 4089-4091 (Jan 24, 2011).

[81] NATO is an Alliance that consists of 28 independent member countries. *See* http://www.nato.int/cps/en/natolive/nato_countries.htm (updated Mar. 10, 2009) (last viewed Sept. 1, 2012).

[82] Added July 7, 2012. *See* http://www.state.gov/r/pa/prs/ps/2012/07/194662.htm. Although Afghanistan is now an approved NNMA, and sales to the government of Afghanistan are permitted, the ITAR § 126.1 restrictions will continue to apply to the sales of defense articles to non-governmental entities in Afghanistan until the ITAR is amended to remove Afghanistan from § 126.1.

[83] Regarding applications for export licenses to Pakistan, see DDTC Notice to Exporters, Pakistan Policy Update (Oct. 1, 2011) *available at* http://pmddtc.state.gov/FR/2011/Pakistan_WebNoticeExporters.pdf (last viewed Sept. 1, 2012):

(October 1, 2011) Section 203 of the Enhanced Partnership with Pakistan Act of 2009 (Public Law 111-73) prohibits for fiscal years

shall be treated as though it were designated a major non-NATO ally (as defined in section 644(q) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(q)) .

[70 FR 50959, Aug. 29, 2005]

§ 120.33 [Reserved][84]

§ 120.34 Defense Trade Cooperation Treaty Between the United States and the United Kingdom[85]

Defense Trade Cooperation Treaty between the United States and the United Kingdom means the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington D.C. and London, June 21 and 26, 2007. For additional information on making exports pursuant to this Treaty, see § 126.17 of this subchapter.

§ 120.35 [Reserved][86]

§ 120.36 United Kingdom Implementing Arrangement[87]

United Kingdom Implementing Arrangement means the Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation,[88] done at Washington D.C., February 14, 2008, as it may be amended.

§ 120.37 Foreign Ownership and Foreign Control[89]

Foreign ownership means more than 50 percent of the outstanding voting securities of the firm are owned by one or more foreign persons (as defined in §120.16). *Foreign control* means one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Foreign control is presumed to exist where foreign persons own 25 percent or more of the outstanding voting securities unless one U.S. person controls an equal or larger percentage.

[76 FR 45197, July 28, 2011]

§ 120.38 [Reserved]

§ 120.39 Regular Employee

(a) A regular employee means for purposes of this subchapter:[90]

2012-2014 the issuance of export licenses for major defense equipment (defined in 22 U.S.C. 2794(6)) to be exported to Pakistan absent an appropriate certification or waiver under Section 203 in the fiscal year. Since no certification or waiver has been issued for fiscal year 2012, exporters are advised not to submit such license requests to DDTC. A new notice will be issued in the event of a waiver or certification in fiscal year 2012.

[84] Added and reserved for the Treaty between the United States and Australia by 77 FR 16592 (Mar. 21, 2002).

[85] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012)

[86] Added and reserved for the Treaty between the United States and Australia by 77 FR 16592 (Mar. 21, 2002).

[87] This section was added by 77 FR 16592-16643 (Mar. 21, 2012; effective April 13, 2012).

[88] Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, U.S.-U.K., Oct. 8, 2010, S. Treaty Doc. No. 110-7, 2007 WL 3390904; Defense Trade Cooperation Treaties Implementation Act of 2010, PL 111-266, October 8, 2010, 124 Stat. 2797 (2010).

[89] Added by 76 FR 45195-45198 (July 28, 2011).

[90] Practice tip: The following is a checklist to determine whether a person is a "regular employee":
The person must be permanently and directly employed by the company, or …

- In a long-term contractual relationship with where the individual works at the company's facilities, and
- works under the company's direction and control, and
- works full time and exclusively for the company, and
- executes nondisclosure certifications for the company, and

(1) An individual permanently and directly employed by the company, or

(2) An individual in a long term contractual relationship with the company where the individual works at the company's facilities, works under the company's direction and control, works full time and exclusively for the company, and executes nondisclosure certifications for the company, and where the staffing agency that has seconded the individual has no role in the work the individual performs (other than providing that individual for that work) and the staffing agency would not have access to any controlled technology (other than where specifically authorized by a license).

[76 FR 28177, May 16, 2011]

- the staffing agency that seconded the individual has no role in the work the individual performs and the staffing agency would not have access to any controlled technology (unless specifically authorized by a license).

PART 121: THE UNITED STATES MUNITIONS LIST

Enumeration of Articles

Section

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121.16 Missile Technology Control Regime Annex

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.
Source: 58 FR 39287, July 22, 1993, unless otherwise noted.

Enumeration of Articles:

§ 121.1 General. The United States Munitions List

(a) The following articles, services and related technical data are designated as defense articles and defense services pursuant to 38 and 47(7) of the Arms Export Control Act (22 U.S.C. 2778 and 2794(7)).[91] Changes in designations will be published in the Federal Register. Information and clarifications on whether specific items are defense articles and services under this subchapter may appear periodically through the Internet Web site of the Directorate of Defense Trade Controls.

(b) *Significant Military Equipment:* An asterisk precedes certain defense articles in the following list. The asterisk means that the article is deemed to be ``Significant Military Equipment'' to the extent specified in § 120.7 of this subchapter. The asterisk is placed as a convenience to help identify such articles. Note that technical data directly related to the manufacture or production of any defense articles enumerated in any

[91] Defendants charged with the illegal export of defense articles have generally been unsuccessful in challenging the placement of items or categories of items in the USML. *See, e.g.,* United States v. Moller-Butcher, 560 F. Supp. 550 (D. Mass., 1983) (Defendants were challenging whether certain items should have been placed on the list at all because they did not "make a significant contribution to the military potential of any other country," a requirement for placement on the USML.; United States v. Martinez, 904 F. 2d 601, 602 (11 Cir., 1990) ("The question whether a particular item should have been placed on the Munitions List possesses nearly every trait that the Supreme Court has enumerated traditionally renders a question political." (citing Baker v. Carr, 369 U.S. 186, 217 (1962)). Defendants were also unsuccessful in asserting a right to discover materials which bear on the question of whether what they were alleged to have exported illegally fell within a USML category. Memorandum and Order on Motion to Compel Production of Documents (#87), United States v. Zhen Zhou Wu, Etc., et al., Doc. 109, Case No. 1:08-cr-10386-PBS (D. Mass. Filed Nov. 20, 2009) (denying motion to compel Government to produce documents which formed basis for assertion that certain objects were on USML). *But see* United States v. Pulungan, 569 F.3d 326, 328, C.A.7 (Wis., 2009), reh'g denied (2009) ("The Directorate's claim of authority to classify any item as a "defense article," without revealing the basis of the decision and without allowing any inquiry by the jury, would create serious constitutional problems. It would allow the sort of secret law that Panama Refining Co. v. Ryan, 293 U.S. 388, 55 S.Ct. 241, 79 L.Ed. 446 (1935), condemned. … A regulation is published for all to see. People can adjust their conduct to avoid liability. A designation by an unnamed official, using unspecified criteria, that is put in a desk drawer, taken out only for use at a criminal trial, and immune from any evaluation by the judiciary, is the sort of tactic usually associated with totalitarian régimes. Government must operate through public laws and regulations. See United States v. Farinella, 558 F.3d 695 (7th Cir.2009). Thus the United States must prove, and not just assert, that the Leupold Mark 4 CQ/T riflescope is "manufactured to military specifications.""") *See also* United States v. Zhen Zhou Wu, 680 F. Supp.2d 287 (D.Mass. 2010) (holding that in prosecution under the Arms Export Control Act for the alleged illegal export of defense articles and technology controlled by the Department of Commerce from the United States to the People's Republic of China, the government could not rely alone on the introduction of a certificate stating that the items allegedly exported were on the Munitions List and/or the Commerce Control List at the time they were exported in order to meet its burden of proof under the Confrontation Clause, but instead expert testimony about the items from Commerce and State Department officials was constitutionally required).

category that are designated as Significant Military Equipment (SME) shall itself be designed [sic][92] SME.

(c) *Missile Technology Control Regime Annex (MTCR)*. Certain defense articles and services are identified in § 121.16 as being on the list of MTCR Annex items on the United States Munitions List. These are articles as specified in § 120.29 of this subchapter and appear on the list at § 121.16.

Category I — Firearms, Close Assault Weapons and Combat Shotguns[93]

*(a) Non-automatic and semi-automatic firearms to caliber .50 inclusive (12.7 mm).

*(b) Fully automatic firearms to .50 caliber inclusive (12.7 mm).

*(c) Firearms or other weapons (*e.g.*, insurgency-counterinsurgency, close assault weapons systems) having a special military application regardless of caliber.

*(d) Combat shotguns. This includes any shotgun with a barrel length less than 18 inches.

*(e) Silencers, mufflers, sound and flash suppressors for the articles in (a) through (d) of this category and their specifically designed, modified or adapted components and parts.

(f) Riflescopes manufactured to military specifications (See category XII(c) for controls on night sighting devices.) [94]

*(g) Barrels, cylinders, receivers (frames) or complete breech mechanisms for the articles in paragraphs (a) through (d) of this category.

(h) Components, parts, accessories and attachments for the articles in paragraphs (a) through (g) of this category.

(i) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (h) of this category. Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

(j) The following interpretations explain and amplify the terms used in this category and throughout this subchapter:

(1) A firearm is a weapon not over. 50 caliber (12.7 mm) which is designed to expel a projectile by the action of an explosive or which may be readily converted to do so.

(2) A rifle is a shoulder firearm which can discharge a bullet through a rifled barrel 16 inches or longer.

(3) A carbine is a lightweight shoulder firearm with a barrel under 16 inches in length.

(4) A pistol is a hand-operated firearm having a chamber integral with or permanently aligned with the bore.

(5) A revolver is a hand-operated firearm with a revolving cylinder containing chambers for individual cartridges.

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[92] So in original. Sshould be “designated”.

[93] *See* DDTC, GUIDELINES FOR THE PERMANENT EXPORT, TEMPORARY EXPORT, AND TEMPORARY IMPORT OF FIREARMS AND AMMUNITION; U.S. MUNITIONS LIST CATEGORIES I AND III (Jan. 16, 2010), http://www.pmddtc.state.gov/licensing/documents/Guidelines_Firearms.pdf (last viewed Sept. 1, 2012).

[94] In United States v. Pulungan, 569 F.3d 326, C.A.7 (Wis., 2009), Doli Pulungan tried in 2007 to export 100 Leupold Mark 4® CQ/T® riflescopes (made in Oregon by Leupold & Stevens, Inc.). He planned to transship through Saudi Arabia to Indonesia in order to conceal the destination, because his clients told him that the United States had an embargo on military exports to Indonesia. There had been such an embargo between 1999 and 2005, but there was none when Pulungan tried to acquire and export the ‘scopes. He was charged with violation of § 2778(c), however, on the theory that the Leupold Mark 4 CQ/T riflescope is “manufactured to military specifications,” a jury found him guilty of attempting to export defense articles without a license, and the judge sentenced him to 48 months' imprisonment. The Court of Appeals reversed, holding that even if riflescopes in question were manufactured to military specifications, as would make them defense articles, evidence did not establish that defendant knew that the riflescopes he attempted to export were defense articles or that license was required to export them, as required to support his conviction for attempting to export defense articles without a license; website consulted by defendant did not state why riflescopes in question could not be shipped outside of the United States, and defendant's belief that what he was doing was illegal because of an embargo, which had been lifted two years earlier, was unrelated to unlicensed exports. International Security Assistance and Arms Export Control Act of 1976, § 212(a)(1), 22 U.S.C.A. § 2778(c).

(6) A submachine gun, "machine pistol" or "machine gun" is a firearm originally designed to fire, or capable of being fired, fully automatically by a single pull of the trigger.

NOTE: This coverage by the U.S. Munitions List in paragraphs (a) through (i) of this category excludes any non-combat shotgun with a barrel length of 18 inches or longer, BB, pellet, and muzzle loading (black powder) firearms. This category does not cover riflescopes and sighting devices that are not manufactured to military specifications. It also excludes accessories and attachments (*e.g.*, belts, slings, after market rubber grips, cleaning kits) for firearms that do not enhance the usefulness, effectiveness, or capabilities of the firearm, components and parts. The Department of Commerce regulates the export of such items. See the Export Administration Regulations (15 CFR parts 730-799). In addition, license exemptions for the items in this category are available in various parts of this subchapter (*e.g.*, §§ 123.17, 123.18 and 125.4).

Category II — Guns and Armament

*(a) Guns over caliber .50 (12.7 mm, whether towed, airborne, self-propelled, or fixed, including but not limited to, howitzers, mortars, cannons and recoilless rifles [sic][95].

(b) Flame throwers specifically designed or modified for military application.

(c) Apparatus and devices for launching or delivering ordnance, other than those articles controlled in Category IV.

*(d) Kinetic energy weapon systems specifically designed or modified for destruction or rendering mission-abort of a target.

(e) Signature control materials (*e.g.*, parasitic, structural, coatings, screening) techniques, and equipment specifically designed, developed, configured, adapted or modified to alter or reduce the signature (*e.g.*, muzzle flash suppression, radar, infrared, visual, laser/electro-optical, acoustic) of defense articles controlled by this category.

*(f) Engines specifically designed or modified for the self-propelled guns and howitzers in paragraph (a) of this category.

(g) Tooling and equipment specifically designed or modified for the production of defense articles controlled by this category.

(h) Test and evaluation equipment and test models specifically designed or modified for the articles controlled by this category. This includes but is not limited to diagnostic instrumentation and physical test models.

(i) Autoloading systems for electronic programming of projectile function for the defense articles controlled in this Category.

(j) All other components, parts, accessories, attachments and associated equipment specifically designed or modified for the articles in paragraphs (a) through (i) of this category. This includes but is not limited to mounts and carriages for the articles controlled in this category.

(k) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (j) of this category. Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

(l) The following interpretations explain and amplify the terms used in this category and elsewhere in this subchapter:

(1) The kinetic energy weapons systems in paragraph (d) of this category include but are not limited to:

(i) Launch systems and subsystems capable of accelerating masses larger than 0.1g to velocities in excess of 1.6 km/s, in single or rapid fire modes, using methods such as: electromagnetic, electrothermal, plasma,

[95] So in original, missing the closing parenthesis.

light gas, or chemical;

(ii) Prime power generation, electric armor, energy storage, thermal management; conditioning, switching or fuel-handling equipment; and the electrical interfaces between power supply gun and other turret electric drive function;

(iii) Target acquisition, tracking fire control or damage assessment systems; and

(iv) Homing seeker, guidance or divert propulsion (lateral acceleration) systems for projectiles.

(2) The articles in this category include any end item, component, accessory, attachment part, firmware, software or system that has been designed or manufactured using technical data and defense services controlled by this category.

(3) The articles specifically designed or modified for military application controlled in this category include any article specifically developed, configured, or adapted for military application.

Category III — Ammunition/Ordnance[96]

*(a) Ammunition/ordnance for the articles in Categories I and II of this section.

(b) Ammunition/ordnance handling equipment specifically designed or modified for the articles controlled in this category, such as, belting, linking, and de-linking equipment.

(c) Equipment and tooling specifically designed or modified for the production of defense articles controlled by this category.

(d) Components, parts, accessories, attachments and associated equipment specifically designed or modified for the articles in this category:

*(1) Guidance and control components for the articles in paragraph (a) of this category;

*(2) Safing, arming and fuzing components (including target detection and localization devices) for the articles in paragraph (a) of this category; and

(3) All other components, parts, accessories, attachments and associated equipment for the articles in paragraphs (a) through (c) of this category.

(e) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category. Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

(f) The following explains and amplifies the terms used in this category and elsewhere in this subchapter:

(1) The components, parts, accessories and attachments controlled in this category include, but are not limited to cartridge cases, powder bags (or other propellant charges), bullets, jackets, cores, shells (excluding shotgun shells), projectiles (including canister rounds and submunitions therefor), boosters, firing components therefor, primers, and other detonating devices for the defense articles controlled in this category.

(2) This category does not control cartridge and shell casings that, prior to export, have been rendered useless beyond the possibility of restoration for use as a cartridge or shell casing by means of heating, flame treatment, mangling, crushing, cutting or popping.

(3) Equipment and tooling in paragraph (c) of this category does not include equipment for hand-loading ammunition.

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[96] DDTC, Guidelines for The Permanent Export, Temporary Export, and Temporary Import of Firearms and Ammunition; U.S. Munitions List Categories I & III (Jan. 16, 2010); available at http://www.pmddtc.state.gov/licensing/documents/Guidelines_Firearms.pdf (last viewed Sept. 1, 2012).

(4) The articles in this category include any end item, component, accessory, attachment, part, firmware, software, or system that has been designed or manufactured using technical data and defense services controlled by this category.

(5) The articles specifically designed or modified for military application controlled in this category include any article specifically developed, configured, or adapted for military application.

Category IV — Launch Vehicles,[97] Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines

*(a) Rockets (including but not limited to meteorological and other sounding rockets), bombs, grenades, torpedoes, depth charges, land and naval mines, as well as launchers for such defense articles, and demolition blocks and blasting caps. (See § 121.11.)

*(b) Launch vehicles and missile and anti-missile systems including but not limited to guided, tactical and strategic missiles, launchers, and systems.

(c) Apparatus, devices, and materials for the handling, control, activation, monitoring, detection, protection,[98] discharge, or detonation of the articles in paragraphs (a) and (b) of this category. (See § 121.5.)

*(d) Missile and space launch vehicle power plants.

*(e) Military explosive excavating devices.

*(f) Ablative materials fabricated or semi-fabricated from advanced composites (*e.g.*, silica, graphite, carbon, carbon/carbon, and boron filaments) for the articles in this category that are derived directly from or specifically developed or modified for defense articles.

*(g) Non-nuclear warheads for rockets and guided missiles.

(h) All specifically designed or modified components, parts, accessories, attachments, and associated equipment for the articles in this category.

(i) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (h) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

Category V—Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents[99]

*(a) Explosives, and mixtures thereof:

(1) ADNBF (aminodinitrobenzofuroxan or 7-Amino 4,6-dinitrobenzofurazane-1-oxide) (CAS 97096-78-1);

(2) BNCP (cis-bis (5-nitrotetrazolato) tetra amine-cobalt (III) perchlorate) (CAS 117412-28-9);

(3) CL-14 (diamino dinitrobenzofuroxan or 5,7-diamino-4,6-dinitrobenzofurazane-1-oxide) (CAS 117907-74-1);

(4) CL-20 (HNIW or Hexanitrohexaazaisowurtzitane); (CAS 135285-90-4); chlathrates of CL-20 (see paragraphs (g)(3) and (4) of this category);

(5) CP (2-(5-cyanotetrazolato) penta aminecobalt (III) perchlorate); (CAS 70247-32-4);

(6) DADE (1,1-diamino-2,2-dinitroethylene, FOX7);

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[97] See also, 1 U.S.C. § 4 ("The word "vehicle" includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land.")

[98] So in original; 30 Fed. Reg. 9034 (July 17, 1965). May have intended to be "projection".

[99] In 77 FR 25944-25949 (May 2, 2012), DDTC proposed to amend the ITAR to revise Category V to more precisely describe the articles warranting control on the USML.

(7) DDFP (1,4-dinitrodifurazanopiperazine);

(8) DDPO (2,6-diamino-3,5-dinitropyrazine-1-oxide, PZO); (CAS 194486-77-6);

(9) DIPAM (3,3'-Diamino-2,2',4,4',6,6'-hexanitrobiphenyl or dipicramide) (CAS 17215-44-0);

(10) DNGU (DINGU or dinitroglycoluril) (CAS 55510-04-8);

(11) Furazans, as follows:

(i) DAAOF (diaminoazoxyfurazan);

(ii) DAAzF (diaminoazofurazan) (CAS 78644-90-3);

(12) HMX and derivatives (see paragraph (g)(5) of this category):

(i) HMX (Cyclotetramethylenetetranitramine; octahydro-1,3,5,7-tetranitro-1,3,5,7- tetrazine; 1,3,5,7-tetranitro-1,3,5,7-tetraza-cyclooctane; octogen, octogene) (CAS 2691-41-0);

(ii) Diflouroaminated analogs of HMX;

(iii) K-55 (2,4,6,8-tetranitro-2,4,6,8-tetraazabicyclo [3,3,0]-octanone-3, tetranitrosemiglycouril, or keto-bicyclic HMX) (CAS 130256-72-3);

(13) HNAD (hexanitroadamantane) (CAS 143850-71-9);

(14) HNS (hexanitrostilbene) (CAS 20062-22-0);

(15) Imidazoles, as follows:

(i) BNNII (Octohydro-2,5-bis(nitroimino) imidazo [4,5-d]Imidazole);

(ii) DNI (2,4-dinitroimidazole) (CAS 5213-49-0);

(iii) FDIA (1-fluoro-2,4-dinitroimidazole);

(iv) NTDNIA (N-(2-nitrotriazolo)-2,4-dinitro-imidazole);

(v) PTIA (1-picryl-2,4,5-trinitroimidazole);

(16) NTNMH (1-(2-nitrotriazolo)-2-dinitromethylene hydrazine);

(17) NTO (ONTA or 3-nitro-1,2,4-triazol-5-one) (CAS 932-64-9);

(18) Polynitrocubanes with more than four nitro groups;

(19) PYX (2,6-Bis(picrylamino)-3,5-dinitropyridine) (CAS 38082-89-2);

(20) RDX and derivatives:

(i) RDX (cyclotrimethylenetrinitramine), cyclonite, T4, hexahydro-1,3,5-trinitro-1,3,5-triazine, 1,3,5-trinitro-1,3,5-triaza-cyclohexane, hexogen, or hexogene) (CAS 121-82-4);

(ii) Keto-RDX (K-6 or 2,4,6-trinitro-2,4,6-triazacyclohexanone (CAS 115029-35-1);

(21) TAGN (Triaminoguanidinenitrate) (CAS 4000-16-2);

(22) TATB (Triaminotrinitrobenzene) (CAS 3058-38-6) (see paragraph (g)(7) of this category);

(23) TEDDZ (3,3,7,7-tetrabis(difluoroamine) octahydro-1,5-dinitro-1,5-diazocine;

(24) Tetrazoles, as follows:

(i) NTAT (nitrotriazol aminotetrazole);

(ii) NTNT (1-N-(2-nitrotriazolo)-4-nitrotetrazole);

(25) Tetryl (trinitrophenylmethylnitramine) (CAS 479-45-8);

(26) TNAD (1,4,5,8-tetranitro-1,4,5,8-tetraazadecalin) (CAS 135877-16-6)(see paragraph (g)(6) of this

category);

(27) TNAZ (1,1,3-trinitroazetidine) (CAS 97645-24-4) (see paragraph (g)(2) of this category);

(28) TNGU (SORGUYL or tetranitroglycoluril) (CAS 55510-03-7);

(29) TNP (1,4,5,8-tetranitro-pyridazino [4,5-d] pyridazine) (CAS 229176-04-9);

(30) Triazines, as follows:

(i) DNAM (2-oxy-4,6-dinitroamino-s-triazine) (CAS 19899-80-0);

(ii) NNHT (2-nitroimino-5-nitro-hexahydro-1,3,5 triazine) (CAS 130400-13-4);

(31) Triazoles, as follows:

(i) 5-azido-2-nitrotriazole;

(ii) ADHTDN (4-amino-3,5-dihydrazino-1,2,4-triazole dinitramide)(CAS 1614-08-0);

(iii) ADNT (1-amino-3,5-dinitro-1,2,4-triazole);

(iv) BDNTA ([Bis-dinitrotriazole]amine);

(v) DBT (3,3'-dinitro-5,5-bi-1,2,4-triazole) (CAS 30003-46-4);

(vi) DNBT (dinitrobistriazole) (CAS 70890-46-9);

(vii) NTDNA (2-nitrotriazole 5-dinitramide) (CAS 75393-84-9);

(viii) NTDNT (1-N-(2-nitrotriazolo) 3,5-dinitro-triazole);

(ix) PDNT (1-picryl-3,5-dinitrotriazole);

(x) TACOT (tetranitrobenzotriazolobenzotriazole) (CAS 25243-36-1);

(32) Any explosive not listed elsewhere in paragraph (a) of this category with a detonation velocity exceeding 8,700m/s at maximum density or a detonation pressure exceeding 34 Gpa (340 kbar).

(33) Other organic explosives not listed elsewhere in paragraph (a) of this category yielding detonation pressures of 25 Gpa (250 kbar) or more that will remain stable at temperatures of 523K (250 degrees C) or higher for periods of 5 minutes or longer;

(34) Diaminotrinitrobenzene (DATB) (CAS 1630-08-6);

(35) Any other explosive not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.*, formulated) for military application.

*(b) Propellants:

(1) Any United Nations (UN) Class 1.1 solid propellant with a theoretical specific impulse (under standard conditions) of more than 250 seconds for non-metallized, or 270 seconds for metallized compositions;

(2) Any UN Class 1.3 solid propellant with a theoretical specific impulse (under standard conditions) of more than 230 seconds for non-halogenized, or 250 seconds for non-metallized compositions;

(3) Propellants having a force constant of more than 1,200 kJ/Kg;

(4) Propellants that can sustain a steady-state burning rate more than 38mm/s under standard conditions (as measured in the form of an inhibited single strand) of 6.89 Mpa (68.9 bar) pressure and 294K (21[deg] C);

(5) Elastomer modified cast double based propellants with extensibility at maximum stress greater than 5% at 233 K (-40C);

(6) Any propellant containing substances listed in Category V;

(7) Any other propellant not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.*, formulated) for military application.

(c) Pyrotechnics, fuels and related substances, and mixtures thereof:

(1) Alane (aluminum hydride)(CAS 7784-21-6);

(2) Carboranes; decaborane (CAS 17702-41-9); pentaborane and derivatives thereof;

(3) Hydrazine and derivatives:

(i) Hydrazine (CAS 302-01-2) in concentrations of 70% or more (not hydrazine mixtures specially formulated for corrosion control);

(ii) Monomethyl hydrazine (CAS 60-34-4);

(iii) Symmetrical dimethyl hydrazine (CAS 540-73-8);

(iv) Unsymmetrical dimethyl hydrazine (CAS 57-14-7);

(4) Liquid fuels specifically formulated for use by articles covered by Categories IV, VI, and VIII;

(5) Spherical aluminum powder (CAS 7429-90-5) in particle sizes of 60 micrometers or less manufactured from material with an aluminum content of 99% or more;

(6) Metal fuels in particle form whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99% or more of any of the following:

(i) Metals and mixtures thereof:

(A) Beryllium (CAS 7440-41-7) in particle sizes of less than 60 micrometers;

(B) Iron powder (CAS 7439-89-6) with particle size of 3 micrometers or less produced by reduction of iron oxide with hydrogen;

(ii) Mixtures, which contain any of the following:

(A) Boron (CAS 7440-42-8) or boron carbide (CAS 12069-32-8) fuels of 85% purity or higher and particle sizes of less than 60 micrometers;

(B) Zirconium (CAS 7440-67-7), magnesium (CAS 7439-95-4) or alloys of these in particle sizes of less than 60 micrometers;

(iii) Explosives and fuels containing the metals or alloys listed in paragraphs (c)(6)(i) and (c)(6)(ii) of this category whether or not the metals or alloys are encapsulated in aluminum, magnesium, zirconium, or beryllium;

(7) Pyrotechnics and pyrophoric materials specifically formulated for military purposes to enhance or control the production of radiated energy in any part of the IR spectrum.

(8) Titanium subhydride (TiHn) of stoichiometry equivalent to n = 0.65-1.68;

(9) Military materials containing thickeners for hydrocarbon fuels specially formulated for use in flame throwers or incendiary munitions; metal stearates or palmates (also known as octol); and M1, M2 and M3 thickeners;

(10) Any other pyrotechnic, fuel and related substance and mixture thereof not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.*, formulated) for military application.

(d) Oxidizers, to include:

(1) ADN (ammonium dinitramide or SR-12) (CAS 140456-78-6);

(2) AP (ammonium perchlorate) (CAS 7790-98-9);

(3) BDNPN (bis,2,2-dinitropropylnitrate) (CAS 28464-24-6);

(4) DNAD (1,3-dinitro-1,3-diazetidine) (CAS 78246-06-7);

(5) HAN (Hydroxylammonium nitrate) (CAS 13465-08-2);

(6) HAP (hydroxylammonium perchlorate) (CAS 15588-62-2);

(7) HNF (Hydrazinium nitroformate) (CAS 20773-28-8);

(8) Hydrazine nitrate (CAS 37836-27-4);

(9) Hydrazine perchlorate (CAS 27978-54-7);

(10) Liquid oxidizers comprised of or containing inhibited red fuming nitric acid (IRFNA) (CAS 8007-58-7) or oxygen diflouride;

(11) Perchlorates, chlorates, and chromates composited with powdered metal or other high energy fuel components controlled by this category;

(12) Any other oxidizer not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.*, formulated) for military application.

*(e) Binders, and mixtures thereof:

(1) AMMO (azidomethylmethyloxetane and its polymers) (CAS 90683-29-7) (see paragraph (g)(1) of this category);

(2) BAMO (bisazidomethyloxetane and its polymers) (CAS 17607-20-4) (see paragraph (g)(1)of this category);

(3) BTTN (butanetrioltrinitrate) (CAS 6659-60-5) (see paragraph (g)(8) of this category);

(4) FAMAO (3-difluoroaminomethyl-3-azidomethyl oxetane) and its polymers;

(5) FEFO (bis-(2-fluoro-2,2-dinitroethyl)formal) (CAS 17003-79-1);

(6) GAP (glycidylazide polymer) (CAS 143178-24-9) and its derivatives;

(7) HTPB (hydroxyl terminated polybutadiene) with a hydroxyl functionality equal to or greater than 2.2 and less than or equal to 2.4, a hydroxyl value of less than 0.77 meq/g, and a viscosity at 30[degrees] C of less than 47 poise (CAS 69102-90-5);

(8) NENAS (nitratoethylnitramine compounds) (CAS 17096-47-8, 85068-73-1 and 82486-82-6);

(9) Poly-NIMMO (poly nitratomethylmethyoxetane, poly-NMMO, (poly[3-nitratomethyl-3-methyl oxetane]) (CAS 84051-81-0);

(10) Energetic monomers, plasticizers and polymers containing nitro, azido nitrate, nitraza or difluoromaino groups specially formulated for military use;

(11) TVOPA 1,2,3-Tris [1,2-bis(difluoroamino) ethoxy]propane; tris vinoxy propane adduct; (CAS 53159-39-0);

(12) Polynitrorthocarbonates;

(13) FPF-1 (poly-2,2,3,3,4,4-hexafluoro pentane-1,5-diolformal) (CAS 376-90-9);

(14) FPF-3 (poly-2,4,4,5,5,6,6-heptafluoro-2-trifluoromethyl-3-oxaheptane-1,7-diolformal);

(15) PGN (Polyglycidylnitrate or poly(nitratomethyl oxirane); poly-GLYN); (CAS 27814-48-8);

(16) N-methyl-p-nitroaniline;

(17) Low (less than 10,000) molecular weight, alcohol-functionalized, poly(epichlorohydrin); poly(epichlorohydrindiol); and triol;

(18) Bis(2,2-dinitropropyl) formal and acetal;

(19) Any other binder and mixture thereof not elsewhere identified in this category specifically designed,

modified, adapted, or configured (*e.g.*, formulated) for military application.

(f) Additives:

(1) Basic copper salicylate (CAS 62320-94-9);

(2) BHEGA (Bis-(2-hydroxyethyl)glycolamide) (CAS 17409-41-5);

(3) Ferrocene Derivatives:

(i) Butacene (CAS 125856-62-4);

(ii) Catocene (2,2-Bis-ethylferrocenyl propane) (CAS 37206-42-1);

(iii) Ferrocene carboxylic acids;

(iv) n-butyl-ferrocene (CAS 31904-29-7);

(4) Lead beta-resorcylate (CAS 20936-32-7);

(5) Lead citrate (CAS 14450-60-3);

(6) Lead-copper chelates of beta-resorcylate or salicylates (CAS 68411-07-4);

(7) Lead maleate (CAS 19136-34-6);

(8) Lead salicylate (CAS 15748-73-9);

(9) Lead stannate (CAS 12036-31-6);

(10) MAPO (tris-1-(2-methyl)aziridinyl phosphine oxide) (CAS 57-39-6); BOBBA-8 (bis(2-methyl aziridinyl) 2-(2-hydroxypropanoxy) propylamino phosphine oxide); and other MAPO derivatives;

(11) Methyl BAPO (Bis(2-methyl aziridinyl) methylamino phosphine oxide) (CAS 85068-72-0);

(12) 3-Nitraza-1,5 pentane diisocyanate (CAS 7406-61-9);

(13) Organo-metallic coupling agents, specifically:

(i) Neopentyl[diallyl]oxy, tri [dioctyl] phosphatotitanate (CAS 103850-22-2); also known as titanium IV, 2,2[bis 2-propenolato-methyl, butanolato, tris (dioctyl) phosphato] (CAS 110438-25-0), or LICA 12 (CAS 103850-22-2);

(ii) Titanium IV, [(2-propenolato-1) methyl, n-propanolatomethyl] butanolato-1, tris(dioctyl)pyrophosphate, or KR3538;

(iii) Titanium IV, [2-propenolato-1)methyl, propanolatomethyl] butanolato-1, tris(dioctyl) phosphate;

(14) Polyfunctional aziridine amides with isophthalic, trimesic (BITA or butylene imine trimesamide), isocyanuric, or trimethyladipic backbone structures and 2-methyl or 2-ethyl substitutions on the aziridine ring and its polymers;

(15) Superfine iron oxide (Fe2O3 hematite) with a specific surface area more than 250 m\2\/g and an average particle size of 0.003 [micro]m or less (CAS 1309-37-1);

(16) TEPAN (tetraethylenepentaamineacrylonitrile) (CAS 68412-45-3); cyanoethylated polyamines and their salts;

(17) TEPANOL (Tetraethylenepentaamineacrylo- nitrileglycidol) (CAS 110445-33-5); cyanoethylated polyamines adducted with glycidol and their salts;

(18) TPB (triphenyl bismuth) (CAS 603-33-8);

(19) PCDE (Poly[chyph]cyano di fluoro aminoethyl ene oxide);

(20) BNO (Butadienenitrileoxide);

(21) Any other additive not elsewhere identified in this category specifically designed, modified, adapted, or

configured (*e.g.*, formulated) for military application.

(g) Precursors, as follows:

(1) BCMO (bischloromethyloxetane) (CAS 142173-26-0) (see paragraphs (e)(1) and (2) of this category);

(2) Dinitroazetidine-t-butyl salt (CAS 125735-38-8) (see paragraph (a)(27) of this category);

(3) HBIW (hexabenzylhexaazaisowurtzitane) (CAS 124782-15-6) (see paragraph (a)(4) of this category);

(4) TAIW (tetraacetyldibenzylhexa-azaisowurtzitane) (see paragraph (a)(4) of this category);

(5) TAT (1, 3, 5, 7-tetraacetyl-1, 3, 5, 7-tetraaza-cyclooctane) (CAS 41378-98-7) (see paragraph (a)(12) of this category);

(6) Tetraazadecalin (CAS 5409-42-7) (see paragraph (a)(26) of this category);

(7) 1,3,5-trichorobenzene (CAS 108-70-3) (see paragraph (a)(22) of this category);

(8) 1,2,4-trihydroxybutane (1,2,4-butanetriol) (CAS 3068-00-6) (see paragraph (e)(3) of this category);

(h) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles numerated in paragraphs (a) through (g) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

(i) The following interpretations explain and amplify the terms used in this category and elsewhere in this subchapter.

(1) Category V contains explosives, energetic materials, propellants and pyrotechnics and specially formulated fuels for aircraft, missile and naval applications. Explosives are solid, liquid or gaseous substances or mixtures of substances, which, in their primary, booster or main charges in warheads, demolition or other military applications, are required to detonate.

(2) Paragraph (c)(6)(ii)(A) of this category does not control boron and boron carbide enriched with boron-10 (20% or more of total boron-10 content.

(3) The resulting product of the combination of any controlled or non-controlled substance compounded or mixed with any item controlled by this subchapter is also subject to the controls of this category.

NOTE 1: To assist the exporter, an item has been categorized by the most common use. Also, a reference has been provided to the related controlled precursors (*e.g.*, see paragraph (a)(12) of this category). Regardless of where the item has been placed in the category, all exports are subject to the controls of this subchapter.

NOTE 2: Chemical Abstract Service (CAS) registry numbers do not cover all the substances and mixtures controlled by this category. The numbers are provided as examples to assist the government agencies in the license review process and the exporter when completing their license application and export documentation.

Category VI — Vessels[100] of War and Special Naval Equipment

*(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels and any vessels specifically designed or modified for military purposes. (See § 121.15.)

(b) Patrol craft without armor, armament or mounting surfaces for weapon systems more significant than .50 caliber machine guns or equivalent and auxiliary vessels. (See § 121.15.)

*(c) Turrets and gun mounts, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults, mine sweeping equipment (including mine countermeasures equipment deployed by

[100] *See also* 1 U.S.C. § 3 ("The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.")

aircraft) and other significant naval systems specifically designed or modified for combatant vessels.

(d) Harbor entrance detection devices (magnetic, pressure, and acoustic) and controls therefor.

*(e) Naval nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, and maintenance. This includes any machinery, device, component, or equipment specifically developed, designed or modified for use in such plants or facilities. (See § 123.20) [101]

(f) All specifically designed or modified components, parts, accessories, attachments, and associated equipment for the articles in paragraphs (a) through (e) of this category.

(g) Technical data (as defined in § 120.10) and defense services (as defined in § 120.9) directly related to the defense articles enumerated in paragraphs (a) through (f) of this category. (See § 125.4 for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

Category VII — Tanks and Military Vehicles

*(a) Military type armed or armored vehicles, military railway trains, and vehicles specifically designed or modified to accommodate mountings for arms or other specialized military equipment or fitted with such items.

*(b) Military tanks, combat engineer vehicles, bridge launching vehicles, half-tracks and gun carriers.

(c) Military trucks, trailers, hoists, and skids specifically designed, modified, or equipped to mount or carry weapons of Categories I, II and IV of this section or for carrying and handling the articles in paragraph (a) of Categories III and IV of this section.

*(d) Military recovery vehicles.

*(e) Amphibious vehicles.

*(f) Engines specifically designed or modified for the vehicles in paragraphs (a), (b), and (e) of this category.

(g) All specifically designed or modified components, parts, accessories, attachments, and associated equipment for the articles in this category, including but not limited to military bridges and deep water fording kits.

(h) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles numerated in paragraphs (a) through (g) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

(i) The following explains and amplifies the terms used in this category and elsewhere in this subchapter:

(1) An *amphibious vehicle* in paragraph (e) of this category is an automotive vehicle or chassis which embodies all-wheel drive, is equipped to meet special military requirements, and which has sealed electrical system or adaptation features for deep water fording.

(2) The articles in this category include any end item, component, accessory, attachment part, firmware, software or system that has been designed or manufactured using technical data and defense service controlled by this category.

Category VIII — Aircraft and Associated Equipment

*(a) Aircraft, including but not limited to helicopters, non-expansive balloons, drones, and lighter-than-air aircraft, which are specifically designed, modified, or equipped for military purposes. This includes but is not limited to the following military purposes: Gunnery, bombing, rocket or missile launching, electronic and other surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel

[101] *See also* § 125.1(e)

dropping, airborne warning and control, and military training. (See § 121.3.)

*(b) Military aircraft engines, except reciprocating engines, specifically designed or modified for the aircraft in paragraph (a) of this category, and all specifically designed military hot section components (*i.e.*, combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles) and digital engine controls (*e.g.*, Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)). However, if such military hot section components and digital engine controls are manufactured to engineering drawings dated on or before January 1, 1970, with no subsequent changes or revisions to such drawings, they are controlled under Category VIII(h).

*(c) Cartridge-actuated devices utilized in emergency escape of personnel and airborne equipment (including but not limited to airborne refueling equipment) specifically designed or modified for use with the aircraft and engines of the types in paragraphs (a) and (b) of this category.

(d) Launching and recovery equipment for the articles in paragraph (a) of this category, if the equipment is specifically designed or modified for military use. Fixed land-based arresting gear is not included in this category.

*(e) Inertial navigation systems, aided or hybrid inertial navigation systems, Inertial Measurement Units (IMUs), and Attitude and Heading Reference Systems (AHRS) specifically designed, modified, or configured for military use and all specifically designed components, parts and accessories. For other inertial reference systems and related components refer to Category XII(d).

Note:

(1) Category XII(d) or Category VIII(e) does not include quartz rate sensors if such items:

(i) Are integrated into and included as an integral part of a commercial primary or commercial standby instrument system for use on civil aircraft prior to export or exported solely for integration into such a commercial primary or standby instrument system, and

(ii) When the exporter has been informed in writing by the Department of State that a specific quartz rate sensor integrated into a commercial primary or standby instrument system has been determined to be subject to the licensing jurisdiction of the Department of Commerce in accordance with this section.

(2) For controls in these circumstances, see the Commerce Control List. In all other circumstances, quartz rate sensors remain under the licensing jurisdiction of the Department of State under Category XII(d) or Category VIII(e) of the U.S. Munitions List and subject to the controls of the ITAR.

(f) Developmental aircraft, engines, and components thereof specifically designed, modified, or equipped for military uses or purposes, or developed principally with U.S. Department of Defense funding, excluding such aircraft, engines, and components subject to the jurisdiction of the Department of Commerce.

Note: Developmental aircraft, engines, and components thereof, having no commercial application at the time of this amendment and which have been specifically designed for military uses or purposes, or developed principally with U.S. Department of Defense funding, will be considered eligible for a CCL license when actually applied to a commercial aircraft or commercial aircraft engine program. Exporters may seek to establish commercial application either on a case-by-case basis through submission of documentation demonstrating application to a commercial program in requesting an export license application from Commerce in respect of a specific export or, in the case of use for broad categories of aircraft, engines, or components, a commodity jurisdiction from State.

*(g) Ground effect machines (GEMS) specifically designed or modified for military use, including but not limited to surface effect machines and other air cushion vehicles, and all components, parts, and accessories, attachments, and associated equipment specifically designed or modified for use with such machines.

(h) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (d) of this category,

excluding aircraft tires and propellers used with reciprocating engines.

Note: The Export Administration Regulations (EAR) administered by the Department of Commerce control any component, part, accessory, attachment, and associated equipment (including propellers) designed exclusively for civil, non-military aircraft (see Sec. 121.3 of this subchapter for the definition of military aircraft) and control any component, part, accessory, attachment, and associated equipment designed exclusively for civil, non-military aircraft engines. The International Traffic in Arms Regulations administered by the Department of State control any component, part, accessory, attachment, and associated equipment designed, developed, configured, adapted or modified for military aircraft, and control any component, part, accessory, attachment, and associated equipment designed, developed, configured, adapted or modified for military aircraft engines. For components and parts that do not meet the above criteria, including those that may be used on either civil or military aircraft, the following requirements apply. A non-SME component or part (as defined in Sec. Sec. 121.8(b) and (d) of this subchapter) that is not controlled under another category of the USML, that: (a) Is standard equipment; (b) is covered by a civil aircraft type certificate (including amended type certificates and supplemental type certificates) issued by the Federal Aviation Administration for a civil, non-military aircraft (this expressly excludes military aircraft certified as restricted and any type certification of Military Commercial Derivative Aircraft); and (c) is an integral part of such civil aircraft, is subject to the jurisdiction of the EAR. In the case of any part or component designated as SME in this or any other USML category, a determination that such item may be excluded from USML coverage based on the three criteria above always requires a commodity jurisdiction determination by the Department of State under Sec. 120.4 of this subchapter. The only exception to this requirement is where a part or component designated as SME in this category was integral to civil aircraft prior to August 14, 2008. For such part or component, U.S. exporters are not required to seek a commodity jurisdiction determination from State, unless doubt exists as to whether the item meets the three criteria above (See Sec. 120.3 and Sec. 120.4 of this subchapter). Also, U.S. exporters are not required to seek a commodity jurisdiction determination from State regarding any non-SME component or part (as defined in Sec. Sec. 121.8(b) and (d) of this subchapter) that is not controlled under another category of the USML, unless doubt exists as to whether the item meets the three criteria above (See Sec. 120.3 and Sec. 120.4 of this subchapter). These commodity jurisdiction determinations will ensure compliance with this section and the criteria of Section 17(c) of the Export Administration Act of 1979. In determining whether the three criteria above have been met, consider whether the same item is common to both civil and military applications without modification of the item's form, fit, or function. Some examples of parts or components that are not common to both civil and military applications are tail hooks, rotodomes, and low observable rotor blades. ``Standard equipment'' is defined as a part or component manufactured in compliance with an established and published industry specification or an established and published government specification (*e.g.*, AN, MS, NAS, or SAE). Parts and components that are manufactured and tested to established but unpublished civil aviation industry specifications and standards are also ``standard equipment,'' *e.g.*, pumps, actuators, and generators. A part or component is not standard equipment if there are any performance, manufacturing or testing requirements beyond such specifications and standards. Simply testing a part or component to meet a military specification or standard for civil purposes does not in and of itself change the jurisdiction of such part or component. Integral is defined as a part or component that is installed in an aircraft. In determining whether a part or component may be considered as standard equipment and integral to a civil aircraft (*e.g.*, latches, fasteners, grommets, and switches) it is important to carefully review all of the criteria noted above. For example, a part approved solely on a non-interference/provisions basis under a type certificate issued by the Federal Aviation Administration would not qualify. Similarly, unique application parts or components not integral to the aircraft would also not qualify.

(i) Technical data (as defined in § 120.10) and defense services (as defined in § 120.9) directly related to the defense articles enumerated in paragraphs (a) through (h) of this category (see § 125.4 for exemptions), except for hot section technical data associated with commercial aircraft engines. Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

Category IX — Military Training Equipment and Training

(a) Training equipment specifically designed, modified, configured or adapted for military purposes, including but not limited to weapons system trainers, radar trainers, gunnery training devices, antisubmarine warfare trainers, target equipment, armament training units, pilot-less aircraft trainers, navigation trainers and human-rated centrifuges.

(b) Simulation devices for the items covered by this subchapter.

(c) Tooling and equipment specifically designed or modified for the production of articles controlled by this category.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed, modified, configured, or adapted for the articles in paragraphs (a), (b), and (c) of this category.

(e) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category.

(f) The following interpretations explain and amplify terms used in this category and elsewhere in this subchapter:

(1) The *weapons systems trainers* in paragraph (a) of this category include individual crew stations and system specific trainers;

(2) The articles in this category include any end item, components, accessory, part, firmware, software or system that has been designed or manufactured using technical data and defense services controlled by this category;

(3) The defense services and related technical data in paragraph (f)[sic][102] of this category include software and associated databases that can be used to simulate trainers, battle management, test scenarios/models, and weapons effects. In any instance when the military training transferred to a foreign person does not use articles controlled by the U.S. Munitions List, the training may nevertheless be a defense service that requires authorization in accordance with this subchapter. See *e.g.*, § 120.9 and § 124.1 of this subchapter for additional information on military training.

Category X — Protective Personnel Equipment and Shelters

(a) Protective personnel equipment specifically designed, developed, configured, adapted, modified, or equipped for military applications. This includes but is not limited to:

(1) Body armor;[103]

(2) Clothing to protect against or reduce detection by radar, infrared (IR) or other sensors at wavelengths greater than 900 nanometers, and the specially treated or formulated dyes, coatings, and fabrics used in its design, manufacture, and production;

(3) Anti-Gravity suits (G-suits);

(4) Pressure suits capable of operating at altitudes above 55,000 feet sea level;

(5) Atmosphere diving suits designed, developed, modified, configured, or adapted for use in rescue operations involving submarines controlled by this subchapter;

(6) Helmets specially designed, developed, modified, configured, or adapted to be compatible with military communication hardware or optical sights or slewing devices;

(7) Goggles, glasses, or visors designed to protect against lasers or thermal flashes discharged by an article subject to this subchapter.

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[102] So in original. Probably intended to state "data in paragraphs (a) through (e) of this category…." *Compare* § 121.1 Cat. VII(h).
[103] *See* license exemption for temporary export at § 123.17(f).

(b) Permanent or transportable shelters specifically designed and modified to protect against the effect of articles covered by this subchapter as follows:

(1) Ballistic shock or impact;

(2) Nuclear, biological, or chemical contamination.

(c) Tooling and equipment specifically designed or modified for the production of articles controlled by this category.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed, modified, configured, or adapted for use with the articles in paragraphs (a) through (c) of this category.

(e) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category.

(f) The following interpretations explain and amplify the terms used in this category and throughout this subchapter:

(1) The body armor covered by this category does not include Type 1, Type 2, Type 2a, or Type 3a [sic][104] as defined by the National Institute of Justice classification;

(2) The articles in this category include any end item, components, accessory, attachment, part, firmware, software or system that has been designed or manufactured using technical data and defense services controlled by this category;

(3) Pressure suits in paragraph (a) (4) of this category include full and partial suits used to simulate normal atmospheric pressure conditions at high altitude.

Category XI — Military Electronics

(a) Electronic equipment not included in Category XII of the U.S. Munitions List which is specifically designed, modified or configured for military application. This equipment includes but is not limited to:

*(1) Underwater sound equipment to include active and passive detection, identification, tracking, and weapons control equipment.

*(2) Underwater acoustic active and passive countermeasures and counter-countermeasures.

(3) Radar systems, with capabilities such as:

*(i) Search,

*(ii) Acquisition,

*(iii) Tracking,

*(iv) Moving target indication,

*(v) Imaging radar systems,

(vi) Any ground air traffic control radar which is specifically designed or modified for military application.

*(4) Electronic combat equipment, such as:

(i) Active and passive countermeasures,

(ii) Active and passive counter-countermeasures, and

(iii) Radios (including transceivers) specifically designed or modified to interfere with other communication devices or transmissions.

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[104] So in original. Should be Type I, Type II, Type II-A, and Type III-A. NIJ Guide—Selection and Application Guide to Personal Body Armor, National Institute of Justice (Nov. 2001); *available at* http://www.nij.gov/pubs-sum/189633.htm (Last viewed Sept. 1, 2012).

*(5) Command, control and communications systems to include radios (transceivers), navigation, and identification equipment.

(6) Computers specifically designed or developed for military application and any computer specifically modified for use with any defense article in any category of the U.S. Munitions List.

(7) Any experimental or developmental electronic equipment specifically designed or modified for military application or specifically designed or modified for use with a military system.

*(b) Electronic systems or equipment specifically designed, modified, or configured for intelligence, security, or military purposes for use in search, reconnaissance, collection, monitoring, direction-finding, display, analysis and production of information from the electromagnetic spectrum and electronic systems or equipment designed or modified to counteract electronic surveillance or monitoring. A system meeting this definition is controlled under this subchapter even in instances where any individual pieces of equipment constituting the system may be subject to the controls of another U.S. Government agency. Such systems or equipment described above include, but are not limited to, those:

(1) Designed or modified to use cryptographic techniques to generate the spreading code for spread spectrum or hopping code for frequency agility. This does not include fixed code techniques for spread spectrum.

(2) Designed or modified using burst techniques (*e.g.*, time compression techniques) for intelligence, security or military purposes.

(3) Designed or modified for the purpose of information security to suppress the compromising emanations of information-bearing signals. This covers TEMPEST suppression technology and equipment meeting or designed to meet government TEMPEST standards. This definition is not intended to include equipment designed to meet Federal Communications Commission (FCC) commercial electro-magnetic interference standards or equipment designed for health and safety.

(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the equipment in paragraphs (a) and (b) of this category, except for such items as are in normal commercial use.

(d) Technical data (as defined in § 120.10) and defense services (as defined in § 120.9) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category. (See § 125.4 for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Category XII — Fire Control, Range Finder,

Optical and Guidance and Control Equipment

*(a) Fire control systems; gun and missile tracking and guidance systems; gun range, position, height finders, spotting instruments and laying equipment; aiming devices (electronic, optic, and acoustic); bomb sights, bombing computers, military television sighting and viewing units, and periscopes for the articles of this section.

*(b) Lasers specifically designed, modified or configured for military application including those used in military communication devices, target designators and range finders, target detection systems, and directed energy weapons.

*(c) Infrared focal plane array detectors specifically designed, modified, or configured for military use; image intensification and other night sighting equipment or systems specifically designed, modified or configured for military use; second generation and above military image intensification tubes (defined below) specifically designed, developed, modified, or configured for military use, and infrared, visible and ultraviolet devices specifically designed, developed, modified, or configured for military application. Military second and third generation image intensification tubes and military infrared focal plane arrays identified in this subparagraph

are licensed by the Department of Commerce (ECCN 6A002A and 6A003A) [sic][105] when part of a commercial system (*i.e.*, those systems originally designed for commercial use). This does not include any military system comprised of non-military specification components. Replacement tubes or focal plane arrays identified in this paragraph being exported for commercial systems are subject to the controls of the ITAR.

NOTE: Special Definition. For purposes of this subparagraph, *second and third generation image intensification tubes* are defined as having: A peak response within the 0.4 to 1.05 micron wavelength range and incorporating a microchannel plate for electron image amplification having a hole pitch (center-to-center spacing) of less than 25 microns and having either:

(a) An S-20, S-25 or multialkali photo cathode; or

(b) A GaAs, GaInAs, or other compound semiconductor photo cathode.

*(d) Inertial platforms and sensors for weapons or weapon systems; guidance, control and stabilization systems except for those systems covered in Category VIII; astrocompasses and star trackers and military accelerometers and gyros. For aircraft inertial reference systems and related components refer to Category VIII.

(e) Components, parts, accessories, attachments and associated equipment specifically designed or modified for the articles in paragraphs (a) through (d) of this category, except for such items as are in normal commercial use.

(f) Technical data (as defined in § 120.10) and defense services (as defined in § 120.9) directly related to the defense articles enumerated in paragraphs (a) through (e) of this category. (See § 125.4 for exemptions.) Technical data directly related to manufacture and production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Category XIII — Auxiliary Military Equipment

(a) Cameras and specialized processing equipment therefor, photointerpretation, stereoscopic plotting, and photogrammetry equipment which are specifically designed, developed, modified, adapted, or configured for military purposes, and components specifically designed or modified therefor;

(b) Military Information Security Assurance Systems and equipment, cryptographic devices, software, and components specifically designed, developed, modified, adapted, or configured for military applications (including command, control and intelligence applications). This includes:

(1) Military cryptographic (including key management) systems, equipment assemblies, modules, integrated circuits, components or software with the capability of maintaining secrecy or confidentiality of information or information systems, including equipment and software for tracking, telemetry and control (TT&C) encryption and decryption;

(2) Military cryptographic (including key management) systems, equipment, assemblies, modules, integrated circuits, components of software which have the capability of generating spreading or hopping codes for spread spectrum systems or equipment;

(3) Military cryptanalytic systems, equipment, assemblies, modules, integrated circuits, components or software;

(4) Military systems, equipment, assemblies, modules, integrated circuits, components or software providing certified or certifiable multi-level security or user isolation exceeding Evaluation Assurance Level (EAL) 5 of the Security Assurance Evaluation Criteria and software to certify such systems, equipment or software;

(5) Ancillary equipment specifically designed, developed, modified, adapted, or configured for the articles in paragraphs (b)(1), (2), (3), and (4) of this category.

(c) Self-contained diving and underwater breathing apparatus as follows:

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[105] So in original. Should be "(ECCN 6A002.c, 6A003.b.3, and 6A003.b.4)".

(1) Closed and semi-closed (rebreathing) apparatus;

(2) Specially designed components and parts for use in the conversion of open-circuit apparatus to military use; and,

(3) Articles exclusively designed for military use with self-contained diving and underwater swimming apparatus.

(d) Carbon/carbon billets and preforms not elsewhere controlled by this subchapter (*e.g.*, Category IV) which are reinforced with continuous unidirectional tows, tapes, or woven cloths in three or more dimensional planes (*e.g.*, 3D, 4D) specifically designed, developed, modified, configured or adapted for defense articles.

(e) Armor (*e.g.*, organic, ceramic, metallic), and reactive armor and components, parts and accessories not elsewhere controlled by this subchapter which have been specifically designed, developed, modified, configured or adapted for a military application.

(f) Structural materials, including carbon/carbon and metal matrix composites, plate, forgings, castings, welding consumables and rolled and extruded shapes that have been specifically designed, developed, configured, modified or adapted for defense articles.

(g) Concealment and deception equipment specifically designed, developed, modified, configured or adapted for military application, including but not limited to special paints, decoys, smoke or obscuration equipment and simulators and components, parts and accessories specifically designed, developed, modified, configured or adapted therefor.

(h) Energy conversion devices for producing electrical energy from nuclear, thermal, or solar energy, or from chemical reaction that are specifically designed, developed, modified, configured or adapted for military application.

(i) Metal embrittling agents.

*(j) Hardware and equipment, which has been specifically designed or modified for military applications, that is associated with the measurement or modification of system signatures for detection of defense articles. This includes but is not limited to signature measurement equipment; reduction techniques and codes; signature materials and treatments; and signature control design methodology.

(k) Tooling and equipment specifically designed or modified for the production of articles controlled by this category.

(l) Technical data (as defined in § 120.10 of this subchapter), and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (k) of this category. (See also, § 123.20 of this subchapter.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designed SME.

(m) The following interpretations explain and amplify terms used in this category and elsewhere in this subchapter:

(1) Paragraph (d) of this category does not control carbon/carbon billets and preforms where reinforcement in the third dimension is limited to interlocking of adjacent layers only, and carbon/carbon 3D, 4D, etc. end items that have not been specifically designed or modified for military applications (*e.g.*, brakes for commercial aircraft or high speed trains);

(2) *Metal embrittlement agents* in paragraph (i) of this category are non-lethal weapon substances that alter the crystal structure of metals within a short time span. Metal embrittling agents severely weaken metals by chemically changing their molecular structure. These agents are compounded in various substances to include adhesives, liquids, aerosols, foams and lubricants.

Category XIV — Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

*(a) Chemical agents, to include:

(1) Nerve agents:

(i) O-Alkyl (equal to or less than C[10], including cycloalkyl) alkyl (Methyl, Ethyl, n-Propyl or Isopropyl)phosphonofluoridates, such as: Sarin (GB): O-Isopropyl methylphosphonofluoridate (CAS 107-44-8) (CWC Schedule 1A); and Soman (GD): O-Pinacolyl methylphosphonofluoridate (CAS 96-64-0) (CWC Schedule 1A);

(ii) O-Alkyl (equal to or less than C[10], including cycloalkyl) N,N-dialkyl (Methyl, Ethyl, n-Propyl or Isopropyl)phosphoramidocyanidates, such as: Tabun (GA): O-Ethyl N, N-dimethylphosphoramidocyanidate (CAS 77-81-6) (CWC Schedule 1A);

(iii) O-Alkyl (H or equal to or less than C[10], including cycloalkyl) S-2-dialkyl (Methyl, Ethyl, n-Propyl or Isopropyl) aminoethyl alkyl (Methyl, Ethyl, n-Propyl or Isopropyl)phosphonothiolates and corresponding alkylated and protonated salts, such as: VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate (CAS 50782-69-9) (CWC Schedule 1A);

(2) Amiton: O,O-Diethyl S-[2(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts (CAS 78-53-5) (CWC Schedule 2A);

(3) Vesicant agents:

(i) Sulfur mustards, such as: 2-Chloroethylchloromethylsulfide (CAS 2625-76-5) (CWC Schedule 1A); Bis(2-chloroethyl)sulfide (CAS 505-60-2) (CWC Schedule 1A); Bis(2-chloroethylthio)methane (CAS 63839-13-6) (CWC Schedule 1A); 1,2-bis (2-chloroethylthio)ethane (CAS 3563-36-8) (CWC Schedule 1A); 1,3-bis (2-chloroethylthio)-n-propane (CAS 63905-10-2) (CWC Schedule 1A); 1,4-bis (2-chloroethylthio)-n-butane (CWC Schedule 1A); 1,5-bis (2-chloroethylthio)-n-pentane (CWC Schedule 1A); Bis (2-chloroethylthiomethyl)ether (CWC Schedule 1A); Bis (2-chloroethylthioethyl)ether (CAS 63918-89-8) (CWC Schedule 1A);

(ii) Lewisites, such as: 2-chlorovinyldichloroarsine (CAS 541-25-3) (CWC Schedule 1A); Tris (2-chlorovinyl) arsine (CAS 40334-70-1) (CWC Schedule 1A); Bis (2-chlorovinyl) chloroarsine (CAS 40334-69-8) (CWC Schedule 1A);

(iii) Nitrogen mustards, such as: HN1: bis (2-chloroethyl) ethylamine (CAS 538-07-8) (CWC Schedule 1A); HN2: bis (2-chloroethyl) methylamine (CAS 51-75-2) (CWC Schedule 1A); HN3: tris (2-chloroethyl)amine (CAS 555-77-1) (CWC Schedule 1A);

(iv) Ethyldichloroarsine (ED);

(v) Methyldichloroarsine (MD);

(4) Incapacitating agents, such as:

(i) 3-Quinuclindinyl benzilate (BZ) (CAS 6581-06-2) (CWC Schedule 2A);

(ii) Diphenylchloroarsine (DA) (CAS 712-48-1);

(iii) Diphenylcyanoarsine (DC);

*(b) Biological agents and biologically derived substances specifically developed, configured, adapted, or modified for the purpose of increasing their capability to produce casualties in humans or livestock, degrade equipment or damage crops.

*(c) Chemical agent binary precursors and key precursors, as follows:

(1) Alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphonyl diflourides, such as: DF: Methyl Phosphonyldifluoride (CAS 676-99-3) (CWC Schedule 1B); Methylphosphinyldiflouride;

(2) O-Alkyl (H or equal to or less than C[10], including cycloalkyl) O-2-dialkyl (methyl, ethyl, n-Propyl or isopropyl)aminoethyl alkyl (methyl, ethyl, N-propyl or isopropyl)phosphonite and corresponding alkylated and protonated salts, such as: QL: O-Ethyl-2-di-isopropylaminoethyl methylphosphonite (CAS 57856-11-8) (CWC Schedule 1B);

(3) Chlorosarin: O-Isopropyl methylphosphonochloridate (CAS 1445-76-7) (CWC Schedule 1B);

(4) Chlorosoman: O-Pinakolyl methylphosphonochloridate (CAS 7040-57-5) (CWC Schedule 1B);

(5) DC: Methlyphosphonyl dichloride (CAS 676-97-1) (CWC Schedule 2B); Methylphosphinyldichloride;

(d) Tear gases and riot control agents including:

(1) Adamsite (Diphenylamine chloroarsine or DM) (CAS 578-94-9);

(2) CA (Bromobenzyl cyanide) (CAS 5798-79-8);

(3) CN (Phenylacyl chloride or w-Chloroacetophenone) (CAS 532-27-4);

(4) CR (Dibenz-(b,f)-1,4-oxazephine) (CAS 257-07-8);

(5) CS (o-Chlorobenzylidenemalononitrile or o-Chlorobenzalmalononitrile) (CAS 2698-41-1);

(6) Dibromodimethyl ether (CAS 4497-29-4);

(7) Dichlorodimethyl ether (ClCi) (CAS 542-88-1);

(8) Ethyldibromoarsine (CAS 683-43-2);

(9) Bromo acetone;

(10) Bromo methylethylketone;

(11) Iodo acetone;

(12) Phenylcarbylamine chloride;

(13) Ethyl iodoacetate;

(e) Defoliants, as follows:

(1) Agent Orange (2,4,5-Trichlorophenoxyacetic acid mixed with 2,4-dichlorophenoxyacetic acid);

(2) LNF (Butyl 2-chloro-4-fluorophenoxyacetate)

*(f) Equipment and its components, parts, accessories, and attachments specifically designed or modified for military operations and compatibility with military equipment as follows:

(1) The dissemination, dispersion or testing of the chemical agents, biological agents, tear gases and riot control agents, and defoliants listed in paragraphs (a), (b), (d), and (e), respectively, of this category;

(2) The detection, identification, warning or monitoring of the chemical agents and biological agents listed in paragraph (a) and (b) of this category;

(3) Sample collection and processing of the chemical agents and biological agents listed in paragraph (a) and (b) of this category;

(4) Individual protection against the chemical agents and biological agents listed in paragraphs (a) and (b) of this category. This includes military protective clothing and masks, but not those items designed for domestic preparedness (*e.g.*, civil defense); [106]

(5) Collective protection against the chemical agents and biological agents listed in paragraph (a) and (b) of this category.

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[106] *See* license exemption for temporary export at § 123.17(f).

(6) Decontamination or remediation of the chemical agents and biological agents listed in paragraph (a) and (b) of this category.

(g) Antibodies, polynucleoides, biopolymers or biocatalysts specifically designed or modified for use with articles controlled in paragraph (f) of this category.

(h) Medical countermeasures, to include pre- and post-treatments, vaccines, antidotes and medical diagnostics, specifically designed or modified for use with the chemical agents listed in paragraph (a) of this category and vaccines with the sole purpose of protecting against biological agents identified in paragraph (b) of this category. Examples include: barrier creams specifically designed to be applied to skin and personal equipment to protect against vesicant agents controlled in paragraph (a) of this category; atropine auto injectors specifically designed to counter nerve agent poisoning.

(i) Modeling or simulation tools specifically designed or modified for chemical or biological weapons design, development or employment. The concept of modeling and simulation includes software covered by paragraph (m) of this category specifically designed to reveal susceptibility or vulnerability to biological agents or materials listed in paragraph (b) of this category.

(j) Test facilities specifically designed or modified for the certification and qualification of articles controlled in paragraph (f) of this category.

(k) Equipment, components, parts, accessories, and attachments, exclusive of incinerators (including those which have specially designed waste supply systems and special handling facilities), specifically designed or modified for destruction of the chemical agents in paragraph (a) or the biological agents in paragraph (b) of this category. This destruction equipment includes facilities specifically designed or modified for destruction operations.

(l) Tooling and equipment specifically designed or modified for the production of articles controlled by paragraph (f) of this category.

(m) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) related to the defense articles enumerated in paragraphs (a) through (l) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this Category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

(n) The following interpretations explain and amplify the terms used in this category and elsewhere in this subchapter:

(1) A *chemical agent in category XIV(a)* is a substance having military application, which by its ordinary and direct chemical action, produces a powerful physiological effect.

(2) The *biological agents or biologically derived substances in paragraph (b) of this category* are those agents and substances capable of producing casualties in humans or livestock, degrading equipment or damaging crops and which have been modified for the specific purpose of increasing such effects. Examples of such modifications include increasing resistance to UV radiation or improving dissemination characteristics. This does not include modifications made only for civil applications (*e.g.*, medical or environmental use).

(3) The *destruction equipment* controlled by this category related to biological agents in paragraph (b) is that equipment specifically designed to destroy only the agents identified in paragraph (b) of this category.

(4)(i) The *individual protection against the chemical and biological agents* controlled by this category includes military protective clothing and masks, but not those items designed for domestic preparedness (*e.g.*, civil defense). Domestic preparedness devices for individual protection that integrate components and parts identified in this subparagraph are licensed by the Department of Commerce when such components are:

(A) Integral to the device;

(B) inseparable from the device; and,

(C) incapable of replacement without compromising the effectiveness of the device.

(ii) Components and parts identified in this subparagraph exported for integration into domestic preparedness devices for individual protection are subject to the controls of the ITAR;

(5) Technical data and defense services in paragraph (l) include libraries, databases and algorithms specifically designed or modified for use with articles controlled in paragraph (f) of this category.

(6) The tooling and equipment covered by paragraph (l) of this category includes molds used to produce protective masks, over-boots, and gloves controlled by paragraph (f) and leak detection equipment specifically designed to test filters controlled by paragraph (f) of this category.

(7) The resulting product of the combination of any controlled or non-controlled substance compounded or mixed with any item controlled by this subchapter is also subject to the controls of this category.

NOTE 1: This Category does not control formulations containing 1% or less CN or CS or individually packaged tear gases or riot control agents for personal self-defense purposes.

NOTE 2: Categories XIV(a) and (d) do not include the following:

(1) Cyanogen chloride;

(2) Hydrocyanic acid;

(3) Chlorine;

(4) Carbonyl chloride (Phosgene);

(5) Ethyl bromoacetate;

(6) Xylyl bromide;

(7) Benzyl bromide;

(8) Benzyl iodide;

(9) Chloro acetone;

(10) Chloropicrin (trichloronitromethane);

(11) Fluorine;

(12) Liquid pepper.

NOTE 3: Chemical Abstract Service (CAS) registry numbers do not cover all the substances and mixtures controlled by this category. The numbers are provided as examples to assist the government agencies in the license review process and the exporter when completing their license application and export documentation.

NOTE 4: With respect to U.S. obligations under the Chemical Weapons Convention (CWC), refer to Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710 through 722). As appropriate, the CWC schedule is provided to assist the exporter.

NOTE 5: Pharmacological formulations containing nitrogen mustards and certain reference standards for these drugs are not considered to be chemical agents and are licensed by the Department of Commerce when:

(1) The drug is in the form of a final medical product; or

(2) The reference standard contains salts of HN2 [bis(2-chloroethyl) methylamine], the quantity to be shipped is 150 milligrams or less, and individual shipments do not exceed twelve

per calendar year per end user.

Technical data for the production of HN1 [bis(2-chloroethyl)ethylamine]; HN2 [bis(2-chloroethyl)methylamine], HN3 [tris(2-chloroethyl)amine]; or salts of these, such as tris (2-chloroethyl)amine

hydrochloride, remains controlled under this Category.

Category XV — Spacecraft Systems and Associated Equipment

*(a) Spacecraft, including communications satellites, remote sensing satellites, scientific satellites, research satellites, navigation satellites, experimental and multi-mission satellites.

NOTE TO PARAGRAPH (a): Commercial communications satellites, scientific satellites, research satellites and experimental satellites are designated as SME only when the equipment is intended for use by the armed forces of any foreign country.

(b) Ground control stations for telemetry, tracking and control of spacecraft or satellites, or employing any of the cryptographic items controlled under category XIII of this subchapter.

(c) Global Positioning System (GPS) receiving equipment specifically designed, modified or configured for military use; or GPS receiving equipment with any of the following characteristics:

(1) Designed for encryption or decryption (*e.g.*, Y-Code) of GPS precise positioning service (PPS) signals;

(2) Designed for producing navigation results above 60,000 feet altitude and at 1,000 knots velocity or greater;

(3) Specifically designed or modified for use with a null steering antenna or including a null steering antenna designed to reduce or avoid jamming signals;

(4) Designed or modified for use with unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km.

(NOTE: GPS receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specifically designed, modified or configured for military use and therefore covered under this paragraph (d)(4).)

Any GPS equipment not meeting this definition is subject to the jurisdiction of the Department of Commerce (DOC). Manufacturers or exporters of equipment under DOC jurisdiction are advised that the U.S. Government does not assure the availability of the GPS P-Code for civil navigation. It is the policy of the Department of Defense (DOD) that GPS receivers using P-Code without clarification as to whether or not those receivers were designed or modified to use Y-Code will be presumed to be Y-Code capable and covered under this paragraph. The DOD policy further requires that a notice be attached to all P-Code receivers presented for export. The notice must state the following: "ADVISORY NOTICE: This receiver uses the GPS P-Code signal, which by U.S. policy, may be switched off without notice."

(d) Radiation-hardened microelectronic circuits that meet or exceed all five of the following characteristics:

(1) A total dose of 5×10^5 Rads (Si);

(2) A dose rate upset threshold of 5×10^8 Rads (Si)/sec;

(3) A neutron dose of 1×10^{14} n/cm^2 (1 MeV equivalent);

(4) A single event upset rate of 1×10^{-10} errors/bit-day or less, for the CREME96 geosynchronous orbit, Solar Minimum Environment;

(5) Single event latch-up free and having a dose rate latch-up threshold of 5×10^8 Rads (Si).

(e) All specifically designed or modified systems or subsystems, components, parts, accessories, attachments, and associated equipment for the articles in this category, including the articles identified in section 1516 of Public Law 105-261: satellite fuel, ground support equipment, test equipment, payload adapter or interface hardware, replacement parts, and non-embedded solid propellant orbit transfer engines (see also Categories IV and V in this section).

NOTE: This coverage by the U.S. Munitions List does not include the following unless specifically designed or modified for military application (see § 120.3 of this subchapter): (For controls on these items see the Export

Administration Regulations, Commerce Control List (15 CFR parts 730 through 799).)

(1) Space qualified traveling wave tubes (also known as helix tubes or TWTs), microwave solid state amplifiers, microwave assemblies, and traveling wave tube amplifiers operating at frequencies equal to or less than 31GHz.

(2) Space qualified photovoltaic arrays having silicon cells or having single, dual, triple junction solar cells that have gallium arsenide as one of the junctions.

(3) Space qualified tape recorders.

(4) Atomic frequency standards that are not space qualified.

(5) Space qualified data recorders.

(6) Space qualified telecommunications systems, equipment and components not designed or modified for satellite uses.

(7) Technology required for the development or production of telecommunications equipment specifically designed for non-satellite uses.

(8) Space qualified focal plane arrays having more than 2048 elements per array and having a peak response in the wavelength range exceeding 300nm but not exceeding 900nm.

(9) Space qualified laser radar or Light Detection and Ranging (LIDAR) equipment.

(f) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the articles enumerated in paragraphs (a) through (e) of this category, as well as detailed design, development, manufacturing or production data for all spacecraft and specifically designed or modified components for all spacecraft systems. This paragraph includes all technical data, without exception, for all launch support activities (*e.g.*, technical data provided to the launch provider on form, fit, function, mass, electrical, mechanical, dynamic, environmental, telemetry, safety, facility, launch pad access, and launch parameters, as well as interfaces for mating and parameters for launch.) (See § 124.1 for the requirements for technical assistance agreements before defense services may be furnished even when all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from the licensing requirements of this subchapter.) Technical data directly related to the manufacture or production of any article enumerated elsewhere in this category that is designated as Significant Military Equipment (SME) shall itself be designated SME. Further, technical data directly related to the manufacture or production of all spacecraft, notwithstanding the nature of the intended end use (*e.g.*, even where the hardware is not SME), is designated SME.

NOTE TO PARAGRAPH (f): The special export controls contained in § 124.15 of this subchapter are always required before a U.S. person may participate in a launch failure investigation or analysis and before the export of any article or defense service in this category for launch in, or by nationals of, a country that is not a member of the North Atlantic Treaty Organization or a major non-NATO ally of the United States. Such special export controls also may be imposed with respect to any destination as deemed appropriate in furtherance of the security and foreign policy of the United States.

Category XVI — Nuclear Weapons, Design and Testing Related Items

*(a) Any article, material, equipment, or device which is specifically designed or modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices. (See § 123.20 of this subchapter and Department of Commerce Export Administration Regulations, 15 CFR 742.3 and 744.2).

*(b) Any article, material, equipment, or device which is specifically designed or modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions (including for modeling or simulating the employment of nuclear weapons or the integrated operational use of nuclear weapons), except such items as are in normal commercial use for other purposes.

*(c) Nuclear radiation detection and measurement devices specifically designed or modified for military

applications.

(d) All specifically designed or modified components and parts, accessories, attachments, and associated equipment for the articles in this category.

(e) Technical data (as defined in § 120.10 of this subchapter), and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category. (See also, § 123.20 of this subchapter.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

Category XVII — Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated

*(a) All articles, technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) relating thereto which are classified in the interests of national security and which are not otherwise enumerated in the U.S. Munitions List.

Category XVIII — Directed Energy Weapons

*(a) Directed energy weapon systems specifically designed or modified for military applications (*e.g.*, destruction, degradation or rendering mission-abort of a target). These include, but are not limited to:

(1) Laser systems, including continuous wave or pulsed laser systems, specifically designed or modified to cause blindness;

(2) Lasers of sufficient continuous wave or pulsed power to effect destruction similar to the manner of conventional ammunition;

(3) Particle beam systems;

(4) Particle accelerators that project a charged or neutral particle beam with destructive power;

(5) High power radio-frequency (RF) systems;

(6) High pulsed power or high average power radio frequency beam transmitters that produce fields sufficiently intense to disable electronic circuitry at distant targets;

(7) Prime power generation, energy storage, switching, power conditioning, thermal management or fuel-handling equipment;

(8) Target acquisition or tracking systems;

(9) Systems capable or [sic][107] assessing target damage, destruction or mission-abort;

(10) Beam-handling, propagation or pointing equipment;

(11) Equipment with rapid beam slew capability for rapid multiple target operations;

(12) Negative ion beam funneling equipment; and,

(13) Equipment for controlling and slewing a high-energy ion beam.

*(b) Equipment specifically designed or modified for the detection or identification of, or defense against, articles controlled in paragraph (a) of this category.

(c) Tooling and equipment specifically designed or modified for the production of defense articles controlled by this category.

(d) Test and evaluation equipment and test models specifically designed or modified for the defense articles controlled by this category. This includes, but is not limited to, diagnostic instrumentation and physical test

[107] So in original. Probably intended to be "of".

models.

(e) Components, parts, accessories, attachments and associated equipment specifically designed or modified for the articles in paragraphs (a) through (d) of this category.

(f) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (e) of this category. Technical data directly related to the manufacture or production of any defense articles enumerated in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

(g) The following interpretations explain and amplify terms used in this category and elsewhere in this subchapter:

(1) The components, parts, accessories, attachments and associated equipment include, but are not limited to adaptive optics and phase conjugators components, space-qualified accelerator components, targets and specifically designed target diagnostics, current injectors for negative hydrogen ion beams, and space-qualified foils for neutralizing negative hydrogen isotope beams.

(2) The particle beam systems in paragraph (a)(3) of this category include devices embodying particle beam and electromagnetic pulse technology and associated components and subassemblies (*e.g.*, ion beam current injectors, particle accelerators for neutral or charged particles, beam handling and projection equipment, beam steering, fire control, and pointing equipment, test and diagnostic instruments, and targets) which are specifically designed or modified for directed energy weapon applications.

(3) The articles controlled in this category include any end item, component, accessory, attachment, part, firmware, software or system that has been designed or manufactured using technical data and defense services controlled by this category.

(4) The articles specifically designed or modified for military application controlled in this category include any articles specifically developed, configured, or adapted for military application.

Category XIX — [Reserved]

Category XX — Submersible Vessels, Oceanographic and Associated Equipment

*(a) Submersible vessels, manned or unmanned, tethered or untethered, designed or modified for military purposes, or powered by nuclear propulsion plants.

*(b) Swimmer delivery vehicles designed or modified for military purposes.

(c) Equipment, components, parts, accessories, and attachments specifically designed or modified for any of the articles in paragraphs (a) and (b) of this category.

(d) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Category XXI — Miscellaneous Articles[108]

(a) Any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specifically designed, developed, configured, adapted, or modified for military purposes. The decision on whether any article may be included in this category shall be made by the Director, Office of Defense Trade Controls Policy.

(b) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) of this category.

[58 FR 39287, July 22, 1993]

§ 121.2 Interpretations of the U.S. Munitions List and the Missile Technology Control Regime Annex

The following interpretations (listed alphabetically) explain and amplify the terms used in § 121.1. These interpretations have the same force as if they were a part of the U.S. Munitions List (USML) category to which they refer. In addition, all the items listed in § 121.16 shall constitute all items on the United States Munitions List which are Missile Technology Control Regime Annex items in accordance with section 71(a) of the Arms Export Control Act.

§ 121.3 Aircraft and Related Articles

In Category VIII, *"aircraft"* means aircraft designed, modified, or equipped for a military purpose, including aircraft described as "demilitarized." All aircraft bearing an original military designation are included in Category VIII. However, the following aircraft are not included so long as they have not been specifically equipped, re-equipped, or modified for military operations:

(a) Cargo aircraft bearing "C" designations and numbered C-45 through C-118 inclusive, C-121 through C-125 inclusive, and C-131, using reciprocating engines only.

(b) Trainer aircraft bearing "T" designations and using reciprocating engines or turboprop engines with less than 600 horsepower (s.h.p.)

(c) Utility aircraft bearing "U" designations and using reciprocating engines only.

(d) All liaison aircraft bearing an "L" designation.

(e) All observation aircraft bearing "O" designations and using reciprocating engines.

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[108] *See* State/DDTC, Use of USML Category XXI (Sep. 8, 2009), www.pmddtc.state.gov/licensing/documents/WebNotice_CatXXI.pdf (last viewed Sept. 1, 2012):

> Effective immediately, all license submissions which identify USML Category XXI – Miscellaneous Articles must include an attached copy of one of the following two documents authorizing use of Cat XXI or the application will be subject to Return Without Action: (1) A copy of a DDTC Commodity Jurisdiction determination letter identifying the commodity as controlled under the USML at Cat XXI; or (2) an official letter from the Director, Office of Defense Trade Controls Policy granting permission to use Cat XXI. This policy is necessary to enforce the requirement of 22 CFR Part 121.1 Category XXI(a). DDTC has observed a recent increase in the use of Cat XXI for items which should be properly categorized under a well defined USML category. The incorrect use of Cat XXI results in the license application being directed to the incorrect licensing team at DDTC and DTSA, which significantly slows down the adjudication of the request. Additionally, if a properly categorized commodity is designated as SME, the incorrect use of Cat XXI also incorrectly identifies the commodity as non-SME. If you are unsure if your commodity is controlled by the USML, you should seek a Commodity Jurisdiction determination (see 22 CFR 120.4). Please follow the guidelines at http://www.pmddtc.state.gov/commodity_jurisdiction/index.html. If you have determined your commodity is USML but are unsure of the correct category, contact the DDTC Response Team at 202-663-1282 or PM-DDTC-Response-Team-DL@state.gov. Any other questions or concerns regarding the use of Category XXI should be directed to the DDTC Response Team at 202-663-1282 or PM-DDTC-Response-Team-DL@state.gov.

§ 121.4 [Reserved]

§ 121.5 Apparatus and Devices under Category IV(c)

Category IV includes but is not limited to the following: Fuzes and components specifically designed, modified or configured for items listed in that category, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance systems equipment and parts, launching racks and projectors, pistols (exploders), ignitors, fuze arming devices, intervalometers, thermal batteries, hardened missile launching facilities, guided missile launchers and specialized handling equipment, including transporters, cranes and lifts designed to handle articles in paragraphs (a) and (b) of this category for preparation and launch from fixed and mobile sites. The equipment in this category includes robots, robot controllers and robot end-effectors specially designed or modified for military applications.

§ 121.6 - § 121.7 [Reserved]

§ 121.8 End-Items, Components, Accessories, Attachments, Parts, Firmware, Software, and Systems

(a) An *end-item* is an assembled article ready for its intended use. Only ammunition, fuel or another energy source is required to place it in an operating state.

(b) A *component* is an item which is useful only when used in conjunction with an end-item. A *major component* includes any assembled element which forms a portion of an end-item without which the end-item is inoperable. (Example: Airframes, tail sections, transmissions, tank treads, hulls, etc.) A *minor component* includes any assembled element of a major component.

(c) *Accessories* and *attachments* are associated equipment for any component, end-item or system, and which are not necessary for their operation, but which enhance their usefulness or effectiveness. (Examples: Military riflescopes, special paints, etc.)

(d) A *part* is any single unassembled element of a major or a minor component, accessory, or attachment which is not normally subject to disassembly without the destruction or the impairment of design use. (Examples: Rivets, wire, bolts, etc.)

(e) *Firmware* and any related unique support tools (such as computers, linkers, editors, test case generators, diagnostic checkers, library of functions and system test diagnostics) specifically designed for equipment or systems covered under any category of the U.S. Munitions List are considered as part of the end-item or component. Firmware includes but is not limited to circuits into which software has been programmed.

(f) *Software* includes but is not limited to the system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis and repair. A person who intends to export software only should, unless it is specifically enumerated in § 121.1 (*e.g.*, XIII(b)), apply for a technical data license pursuant to part 125 of this subchapter.

(g) A *system* is a combination of end-items, components, parts, accessories, attachments, firmware or software, specifically designed, modified or adapted to operate together to perform a specialized military function.

§ 121.9 [Reserved]

§ 121.10 Forgings, Castings, and Machined Bodies

Articles on the U.S. Munitions List include articles in a partially completed state (such as forgings, castings, extrusions and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the U.S. Munitions List (including components, accessories, attachments and parts as defined in § 121.8), then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of this subchapter, except for such items as are in normal commercial use.

§ 121.11 Military Demolition Blocks and Blasting Caps

Military demolition blocks and blasting caps referred to in Category IV(a) do not include the following articles:

(a) Electric squibs.

(b) No. 6 and No. 8 blasting caps, including electric ones.

(c) Delay electric blasting caps (including No. 6 and No. 8 millisecond ones).

(d) Seismograph electric blasting caps (including SSS, Static-Master, Vibrocap SR, and SEISMO SR).

(e) Oil well perforating devices.

§ 121.12 - 121.14 [Reserved]

§ 121.15 Vessels of War and Special Naval Equipment

Vessels of war means vessels, waterborne or submersible, designed, modified or equipped for military purposes, including vessels described as developmental, "demilitarized" or decommissioned. Vessels of war in Category VI, whether developmental, "demilitarized" and/or decommissioned or not, include, but are not limited to, the following:

(a) Combatant vessels:

(1) Warships (including nuclear-powered versions):

(i) Aircraft carriers.

(ii) Battleships.

(iii) Cruisers.

(iv) Destroyers.

(v) Frigates.

(vi) Submarines.

(2) Other Combatants:

(i) Patrol Combatants (*e.g.*, including but not limited to PHM).

(ii) Amphibious Aircraft/Landing Craft Carriers.

(iii) Amphibious Materiel/Landing Craft Carriers.

(iv) Amphibious Command Ships.

(v) Mine Warfare Ships.

(vi) Coast Guard Cutters (*e.g.*, including but not limited to: WHEC, WMEC).

(b) Combatant Craft:

(1) Patrol Craft (patrol craft described in § 121.1, Category VI, paragraph (b) are considered noncombatant):

(i) Coastal Patrol Combatants.

(ii) River, Roadstead Craft (including swimmer delivery craft).

(iii) Coast Guard Patrol Craft (*e.g.*, including but not limited to WPB).

(2) Amphibious Warfare Craft:

(i) Landing Craft (*e.g.*, including but not limited to LCAC).

(ii) Special Warfare Craft (*e.g.*, including but not limited to: LSSC, MSSC, SDV, SWCL, SWCM).

(3) Mine Warfare Craft and Mine Countermeasures Craft (*e.g.*, including but not limited to: MCT, MSB).

(c) Non-Combatant Auxiliary Vessels and Support Ships:

(1) Combat Logistics Support:

(i) Underway Replenishment Ships.

(ii) Surface Vessel and Submarine Tender/Repair Ships.

(2) Support Ships:

(i) Submarine Rescue Ships.

(ii) Other Auxiliaries (*e.g.*, including but not limited to: AGDS, AGF, AGM, AGOR, AGOS, AH, AP, ARL, AVB, AVM, AVT).

(d) Non-Combatant Support, Service and Miscellaneous Vessels (*e.g.*, including but not limited to: DSRV, DSV, NR, YRR).

[58 FR 60115, Nov. 15, 1993]

§ 121.16 Missile Technology Control Regime Annex[109]

Some of the items on the Missile Technology Control Regime Annex are controlled by both the Department of Commerce on the Commodity Control List and by the Department of State on the United States Munitions List. To the extent an article is on the United States Munitions List, a reference appears in parentheses listing the U.S. Munitions List category in which it appears. The following items constitute all items on the Missile Technology Control Regime Annex which are covered by the U.S. Munitions List:

Item 1—Category I

Complete rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets (see § 121.1, Cat. IV(a) and (b))) [sic][110] and unmanned air vehicle systems (including cruise missile systems, see § 121.1, Cat. VIII (a), target drones and reconnaissance drones (see § 121.1, Cat. VIII (a))) [sic][111] capable of delivering at least a 500 kg payload to a range of at least 300 km.

Item 2—Category I

Complete subsystems usable in the systems in Item 1 as follows:

(a) Individual rocket stages (see § 121.1, Cat. IV(h));

(b) Reentry vehicles (see § 121.1, Cat. IV(g)), and equipment designed or modified therefor, as follows, except as provided in Note (1) below for those designed for non-weapon payloads;

(1) Heat shields and components thereof fabricated of ceramic or ablative materials (see § 121.1, Cat. IV(f));

(2) Heat sinks and components thereof fabricated of lightweight, high heat capacity materials;

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[109] ITAR §§ 123.16, 124.2(c)(5)(i), and 126.5(b) discuss MTCR restrictions on ITAR license exemptions. *See* §§ 120.29 and § 121.2 for an explanation of the MTCR and the effect of the MTCR interpretations from § 121.3 through § 121.15. Practice Tip: The MTCR portion of the ITAR is many years out of date. Some of the items on the MTCR Annex are controlled wholly or partially by the Department of Commerce on the Commodity Control List and some are controlled wholly or partially by the Department of State on the United States Munitions List (USML). For items wholly or partially on the USML, a reference appears in parentheses listing the USML category which is relevant. The list in § 121.16 identifies all items on the MTCR Annex covered, wholly or partially, by the USML, but none of the MTCR items is identical in the USML, which uses different terminology. (Contributor: William A. Root, 301-987-6418, waroot@aol.com). Changes to the MTCR Annex were agreed to at the November 2009 Plenary in Rio de Janeiro that have not been incorporated into the ITAR. The MTCR summarizes these changes as follows: Three new controls in 6.C.7; a clarification of controls in 4.C.2.f.; note to clarify controls in 4.C.6.c.2.o.;addition of a Technical Note in 3.A.2.; addition of CAS numbers in 4.C.2.b.14, 4.C.2.b.17. and 4.C.6.c.2.h.; clarification in 3.A.1.; standardization of Notes and Technical Notes in Items 3, 4, 6, 9, 12, and 19; clarification in definitions. (Contributor: Thomas M. deButts, deButts@PillsburyLaw.com, 202-663-8872). If an item is no longer on the MTCR, it does not require a license from DDTC simply because it is still referenced in section 121.16. (Contributor: Clif Burns, Clif.Burns@bryancave.com, 202-624-3949.)

[110] So in original. Should be "))".

[111] So in original. Should be "))".

(3) Electronic equipment specially designed for reentry vehicles (see § 121.1, Cat. XI(a)(7));

(c) Solid or liquid propellant rocket engines, having a total impulse capacity of 1.1 x 10 N-sec (2.5 x 10 lb-sec) or greater (see § 121.1, Cat. IV, (h)).

(d) "Guidance sets" capable of achieving system accuracy of 3.33 percent or less of the range (*e.g.*, a CEP of 1 j,.[sic][112] or less at a range of 300 km), except as provided in Note (1) below for those designed for missiles with a range under 300 km or manned aircraft (see § 121.1, Cat. XII(d));

(e) Thrust vector control sub-systems, except as provided in Note (1) below for those designed for rocket systems that do not exceed the range/payload capability of Item 1 (see § 121.1, Cat. IV);

(f) Warhead safing, arming, fuzing, and firing mechanisms, except as provided in Note (1) below for those designed for systems other than those in Item 1 (see § 121.1, Cat. IV(h)).

Notes to Item 2:

(1) The exceptions in (b), (d), (e), and (f) above may be treated as Category II if the subsystem is exported subject to end use statements and quantity limits appropriate for the excepted end use stated above.

(2) *CEP (circle of equal probability)* is a measure of accuracy, and defined as the radius of the circle centered at the target, at a specific range, in which 50 percent of the payloads impact.

(3) A *"guidance set"* integrates the process of measuring and computing a vehicle's position and velocity (*i.e.*, navigation) with that of computing and sending commands to the vehicle's flight control systems to correct the trajectory.

(4) Examples of methods of achieving thrust vector control which are covered by (e) include:

(i) Flexible nozzle;

(ii) Fluid or secondary gas injection;

(iii) Movable engine or nozzle;

(iv) Deflection of exhaust gas stream (jet vanes or probes); or

(v) Use of thrust tabs.

Item 3—Category II

Propulsion components and equipment usable in the systems in Item 1, as follows:

(a) Lightweight turbojet and turbofan engines (including) turbocompound engines) that are small and fuel efficient (see § 121.1, both Cat. IV(h) and VIII(b));

(b) Ramjet/Scramjet/pulse jet/combined cycle engines, including devices to regulate combustion, and specially designed components therefor (see § 121.1, both Cat. IV(h) and Cat. VIII(b));

(c) Rocket motor cases, "interior lining", "insulation" and nozzles therefor (see § 121.1, Cat. IV(h) and Cat. V(c));

(d) Staging mechanisms, separation mechanisms, and interstages therefor (see § 121.1, Cat. IV(c) and (h));

(e) Liquid and slurry propellant (including oxidizers) control systems, and specially designed components therefor, designed or modified to operate in vibration environments of more than 100 g RMS between 20 Hz and,000 Hz [sic][113] (see § 121.1, Cat. IV(c) and (h));

(f) Hybrid rocket motors and specially designed components therefor (see § 121.1, Cat. IV(h)).

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[112] So in original. Should be "10 km". *See* 15 CFR Part 774 Supp. 1, ECCN 7A117 (""Guidance sets" capable of achieving system accuracy of 3.33% or less of the range (*e.g.*, a "CEP" of 10 km or less at a range of 300 km).").

[113] So in original. Should be "between 20 Hz and 2,000 Hz".

Note to Item 3:

(1) Item 3(a) engines may be exported as part of a manned aircraft or in quantities appropriate for replacement parts for manned aircraft.

(2) In Item 3(C), "interior lining" suited for the bond interface between the solid propellant and the case or insulating liner is usually a liquid polymer based dispersion of refractory or insulating materials, *e.g.,* carbon filled HTPB or other polymer with added curing agents to be sprayed or screeded over a case interior (see § 121.1, Cat. V(c)).

(3) In Item 3(c), "insulation" intended to be applied to the components of a rocket motor, *i.e.,* the case, nozzle inlets, case closures, includes cured or semi-cured compounded rubber sheet stock containing an insulating or refractory material. It may also be incorporated as stress relief boots or flaps.

(4) The only servo valves and pumps covered in (e) above, are the following:

(i) Servo valves designed for flow rates of 24 liters per minute or greater, at an absolute pressure of 7,000 kPa (1,000 psi) or greater, that have an actuator response time of less than 100 msec;

(ii) Pumps, for liquid propellants, with shaft speeds equal to or greater than 8,000 RPM or with discharge pressures equal to or greater than 7,000 kPa (1,000 psi).

(5) Item 3(e) systems and components may be exports as part of a satellite.

Item 4—Category II

Propellants and constituent chemicals for propellants as follows:.

(a) Propulsive substances:

(1) Hydrazine with a concentration of more than 70 percent and its derivatives including monomethylhydrazine (MMH);

(2) Unsymmetric dimethylhydrazine (UDHM);

(3) Ammonium perchlorate;

(4) Sphercical [sic][114] aluminum powder with particle of uniform diameter of less than 500 x 10^{-6}M (500 microns) and an aluminum content of 97 percent or greater;

(5) Metal fuels in particle sizes less than 500 x 10^{-6}M (500 microns), whether spherical, atomized, spheriodal, flaked or ground, consisting of 97 percent or more of any of the following: zirconium, beryllium, boron, magnesium, zinc, and alloys of these;

(6) Nitroamines (cyclotetramethylenetetranitramene (HMX), cyclotrimethylenetrinitramine (RDX);

(7) Percholrates, chlorates or chromates mixed with powdered metals or other high energy fuel components;

(8) Carboranes, decaboranes, pentaboranes and derivatives thereof;

(9) Liquid oxidizers, as follows:

(i) Nitrogen dioxide/dinitrogen tetroxide;

(ii) Inhibited Red Fuming Nitric Acid (IRFNA);

(iii) Compounds composed of fluorine and one or more of other halogens, oxygen or nitrogen.

(b) Polymeric substances:

(1) Hydroxyterminated polybutadiene (HTPB);

(2) Glycidylazide polymer (GAP).

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[114] So in original. Should be "spherical".

(c) Other high energy density propellants such a [sic], Boron Slurry, having an energy density of 40 x 10 joules/kg or greater.

(d) Other propellant additives and agents:

(1) Bonding agents as follows:

(i) tris(1(2methyl)aziridinyl phosphine oxide (MAPO);

(ii) trimesol1(2ethyl)aziridine (HX868, BITA);

(iii) "Tepanol" (HX878), reaction product of tetraethylenepentamine, acrylonitrile and glycidol;

(iv) "Tepan" (HX879), Reaction product of tet enepentamine and acrylonitrile;

(v) Polyfunctional aziridene amides with isophthalic, trimesic, isocyanuric, or trimethyladipic backbone also having a 2methyl or 2ethyl aziridine group (HX752, HX872 and HX877).

(2) Curing agents and catalysts as follows:

(i) Triphenyl bismuth (TPB);

(3) Burning rate modifiers as follows:

(i) Catocene;

(ii) Nbutylferrocene;

(iii) Other ferrocene derivatives.

(4) Nitrate esters and nitrato plasticizers as follows:

(i) 1,2,4butanetriol trinitrate (BTTN);

(5) Stabilizers as follows:

(i) Nmethylpnitroaniline.

Item 8—Category II

Structural materials usable in the systems in Item 1, as follows:

(a) Composite structures, laminates, and manufactures thereof, including resin impregnated fibre[115] prepregs and metal coated fibre preforms therefor, specially designed for use in the systems in Item 1 and the subsystems in Item 2 made either with organix[116] matrix or metal matrix utilizing fibrous or filamentary reinforcements having a specific tensile strength greater than $7.62x10^4$ m ($3x10^6$ inches) and a specific modules[117] greater than $3.18x10^6$ m ($1.25x10^8$ inches), (see § 121.1, Category IV (f), and Category XIII (d));

(b) Resaturated pyrolized (*i.e.*, carbon-carbon) materials designed for rocket systems, (see § 121.1 Category IV (f));

(c) Fine grain recrystallized bulk graphites (with a bulk density of at least 1.72 g/cc measured at 15 degrees C), pyrolytic, or fibrous reinforced graphites useable for rocket nozzles and reentry vehicle nose tips (see § 121.1, Category IV (f) and Category XIII);

(d) Ceramic composites materials (dielectric constant less than 6 at frequencies from 100 Hz to 10,000 MHz) for use in missile radomes, and bulk machinable siliconcarbide reinforced unfired ceramic useable for nose tips (see § 121.1, Category IV (f));

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[115] So in original. Probably intended to be "fiber".
[116] So in original. Probably intended to be "organic".
[117] So in original. Probably intended to be "modulus". See http://www.engineeringtoolbox.com/young-modulus-d_417.html. Notice courtesy of Gary D. Hagen, Pacific Northwest National Laboratory, gary.hagen@pnnl.gov.

Item 9—Category II

Instrumentation, navigation and direction finding equipment and systems, and associated production and test equipment as follows; and specially designed components and software therefor:

(a) Integrated flight instrument systems, which include gyrostabilizers or automatic pilots and integration software therefor; designed or modified for use in the systems in Item 1 (See § 121.1, Category XII(d));

(b) Gyro-astro compasses and other devices which derive position or orientation by means of automatically tracking celestial bodies or satellites (see § 121.1, Category XV(d));

(c) Accelerometers with a threshold of 0.05 g or less, or a linearity error within 0.25 percent of full scale output, or both, which are designed for use in inertial navigation systems or in guidance systems of all types (see § 121.1, Category VIII(e) and Category XII (d));

(d) All types of gyros usable in the systems in Item 1, with a rated drift rate stability of less than 0.5 degree (1 sigma or rms) per hour in a 1 q [sic][118] environment (see § 121.1, Category VIII(e) and Category XII(d));

(e) Continuous output accelerometers or gyros of any type, specified to function at acceleration levels greater than 100 g (see § 121.1, Category XII(d));

(f) Inertial or other equipment using accelerometers described by subitems (c) and (e) above, and systems incorporating such equipment, and specially designed integration software therefor (see § 121.1, Category VIII (e) and Category XII(d)); [sic][119]

Notes to Item 9:

(1) Items (a) through (f) may be exported as part of a manned aircraft or satellite or in quantities appropriate for replacement parts for manned aircraft.

(2) In subitem (d):

(i) *Drift rate* is defined as the time rate of output deviation from the desired output. It consists of random and systematic components and is expressed as an equivalent angular displacement per unit time with respect to inertial space.

(ii) *Stability* is defined as standard deviation (1 sigma) of the variation of a particular parameter from its calibrated value measured under stable temperature conditions. This can be expressed as a function of time.

Item 10—Category II

Flight control systems and "technology" as follows; designed or modified for the systems in Item 1.

(a) Hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire systems), (see § 121.1, Category IV (h));

(b) Attitude control equipment, (see § 121.1, Category IV, (c) and (h));

(c) Design technology for integration of air vehicle fuselage, propulsion system and lifting control surfaces to optimize aerodynamic performance throughout the flight regime of an unmanned air vehicle, (see § 121.1, Category VIII (k) [sic][120]);

(d) Design technology for integration of the flight control, guidance, and propulsion data into a flight management system for optimization of rocket system trajectory, (see § 121.1, Category IV (i)).

Note to Item 10:

Items (a) and (b) may be exported as part of a manned aircraft or satellite or in quantities appropriate for

[118] So in original. Should be "g" (for gravity).
[119] So in original. Ending punctuation should be a period.
[120] So in original. There is no Category VIII (k).

replacement parts for manned aircraft.

Item 11—Category II

Avionics equipment, "technology" and components as follows; designed or modified for use in the systems in Item 1, and specially designed software therefor:

(a) Radar and laser radar systems, including altimeters (see § 121.1, Category XI(a)(3));

(b) Passive sensors for determining bearings to specific electromagnetic sources (direction finding equipment) or terrain characteristics (see § 121.1, Category XI(b) and (d));

(c) Global Positioning System (GPS) or similar satellite receivers;

(1) Capable of providing navigation information under the following operational conditions:

(i) At speeds in excess of 515 m/sec (1,000 nautical miles/hours); and

(ii) At altitudes in excess of 18 km (60,000 feet), (see § 121.1, Category XV(d)(2)); or

(2) Designed or modified for use with unmanned air vehicles covered by Item 1 (see § 121.1, Category XV(d)(4)).

(d) Electronic assemblies and components specifically designed for military use and operation at temperatures in excess of 125 degrees C, (see § 121.1, Category XI(a)(7)).

(e) Design technology for protection of avionics and electrical subsystems against electromagnetic pulse (EMP) and electromagnetic interference (EMI) hazards from external sources, as follows, (see § 121.1, Category XI (b)).

(1) Design technology for shielding systems;

(2) Design technology for the configuration of hardened electrical circuits and subsystems;

(3) Determination of hardening criteria for the above.

Notes to Item 11:

(1) Item 11 equipment may be exported as part of a manned aircraft or satellite or in quantities appropriate for replacement parts for manned aircraft.

(2) Examples of equipment included in this Item:

(i) Terrain contour mapping equipment;

(ii) Scene mapping and correlation (both digital and analog) equipment;

(iii) Doppler navigation radar equipment;

(iv) Passive interferometer equipment;

(v) Imaging sensor equipment (both active and passive);

(3) In subitem (a), laser radar systems embody specialized transmission, scanning, receiving and signal processing techniques for utilization of lasers for echo ranging, direction finding and discrimination of targets by location, radial speed and body reflection characteristics.

Item 12—Category II

Launch support equipment, facilities and software for the systems in Item 1, as follows:

(a) Apparatus and devices designed or modified for the handling, control, activation and launching of the systems in Item 1, (see § 121.1, Category IV(c));

(b) (Vehicles designed or modified for the transport, handling, control, activation and launching of the systems in Item 1, (see § 121.1, Category VII(d));

(c) Telemetering and telecontrol equipment usable for unmanned air vehicles or rocket systems, (see § 121.1, Category XI(a));

(d) Precision tracking systems:

(1) Tracking systems which use a translb nv installed on the rocket system or unmanned air vehicle in conjunction with either surface or airborne references or navigation satellite systems to provide real-time measurements of in-flight position and velocity, (see § 121.1, Category XI(a));

(2) Range instrumentation radars including associated optical/infrared trackers and the specially designed software therefor with all of the following capabilities (see § 121.1, Category XI(a)(3)):

(i) angular resolution better than 3 milli-radians (0.5 mils);

(ii) range of 30 km or greater with a range resolution better than 10 meters RMS;

(iii) velocity resolution better than 3 meters per second.

(3) Software which processes post-flight, recorded data, enabling determination of vehicle position throughout its flight path (see § 121.1, Category IV(i)).

Item 13—Category II

Analog computers, digital computers, or digital differential analyzers designed or modified for use in the systems in Item 1 (see § 121.1, Category XI (a)(6)), having either of the following characteristics:

(a) Rated for continuous operation at temperature from below minus 45 degrees C to above plus 55 degrees C; or

(b) Designed as ruggedized or "radiation hardened".

Note to Item 13:

Item 13 equipment may be exported as part of a manned aircraft or satellite or in quantities appropriate for replacement parts for manned aircraft.

Item 14—Category II

Analog-to-digital converters, usable in the system in Item 1, having either of the following characteristics:

(a) Designed to meet military specifications for ruggedized equipment (see § 121.1, Category XI(d)); or,

(b) Designed or modified for military use (see § 121.1, Category XI(d)); and being one of the following types:

(1) Analog-to-digital converter "microcircuits," which are "radiation hardened" or have all of the following characteristics:

(i) Having a resolution of 8 bits or more;

(ii) Rated for operation in the temperature range from below minus 54 degrees C to above plus 125 degrees C; and

(iii) Hermetically sealed.

(2) Electrical input type analog-to-digital converter printed circuit boards or modules, with all of the following characteristics:

(i) Having a resolution of 8 bits or more;

(ii) Rated for operation in the temperature range from below minus 45 degrees C to above plus 55 degrees C; and

(iii) Incorporated "microcircuits" listed in (1), above.

Item 15—Category II[121]

Item 16—Category II

Specially designed software, or specially designed software with related specially designed hybrid (combined analog/digital) computers, for modeling, simulation, or design integration of the systems in Item 1 and Item 2 (see § 121.1, Category IV(i) and Category XI(a)(6)).

Note to Item 16:

The modelling includes in particular the aerodynamic and thermodynamic analysis of the system.

Item 17—Category II

Materials, devices, and specially designed software for reduced observables such as radar reflectivity, ultraviolet/infrared signatures on acoustic signatures (*i.e.*, stealth technology), for applications usable for the systems in Item 1 or Item 2 (see § 121.1, Category XIII (e) and (k)), for example:

(a) Structural material and coatings specially designed for reduced radar reflectivity;

(b) Coatings, including paints, specially designed for reduced or tailored reflectivity or emissivity in the microwave, infrared or ultraviolet spectra, except when specially used for thermal control of satellites.

(c) Specially designed software or databases for analysis of signature reduction.

(d) Specially designed radar cross section measurement systems (see § 121.1, Category XI(a)(3)).

Item 18—Category II

Devices for use in protecting rocket systems and unmanned air vehicles against nuclear effects (*e.g.*, Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for the systems in Item 1, as follows (see § 121.1, Category IV (c) and (h)):

(a) "Radiation Hardened" "microcircuits" and detectors (see § 121.1, Category XI(c)(3) [sic][122]. Note: This commodity has been formally proposed for movement to category XV(e)(2) in the near future).

(b) Radomes designed to withstand a combined thermal shock greater than 1000 cal/sq cm accompanied by a peak over pressure of greater than 50 kPa (7 pounds per square inch) (see § 121.1, Category IV(h)).

Note to Item 18(a):

A *detector* is defined as a mechanical, electrical, optical or chemical device that automatically identifies and records, or registers a stimulus such as an environmental change in pressure or temperature, an electrical or electromagnetic signal or radiation from a radioactive material. The following pages were removed from the final ITAR for replacement by DDTC's updated version § 6(l) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(l)), as amended. In accordance with this provision, the list of MTCR Annex items shall constitute all items on the U.S. Munitions List in § 121.16.

[58 FR 39287, July 22, 1993, as amended at 71 FR 20539, Apr. 21, 2006]

[121] Not contained in original. "Item 15-Category II" was excluded when the MTCR Annex was added to the ITAR in 1993 because the items in that category are subject to the EAR. *See* 58 FR 39280 (July 22, 1993). The items in that category are currently classified in ECCNs 2B116, 2D101, 9B105, 9D101, and in related technology ECCNs. See further discussion about the MTCR at the footnote to § 121.16.
[122] So in original. There is no Category XI(c)(3).

PART 122: REGISTRATION OF MANUFACTURERS AND EXPORTERS

Section

122.1 Registration Requirements
122.2 Submission of Registration Statement
122.3 Registration Fees
122.4 Notification of Changes in Information Furnished by Registrants
122.5 Maintenance of Records by Registrants

Authority: Secs. 2 and 38, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311; 1977 Comp. p. 79, 22 U.S.C. 2651a.
Source: 58 FR 39298, July 22, 1993, unless otherwise noted.

§ 122.1 Registration Requirements[123]

(a) Any person who engages in the United States in the business of either manufacturing or exporting[124] defense articles or furnishing defense services is required to register with the Directorate of Defense Trade Controls. For the purpose of this subchapter, engaging in the business of manufacturing or exporting defense articles or furnishing defense services requires only one occasion of manufacturing or exporting a defense article or furnishing a defense service. Manufacturers who do not engage in exporting must nevertheless register.[125]

(b) *Exemptions.* Registration is not required for:

(1) Officers and employees of the United States Government acting in an official capacity.

(2) Persons whose pertinent business activity is confined to the production of unclassified technical data only.

(3) Persons all of whose manufacturing and export activities are licensed under the Atomic Energy Act of 1954, as amended.

(4) Persons who engage only in the fabrication of articles for experimental or scientific purpose, including research and development.

(c) *Purpose*. Registration is primarily a means to provide the U.S. Government with necessary information on who is involved in certain manufacturing and exporting activities. Registration does not confer any export rights or privileges. It is generally a precondition to the issuance of any license or other approval under this subchapter.

[58 FR 39298, July 22, 1993, as amended at 71 FR 20540, Apr. 21, 2006]

§ 122.2 Submission of Registration Statement

(a) *General.* An intended registrant must submit[126] a Department of State Form DS-2032 (Statement of

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[123] DDTC registration guidelines and forms are available at http://www.pmddtc.state.gov/registration/index.html (Sep. 12, 1911); last viewed Sept. 1, 2012).

[124] DDTC failed to include in part 122 the requirement for those who temporarily import (ITAR § 120.18) USML articles to register with DDTC, but ITAR § 123.2, Import Jurisdiction, states that the temporary import of defense articles is regulated by the Department of State, and that all temporary imports of defense articles must be authorized by a temporary import license (DSP-61) (ITAR § 123.1(a)(3), (4), Requirement for Export or Temporary Import Licenses; and § 123.3, Temporary Import Licenses) or an ITAR exemption (ITAR §123.4, Temporary Import License Exemptions). ITAR § 120.1(c) states that "[a]pplications for licenses or other approvals will be considered only if the applicant has registered with the Directorate of Defense Trade Controls pursuant to part 122" (ITAR § 120.1(c)), but part 122 is silent regarding the requirement for registering temporary importers.

[125] Practice tip: DDTC also construes this to cover companies that own, control, or otherwise are related to companies that engage in the manufacture or export of defense articles or furnish defense services, but which themselves do not engage in such activities. DDTC is, in many cases, requiring companies that are not the parent company to consolidate the registrations of affiliated companies or all companies with common ultimate ownership, even if the common owner is foreign. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132.)

[126] *See generally,* DDTC, "A Complete Registration Package" (Nov. 21, 2011), *available at* http://www.pmddtc.state.gov/registration/crp.html (last viewed Sept. 1, 2012).

Registration) to the Office of Defense Trade Controls Compliance by registered or overnight mail delivery, and must submit an electronic payment via Automated Clearing House or Federal Reserve Wire Network payable to the Department of State of one of the fees prescribed in § 122.3(a) of this subchapter. Automated Clearing House (ACH) and Federal Reserve Wire Network (FedWire) are electronic networks used to process financial transactions in the United States. Intended registrants should access the Directorate of Defense Trade Control's website at www.pmddtc.state.gov for detailed guidelines on submitting an ACH or FedWire electronic payment. Electronic payments must be in U.S. currency and must be payable through a U.S. financial institution. Cash, checks, foreign currency, or money orders will not be accepted. In addition, the Statement of Registration must be signed by a senior officer (e.g., Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant also shall submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

(b) *Transmittal letter*. A letter of transmittal, signed by an authorized senior officer of the intended registrant, shall accompany each Statement of Registration.

(1) The letter shall state whether the intended registrant, chief executive officer, president, vice presidents, other senior officers or officials (*e.g.*, comptroller, treasurer, general counsel) or any member of the board of directors:

(i) Has ever been indicted for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(ii) Is ineligible to contract with, or to receive a license[127] or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government.

(2) The letter shall also declare whether the intended registrant is owned or controlled by foreign persons (as defined in § 120.16 of this subchapter). If the intended registrant is owned or controlled by foreign persons, the letter shall also state whether the intended registrant is incorporated or otherwise authorized to engage in business in the United States.

(c) *Definition*. For purpose of this section, *ownership* means that more than 50 percent of the outstanding voting securities of the firm are owned by one or more foreign persons. *Control* means that one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Control is presumed to exist where foreign persons own 25 percent or more of the outstanding voting securities if no U.S. persons control an equal or larger percentage.

[58 FR 39298, July 22, 1993, as amended at 69 FR 70889, Dec. 8, 2004; 71 FR 20540, Apr. 21, 2006; 73 FR 55440, Sept. 25, 2008; 76 FR 45195, July 28, 2011; 76 FR 76035, Dec. 6, 2011]

, 2012), on submitting registration packages and material changes to registration. A complete package consists of a DS-2032, Transmittal Letter, Legal Documentation and other attachments as needed.

[127] Practice tip: DDTC has advised that this is not intended to cover officers and directors who are ineligible to obtain an export license or other approval solely because they are foreign persons. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132.)

§ 122.3 Registration Fees

(a) A person who is required to register must do so on an annual basis upon submission of a completed Form DS-2032 and payment of a fee as follows:

(1) Tier 1: A set fee of $2,250 per year is required for new registrants or registrants for whom the Directorate of Defense Trade Controls has not reviewed, adjudicated or issued a response to any applications during a 12-month period ending 90 days prior to expiration of the current registration.

(2) Tier 2: A set fee of $2,750 per year is required for registrants for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response to between one and ten applications during a 12-month period ending 90 days prior to expiration of the current registration.

(3) Tier 3: The third tier is for registrants for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response to more than ten applications during a 12-month period ending 90 days prior to expiration of the current registration. For this tier, registrants will pay a fee of $2,750 plus an additional fee based on the number of applications for which the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response. The additional fee will be determined by multiplying $250 times the number of applications over ten for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response during a 12-month period ending 90 days prior to expiration of the current registration.

(4) For registrants, including universities, exempt from income taxation pursuant to 26 U.S.C. 501(c)(3), their fee may be reduced to the Tier 1 registration fee provided a copy of their certification letter from the Internal Revenue Service is submitted with their registration package. To be eligible, the registrant and all of its subsidiaries/affiliates must be exempt from income taxation pursuant to 26 U.S.C. 501(c)(3).

(5) The fee for registrants whose total registration fee is greater than 3% of the total value of applications for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response during the 12-month period ending 90 days prior to expiration of the current registration will be reduced to 3% of such total application value or $2,750, which ever is greater.

(6) For those renewing a registration, notice of the fee due for the next year's registration will be sent to the registrant of record at least 60 days prior to its expiration date.[128]

(7) For purposes of this subsection, "applications" refers to the actions enumerated within parts 123 through 126 of this subchapter that require the Directorate of Defense Trade Controls to review, adjudicate and issue responses.[129] Only those applications that the Department has taken final action on and provided response to will be counted in determining the annual registration fee. Those applications that are "returned without action" or "denied" will not be counted.[130]

(b) *Expiration of registration.* A registrant must submit its request for registration renewal at least 30 days but no earlier than 60 days prior to the expiration date.

(c) *Lapse in registration.* A registrant who fails to renew a registration and, after an intervening period, seeks to register again must pay registration fees for any part of such intervening period during which the registrant engaged in the business of manufacturing or exporting defense articles or defense services.

[58 FR 39298, July 22, 1993, as amended at 62 FR 27497, May 20, 1997; 69 FR 70889, Dec. 8, 2004; 70 FR 50959, Aug. 29, 2005; 73 FR 41259, July 18, 2008; 73 FR 55440, Sept. 25, 2008; 76 FR 45197, July 28, 2011]

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[128] Practice tip: The notice from DDTC is a courtesy only. This amount is due regardless of whether the registrant actually receives the notice. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132.)

[129] *E.g.*, a license (DSP-5, DSP-61, DSP-73, DSP-85); a license amendment (DSP-119); TAA, MLA, DA, or agreement amendment. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132.)

[130] Practice tip: This does not include voluntary disclosures, commodity jurisdiction requests, advisory opinion requests, general correspondence or export authorization requests that are returned without action. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132.)

§ 122.4 Notification of Changes in Information Furnished by Registrants

(a) A registrant must, within five days of the event, notify the Directorate of Defense Trade Controls by registered mail if:

(1) Any of the persons referred to § 122.2(b) are indicted for or convicted of violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter, or become ineligible[131] to contract with, or to receive a license or other approval to export or temporarily import defense articles or defense services from any agency of the U.S. government; or

(2) There is a material change[132] in the information contained in the Statement of Registration, including a change in the senior officers; the establishment, acquisition or divestment of a subsidiary or foreign affiliate; a merger; a change of location; or the dealing in an additional category of defense articles or defense services.

(b) A registrant must notify the Directorate of Defense Trade Controls by registered mail at least 60 days in advance of any intended sale or transfer to a foreign person of ownership or control of the registrant or any entity thereof. Such notice does not relieve the registrant from obtaining the approval required under this subchapter for the export of defense articles or defense services to a foreign person, including the approval required prior to disclosing technical data. Such notice provides the Directorate of Defense Trade Controls with the information necessary to determine whether the authority of § 38(g)(6) of the Arms Export Control Act regarding licenses or other approvals for certain sales or transfers of defense articles or data on the U.S. Munitions List should be invoked (see §§ 120.10 and 126.1(e) of this subchapter).

(c) The new entity formed when a registrant merges with another company or acquires, or is acquired by, another company or a subsidiary or division of another company shall advise the Directorate of Defense Trade Controls of the following:

(1) The new firm name and all previous firm names being disclosed;

(2) The registration number that will survive and those that are to be discontinued (if any);

(3)[133] The license numbers of all approvals on which unshipped balances will be shipped under the surviving registration number, since any license not the subject of notification will be considered invalid; and

(4) Amendments to agreements approved by the Directorate of Defense Trade Controls to change the name

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[131] Practice tip: This statement has not been interpreted to include foreign person officers and directors who are ineligible solely based on their status as foreign persons. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132.). Knowledge of ineligibility may be assumed if party's name is posted on the General Services Administration Excluded Parties List System (EPLS), an electronic, web-based system accessible at http://www.gsa.gov/portal/content/101991 (last viewed Sept. 1, 2012), that identifies those parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and non-financial assistance and benefits. The EPLS keeps the user community aware of administrative and statutory exclusions across the entire government, suspected terrorists, and individuals barred from entering the United States. Users are able to search, view, and download both current and archived exclusions.

[132] DDTC posted the following notice on May 2, 2012, at http://pmddtc.state.gov/registration/notification_chreg.html (last viewed Sept. 1, 2012):

> Notification of Changes in Registration Information: A *material change* is a change in information contained in the DS-2032 Statement of Registration ("DS-2032"). Examples of material changes include, but are not limited to, ineligibility changes, changes to name, address, or senior officers (e.g., Members of the Board of Directors, Senior Officers, Partners, and Owners); the establishment, acquisition or divestment of a U.S. or foreign parent, subsidiary, or affiliate; a merger; or, the addition or deletion of USML categories. Material changes where the 5-day reporting period coincides with an annual registration renewal may be submitted within a registration renewal and must be explicitly noted in the cover letter and highlighted for additions and strike through for deletions in the DS-2032.

[133] DDTC posted the following notice on May 2, 2012, at http://pmddtc.state.gov/registration/notification_chreg.html (last viewed Sept. 1, 2012):

> Notification of Mergers, Acquisitions, or Divestures must be submitted to the Directorate of Defense Trade Controls (DDTC) separately from an annual registration renewal. Pursuant to ITAR Section 122.4(c)(3) regarding currently approved and pending authorizations which are affected by material change notifications, please access The Office of Defense Trade Controls Licensing guidelines at http://www.pmddtc.state.gov/licensing/guidelines_instructions.html. Once on the website, select General Correspondence for Amendment of Existing ITAR Authorizations Due to Foreign Entity Name Change or General Correspondence for Amendment of Existing ITAR Authorizations Due to U.S. Entity Name/Address and/or Registration Code Changes.

of a party to those agreements. The registrant must, within 60 days of this notification, provide to the Directorate of Defense Trade Controls a signed copy of an amendment to each agreement signed by the new U.S. entity, the former U.S. licensor and the foreign licensee. Any agreements not so amended will be considered invalid.

(d) Prior approval by the Directorate of Defense Trade Controls is required for any amendment making a substantive change.

[58 FR 39298, July 22, 1993, as amended at 71 FR 20540, Apr. 21, 2006]

§ 122.5 Maintenance of Records by Registrants

(a) A person who is required to register must maintain records concerning the manufacture, acquisition and disposition[134] (to include copies of all documentation on exports using exemptions and applications and licenses and their related documentation), of defense articles; of technical data; the provision of defense services; brokering activities; and information on political contributions, fees, or commissions furnished or obtained, as required by part 130 of this subchapter. Records in an electronic format must be maintained using a process or system capable of reproducing all records on paper. Such records when displayed on a viewer, monitor, or reproduced on paper, must exhibit a high degree of legibility and readability. (For the purpose of this section, *"legible"* and *"legibility"* mean the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. *"Readable"* and *"readability"* means the quality of a group of letters or numerals being recognized as complete words or numbers.) This information must be stored in such a manner that none of it may be altered once it is initially recorded without recording all changes, who made them, and when they were made.[135] For processes or systems based on the storage of digital images, the process or system must afford accessibility to all digital images in the records being maintained. All records subject to this section must be maintained for a period of five years[136] from the expiration of the license or other approval, to include exports using an exemption (See § 123.26 of this subchapter); or, from the date of the transaction (*e.g.*, expired licenses or other approvals relevant to the export transaction using an exemption). The Managing Director, Directorate of Defense Trade Controls, and the Director of the Office of Defense Trade Controls Licensing, may prescribe a longer or shorter period in individual cases.

(b) Records maintained under this section shall be available at all times for inspection and copying by the Directorate of Defense Trade Controls or a person designated by the Directorate of Defense Trade Controls (*e.g.*, the Diplomatic Security Service[137]) or U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection. Upon such request, the person maintaining the records must furnish the records, the equipment, and if necessary, knowledgeable personnel for locating, reading, and reproducing any record that is required to be maintained in accordance with this section.

[70 FR 50959, Aug. 29, 2005]

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[134] Practice tip: Presumably this is limited to acquisition and disposition in which an export occurred, not all acquisitions and dispositions where no export occurred. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132.)

[135] Practice tip: If you rely on an order processing database or other system, ensure your information system supports these requirements. (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132.)

[136] This period may be based upon the general Federal statute of limitations for enforcement of civil fines, penalties, or forfeitures stated in 28 U.S.C. § 2462, Time for Commencing Proceedings. Usage note: The ITAR uses "five years" at §§ 122.5(a), 126.18(a)(2), and 130.14, but "5 years" at § 125.6(a) and (b). The preferred usage for U.S. Government documents is to use numbers rather than words for years and other periods of time. Rule 12.9, GPO Style Manual (2008).

[137] The Bureau of Diplomatic Security (DS) is the security and law enforcement arm of the U.S. Department of State. DS is a world leader in international investigations, threat analysis, cyber security, counterterrorism, security technology, and protection of people, property, and information. *See generally, Department of State,* Bureau of Diplomatic Security, http://www.state.gov/m/ds/.

PART 123: LICENSES FOR THE EXPORT OF DEFENSE ARTICLES[138]

Section

123.1 Requirement for Export or Temporary Import Licenses
123.2 Import Jurisdiction
123.3 Temporary Import Licenses
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123.5 Temporary Export Licenses
123.6 Foreign Trade Zones and U.S. Customs and Border Protection Bonded Warehouses
123.7 Exports to Warehouses or Distribution Points Outside the United States
123.8 Special Controls on Vessels, Aircraft, and Satellites Covered by the U.S. Munitions List
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123.14 Import Certificate/Delivery Verification Procedure
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123.19 Canadian and Mexican Border Shipments
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123.21 Duration, Renewal, and Disposition of Licenses
123.22 Filing, Retention, and Return of Export Licenses and Filing of Export Information
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123.24 Shipments by U.S. Postal Service
123.25 Amendments to Licenses
123.26 Recordkeeping for Exemptions
123.27 Special licensing Regime for Export to U.S. Allies of Commercial Communications Satellite Components, Systems, Parts, Accessories, Attachments, and Associated Technical Data

Authority: *Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec 1205(a), Pub. L. 107–228.*
Source: *58 FR 39299, July 22, 1993, unless otherwise noted.*

§ 123.1 Requirement for Export or Temporary[139] Import Licenses[140]

(a) Any person who intends to export or to import temporarily a defense article must obtain the approval of the Directorate of Defense Trade Controls prior to the export or temporary import,[141] unless the export or temporary import qualifies for an exemption under the provisions of this subchapter. Applications for export or temporary import must be made as follows:

(1) Applications for licenses for permanent export must be made on Form DSP-5 (unclassified);

(2) Applications for licenses for temporary export must be made on Form DSP-73 (unclassified);

(3) Applications for licenses for temporary import must be made on Form DSP-61 (unclassified); and

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[138] This part should be named "Licenses for the Export and Temporary Import of Defense Articles," as it also includes requirements for temporary imports. This part (edits throughout and adding Israel to 123.9(e)) was amended by 77 FR 16592-16643 (Mar. 21, 2012, effective Apr. 13, 2012).
[139] The word "temporary" is not defined in ITAR, but see §§ 123.4 and 123.5, which limit temporary imports to 4 years.
[140] DDTC guidance on electronic license applications, "DTrade Information Center," is available at http://www.pmddtc.state.gov/DTRADE/index.html (June 7, 2012) (last viewed Sept. 1, 2012).
[141] See footnote at § 122.1(a) regarding the requirement for a person who intends to temporarily import a defense article to register with DDTC.

(4) Applications for the export or temporary import of classified defense articles or classified technical data[142] must be made on Form DSP-85.[143]

(b) Applications for Department of State export licenses must be confined to proposed exports of defense articles including technical data.

(c) As a condition to the issuance of a license or other approval, the Directorate of Defense Trade Controls may require all pertinent documentary information regarding the proposed transaction and proper completion of the application form as follows:

(1) Form DSP-5, DSP-61, DSP-73, and DSP-85 applications must have an entry in each block where space is provided for an entry. All requested information must be provided.

(2) Attachments and supporting technical data or brochures should be submitted in seven collated copies. Two copies of any freight forwarder lists must be submitted. If the request is limited to renewal of a previous license or for the export of spare parts, only two sets of any attachment (including freight forwarder lists) and one copy of the previous license should be submitted. In the case of fully electronic submissions, unless otherwise expressly required by the Directorate of Defense Trade Controls, applicants need not provide multiple copies of supporting documentation and attachments, supporting technical data or brochures, and freight forwarder lists.

(3) A certification letter signed by an empowered official must accompany all application submissions (see § 126.13 of this subchapter).

(4) An application for a license under this part for the permanent export of defense articles sold commercially must be accompanied by a copy of a purchase order, letter of intent, or other appropriate documentation.**[144]**

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[142] The title on the DSP-85 is "Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data." § 120.28(a)(6).

[143] Per DDTC announcement on May 13, 2011, at http://pmddtc.state.gov/, DDTC no longer accepts the multi-page DSP-85 license application paper form. Submissions must be now be made using the DSP-85 downloadable and fillable form, and mailed or delivered to DDTC. No changes have been made to the content of the form itself. Download the form at: http://pmddtc.state.gov/licensing/documents/DSP_85.pdf (undated) (last viewed Sept. 1, 2012).

[144] DDTC, "UPDATE – Notice on License Support Documentation" (Aug. 4, 2008), *available at* website, at http://www.pmddtc.state.gov/licensing/documents/gl_licensesupportdoc.pdf (last viewed Sept. 1, 2012) provides the following guidance:

> Section 123.1(c)(4) of the International Traffic in Arms Regulations (ITAR) establishes that the Directorate of Defense Trade Controls (DDTC) may require all pertinent documentary information in order to consider the issuance of a license or other approval. Consistent with our longstanding practice, in addition to requiring a purchase order, letter of intent, or other documentation, DDTC's Office of Defense Trade Controls Licensing (DTCL) may require a signed contract to be submitted with any application for the permanent export of defense articles. The purpose of this requirement is to confirm the legitimacy of the transaction, including the roles and responsibilities of all the parties. DTCL has received with increasing frequency supporting documentation that calls into question whether the applicants are in a position to fulfill their responsibilities as registered exporters and, in fact, whether anyone at the companies could meet the obligations as empowered officials under Section 120.25. In these instances, the applications have been Returned Without Action advising the applicants of the ITAR requirements. At this time, DTCL finds it prudent to iterate to exporters of defense articles the fundamental ITAR requirement for supporting documentation. The purchase documentation must be from the foreign party purchasing the defense articles. The purchase documentation cannot be from its U.S. subsidiary since the latter entity is considered a U.S. person under the ITAR. The purchase order must be addressed and directed to the registered U.S. party selling the defense articles and submitting the export license application. This ensures the applicant is in a contractual position to fulfill all responsibilities of registered parties under the ITAR, including being knowledgeable of all elements of the transaction. The documentation may contain references to other parties and their roles (e.g., suppliers, manufacturers, freight forwarders), but at a minimum must specifically explain the role of the party submitting the license application. All applications not in compliance with this requirement will be Returned Without Action. In the interim, DTCL will consider applications on a case-by-case basis and determine whether they may be approved pending full implementation of this requirement. . . . .The supporting purchase order, letter of intent, or other documentation must have an issue date within one year from the date of application submission; if more than one year old, a letter of explanation must be provided and will be considered on a case-by-case basis. The only exception to this requirement is an unshipped balance license request where the original purchase order or letter of intent is required as supporting documentation with a letter of explanation identifying the unshipped balance. Any supporting purchase order, letter of intent, or other documentation identifying the purchase price in a non-U.S. currency must provide the exchange rate and U.S. dollar conversion for each line item. This conversion must be annotated on the relevant document by either the foreign party or the U.S. applicant. The supporting purchase order, letter of intent, or other documentation must state the ultimate end-user and end-use of the requested defense articles. The end-user and end-use statement must be consistent with what is on the license application. If this information is not available in the supporting purchase documentation, a separate statement from the foreign party is acceptable. This separate statement does not take the place of a DSP-83 when required. . . . . Per DDTC guidance in the guidelines to complete the DSP-5, DSP-73 and DSP-61, DDTC will not accept post office boxes or other general or imprecise addresses without a letter of

In cases involving the U.S. Foreign Military Sales program, three copies of the relevant Letter of Offer and Acceptance are required, unless the procedures of § 126.4(c) or § 126.6 of this subchapter are followed.[145]

(5) Form DSP-83, duly executed, must accompany all license applications for the permanent export of significant military equipment, including classified hardware or classified technical data (see §§ 123.10 and 125.3 of this subchapter).[146]

(6) A statement concerning the payment of political contributions, fees and commissions must accompany a permanent export application if the export involves defense articles or defense services valued in an amount of $500,000 or more and is being sold commercially to or for the use of the armed forces of a foreign country or international organization (see part 130 of this subchapter).

(d) Provisions for furnishing the type of defense services described in § 120.9(a) of this subchapter are contained in part 124 of this subchapter. Provisions for the export or temporary import of technical data and classified defense articles are contained in part 125 of this subchapter.

(e) A request for a license for the export of unclassified technical data (DSP-5) related to a classified defense article should specify any classified technical data or material that subsequently will be required for export in the event of a sale.

[58 FR 39299, July 22, 1993, as amended at 70 FR 50960, Aug. 29, 2005; 71 FR 20540, Apr. 21, 2006]

§ 123.2 Import Jurisdiction

The Department of State regulates the temporary[147] import of defense articles. Permanent imports of defense articles into the United States are regulated by the Department of the Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives under the direction of the Attorney General (see 27 CFR parts 447, 478, 479, and 555).

[71 FR 20540, Apr. 21, 2006]

§ 123.3 Temporary Import Licenses

(a) A license (DSP-61) issued by the Directorate of Defense Trade Controls is required for the temporary import and subsequent export of unclassified defense articles, unless exempted from this requirement pursuant to § 123.4. This requirement applies to:

(1) Temporary imports of unclassified defense articles that are to be returned directly to the country from which they were shipped to the United States;

(2) Temporary imports of unclassified defense articles in transit to a third country;

(b) A bond may be required as appropriate (see part 125 of this subchapter for license requirements for technical data and classified defense articles.)

(c) A DSP-61 license may be obtained by a U.S. importer in satisfaction of § 123.4(c)(4) of this subchapter. If a foreign exporter requires documentation for a permanent import, the U.S. importer must contact the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives for the appropriate documentation. A DSP-61 will not be approved to support permanent import requirements.

[58 FR 39299, July 22, 1993, as amended at 71 FR 20540, Apr. 21, 2006]

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explanation/justification. This requirement extends to all parties to the transaction, U.S. and foreign. Incomplete, imprecise addresses or use of post office boxes may result in your application being Returned Without Action after September 15, 2008. If the address of a manufacturer is not known, the applicant may select "Unknown" and state in the letter of explanation why the information is not available. When selecting "Unknown", the applicant must exercise due diligence to determine the manufacturer's information, such as requesting the source to provide the manufacturer's information. In order to facilitate the review of your license application, please identify related precedent licenses in the "Description of Transaction" section of the license application. There is no need to upload a copy of the precedent license but citing the precedent case number is strongly encouraged.

[145] This section is referred to in § 123.27 regarding an exemption for commercial communications satellites.

[146] See exemption for commercial communications satellites at § 123.27.

[147] The word "temporary" is not defined in ITAR, but see §§ 123.4 and 123.5, which limit temporary imports to 4 years.

§ 123.4 Temporary Import License Exemptions

(a)[148] Port Directors of U.S. Customs and Border Protection shall permit the temporary import (and subsequent export) without a license, for a period of up to 4 years,[149] of unclassified[150] U.S.-origin defense items[151] (including any items manufactured abroad pursuant to U.S. Government approval) if the item temporarily imported:

(1)[152] Is serviced (*e.g.*, inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components, but excluding any modifications, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item), and is subsequently returned to the country from which it was imported. Shipment may be made by the U.S. importer or a foreign government representative of the country from which the goods were imported; or

(2) Is to be enhanced, upgraded or incorporated into another item which has already been authorized by the Directorate of Defense Trade Controls for permanent export; or

(3) Is imported for the purpose of exhibition, demonstration or marketing in the United States and is subsequently returned to the country from which it was imported; or

(4) Has been rejected for permanent import by the Department of the Treasury[153] and is being returned to the country from which it was shipped; or

(5) Is approved for such import under the U.S. Foreign Military Sales (FMS) program pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (LOA).

Note: These exceptions do not apply to shipments that transit the U.S. to or from Canada (see § 123.19 and § 126.5 of this subchapter for exceptions).

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[148] Practical summary of § 123.4(a): Temporary import of a defense article is permitted without license, PROVIDED it is:
- unclassified, **and**
- for repair & return to sender within 4 years, **and**
- U.S.-made (or foreign with USG approval), **and**:
- will be serviced but not improved; **or**
- will be improved or incorporated into another item which has already been authorized for permanent return; **or**
- will be imported only for exhibition or demonstration in USA; **or**
- was rejected for permanent import and is being returned to sender; **or**
- was approved for import under FMS LOA.

[149] Usage note: The ITAR uses "four years" at § 123.21(a) and "five years" at §§ 122.5(a), 126.18(a)(2), and 130.14, but "4 years" at §§ 123.4(a) and 123.5(a), and "5 years" at § 125.6(a) and (b). The preferred usage for U.S. Government documents is to use numbers for years and other periods of time. Rule 12.9, GPO Style Manual (2008).

[150] See § 123.1(a)(4) and § 123.3(b) re classified articles.

[151] "Defense articles" is the term defined at 120.6 and used throughout the ITAR, although "defense items" is defined in the Arms Export Control Act at 22 U.S.C. 2778(j)(4)(A) as "defense articles, defense services, and related technical data."

[152] DDTC has posted guidance for obtaining permission to return "surprise" temporary imports sent to U.S. repair facilities without the required use of a DSP-61 or 123.4(a) exemption. State Dept., DDTC, TEMPORARY IMPORT VIOLATIONS (Nov. 25, 2009), *available at:* http://www.pmddtc.state.gov/licensing/documents/WebNotice_TemporaryImportViolations.pdf (last viewed Sept. 1, 2012), stating:

> Temporary imports of defense articles require the recipient to obtain a DSP-61 (Temporary Import License) or to claim the exemption under 22 CFR 123.4. In order for the temporary import exemption to be claimed at the time of re-export, the article being returned must have been declared at the time of import on the appropriate U.S. Customs and Border Protection document. The Directorate of Defense Trade Controls (DDTC) has seen an increase in the number of instances where a foreign person temporarily returns a defense article for repair or replacement without authorization to a U.S. person without the U.S person's prior knowledge. In this situation, the U.S. person is unable to coordinate the return and obtain the requisite DSP-61 license or claim the regulatory exemptions under §123.4(a)(1) of the International Traffic in Arms Regulations (ITAR) (22 CFR 120-130). DDTC has established new guidance regarding these unauthorized temporary imports and the subsequent exports to return the items. When this situation occurs, the U.S. person should investigate the nature and cause of the violation and determine if the U.S. person had any responsibility for the violation. If the U.S. person determines they did not have any responsibility for the violation, then in lieu of submitting a separate Voluntary Disclosure in accordance with ITAR §127.12, the U.S. person can submit a DSP-5 license application to return the defense article to the foreign person. A transmittal letter, signed by the Empowered Official, must be submitted with the application, explaining the reasons why the applicant does not believe they have any responsibility for the violation and the steps taken to make this determination; the identities and addresses of all persons known or suspected to be involved in the activities giving rise to the unauthorized temporary import; and any measures taken to prevent a reoccurrence.

[153] So in original. Probably should have been changed to "Department of Homeland Security" (DHS) in 2002, when DHS was created, the name of the U.S. Customs Service was changed to U.S. Customs and Border Patrol (CBP), and CBP was placed under the jurisdiction of DHS.

(b)[154] Port Directors of U.S. Customs and Border Protection shall permit the temporary import (but not the subsequent export) without a license of unclassified defense articles that are to be incorporated into another article, or modified, enhanced, upgraded, altered, improved or serviced in any other manner that changes the basic performance or productivity of the article prior to being returned to the country from which they were shipped or prior to being shipped to a third country. A DSP-5 is required for the reexport of such unclassified defense articles after incorporation into another article, modification, enhancement, upgrading, alteration or improvement.

(c) *Requirements.* To use an exemption under § 123.4 (a) or (b), the following criteria must be met:

(1) The importer must meet the eligibility requirements set forth in § 120.1(c)[155] of this subchapter;

(2) At the time of export, the ultimate consignee named on the Electronic Export Information (EEI) must be the same as the foreign consignee or end-user of record named at the time of import; [156]

(3) A stated in § 126.1 of this subchapter, the temporary import must not be from or on behalf of a proscribed country, area, or person listed in that section unless an exception has been granted in accordance with § 126.3 of this subchapter; and

(4) The foreign exporter must not require documentation of U.S. Government approval of the temporary import. If the foreign exporter requires documentation for a temporary import that qualifies for an exemption under this subchapter, the U.S. importer will not be able to claim the exemption and is required to obtain a DSP-61 Application/License for Temporary Import of Unclassified Defense Articles.

(d)[157] *Procedures*. To the satisfaction of the Port Directors of U.S. Customs and Border Protection, the importer and exporter must comply with the following procedures:

(1) At the time of temporary import—

(i) File and annotate the applicable U.S. Customs and Border Protection document (*e.g.*, Form CF 3461, 7512, 7501, 7523 or 3311)[158] to read: *"This shipment is being imported in accordance with and under the authority of 22 CFR 123.4(a)* (identify subsection)*,"* and

(ii) Include, on the invoice or other appropriate documentation, a complete list and description of the defense article(s) being imported, including quantity and U.S. dollar value; and

(2) At the time of export, in accordance with the U.S. Customs and Border Protection procedures, the Directorate of Defense Trade Controls (DDTC) registered and eligible exporter, or an agent acting on the filer's behalf, must electronically file the export information using the Automated Export System (AES), and identify 22 CFR 123.4 as the authority for the export and provide, as requested by U.S. Customs and Border Protection, the entry document number or a copy of the U.S. Customs and Border Protection document under which the article was imported.

[58 FR 39299, July 22, 1993, as amended at 64 FR 17533, Apr. 12, 1999; 68 FR 61101, Oct. 27, 2003; 70 FR 50960, Aug. 29, 2005]

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[154] Practical summary of § 123.4(b): Temporary imports of an unclassified item is permitted without license, PROVIDED it will be exported under DSP-5 within 4 years.
- Not limited to U.S.-origin articles.
- Not required to be exported within 4 years.
- Okay to be shipped to different party or country than origin.

[155] Referring to the MTCR Annex.

[156] CBP entry documents (*e.g.,* CBP-3461, 7501) do not recognize listing of the foreign consignee or end-user of record.

[157] Practical summary of § 123.4(d) procedures:
(1) On import—
(i) Get CBP annotation on CF 3461, 7512, 7501, 7523, 3311, carnet, or other document, which must contain statement: *"This shipment is being imported in accordance with and under the authority of 22 CFR 123.4(a)* (identify subsection)*,"* and
(ii) Include on invoice or other docs a description of item including quantity and value; and
(2) On export, file AES report, identifying 22 CFR 123.4 as authority for export, and provide entry document number or copy of the CBP form under which the article was imported.

[158] Although not stated in the ITAR, DDTC has opined that CBP documents include carnets, which must also contain this statement when the imported item is being imported under these exemptions.

§ 123.5 Temporary Export Licenses

(a) The Directorate of Defense Trade Controls may issue a license for the temporary export of unclassified defense articles (DSP-73). Such licenses are valid only if the article will be exported for a period of less than 4 years and will be returned to the United States and transfer of title will not occur during the period of temporary export. Accordingly, articles exported pursuant to a temporary export license may not be sold or otherwise permanently transferred to a foreign person while they are overseas under a temporary export license. A renewal of the license or other written approval must be obtained from the Directorate of Defense Trade Controls if the article is to remain outside the United States beyond the period for which the license is valid.

(b) *Requirements.* Defense articles authorized for temporary export under this section may be shipped only from a port in the United States where a Port Director of U.S. Customs and Border Protection is available, or from a U.S. Post Office (see 39 CFR part 20), as appropriate. The license for temporary export must be presented to the Port Director of U.S. Customs and Border Protection who, upon verification, will endorse the exit column on the reverse side of the license. In some instances of the temporary export of technical data (*e.g.*, postal shipments), self-endorsement will be necessary (see § 123.22(b)[159]). The endorsed license for temporary export is to be retained by the licensee. In the case of a military aircraft or vessel exported under its own power, the endorsed license must be carried on board such vessel or aircraft as evidence that it has been duly authorized by the Department of State to leave the United States temporarily.

(c) Any temporary export license for hardware that is used, regardless of whether the hardware was exported directly to the foreign destination or returned directly from the foreign destination, must be endorsed[160] by the U.S. Customs and Border Protection in accordance with the procedures in § 123.22 of this subchapter.

[70 FR 50960, Aug. 29, 2005]

§ 123.6 Foreign Trade Zones and U.S. Customs and Border Protection Bonded Warehouses

Foreign trade zones in the United States and U.S. Customs and Border Protection bonded warehouses are considered integral parts of the United States for the purpose of this subchapter. An export license is therefore not required for shipment between the United States and a foreign trade zone or a U.S. Customs and Border Protection bonded warehouse. In the case of classified defense articles, the provisions of the Department of Defense National Industrial Security Program Operating Manual[161] will apply. An export license is required for all shipments of articles on the U.S. Munitions List from foreign trade zones and U.S. Customs and Border Protection bonded warehouses to foreign countries, regardless of how the articles reached the zone or warehouse.

[71 FR 20540, Apr. 21, 2006]

§ 123.7 Exports to Warehouses or Distribution Points Outside the United States

Unless the exemption under § 123.16(b)(1) is used, a license is required to export defense articles to a warehouse or distribution point outside the United States for subsequent resale and will normally be granted only if an agreement has been approved pursuant to § 124.14 of this subchapter.

§ 123.8 Special Controls on Vessels, Aircraft, and Satellites Covered by the U.S. Munitions List

(a) Transferring registration or control to a foreign person of any aircraft, vessel, or satellite on the U.S. Munitions List is an export for purposes of this subchapter and requires a license or written approval from the Directorate of Defense Trade Controls. This requirement applies whether the aircraft, vessel, or satellite is

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[159] For electronic reports to DDTC of exports of technical data via the U.S. Postal Service, see § 123.24(b).
[160] Referred to in § 123.22(a) as "decrement" rather than "endorse".
[161] DoD Manual 5220.22-M, National Industrial Security Program Operating Manual ("NISPOM") (Feb 28, 2006), *available at* http://www.dtic.mil/whs/directives/corres/pdf/522022m.pdf (last viewed Sept. 1, 2011).

physically located in the United States or abroad.

(b) The registration in a foreign country of any aircraft, vessel or satellite covered by the U.S. Munitions List which is not registered in the United States but which is located in the United States constitutes an export. A license or written approval from the Directorate of Defense Trade Controls is therefore required. Such transactions may also require the prior approval of the U.S. Department of Transportation's Maritime Administration, the Federal Aviation Administration or other agencies of the U.S. Government.

[71 FR 20540, Apr. 21, 2006]

§ 123.9 Country of Ultimate Destination and Approval of Reexports or Retransfers[162]

(a) The country designated as the country of ultimate destination on an application for an export license, or in an Electronic Export Information filing where an exemption is claimed under this subchapter, must be the country of ultimate end use. The written approval of the Directorate of Defense Trade Controls must be obtained before reselling, transferring, transshipping, or disposing of a defense article to any end user, end use or destination other than as stated on the export license, or on the Electronic Export Information filing in cases where an exemption is claimed under this subchapter, except in accordance with the provisions of an exemption under this subchapter that explicitly authorizes the resell, transfer, reexport, retransfer, transshipment, or disposition of a defense article without such approval. Exporters must determine the specific end-user, end-use, and destination prior to submitting an application to the Directorate of Defense Trade Controls or claiming an exemption under this subchapter.

Note to paragraph (a): In making the aforementioned determination, a person is expected to review all readily available information, including information readily available to the public generally as well as information readily available from other parties to the transaction.

(b) The exporter shall incorporate the following statement[163] as an integral part of the bill of lading, airway bill, or other shipping documents, and the invoice whenever defense articles are to be exported or transferred pursuant to a license, other written approval, or an exemption under this subchapter, other than the exemptions contained in § 126.16 and § 126.17 of this subchapter (Note: for exports made pursuant to § 126.16 or § 126.17 of this subchapter, see § 126.16(j)(5) or § 126.17(j)(5)):

"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, to any other country or end-user, 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."*

(c) Any U.S. person or foreign person requesting written approval from the Directorate of Defense Trade Controls for the reexport, retransfer, other disposition, or change in end-use, end-user, or destination[164] of a defense article initially exported or transferred pursuant to a license or other written approval, or an exemption under this subchapter, must submit all the documentation required for a permanent export license (see § 123.1 of this subchapter) and shall also submit the following:

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[162] *See* 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information:
One commenting party requested § 123.9(a) clarify whether the United Kingdom government could deploy items received pursuant to the Treaty. DDTC has reviewed this request and has not made changes to this paragraph. Section 126.17(h) identifies the process by which items exported pursuant to the Treaty may be deployed by the United Kingdom government. One commenting party requested edits to the note to § 123.9(a) to use the word "knowledge." DDTC rejected this request because the language in the note is sufficient, but has added clarifying language to the note.

[163] This statement is generally referred to as the "Destination Control Statement" (DCS) by ITAR practitioners, but this term is not found in the ITAR. It is an EAR term defined at 15 CFR 758.6.

[164] *See* 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information:
One commenting party requested clarification of the addition and use of the word "destination" in § 123.9 (c). The term "destination" is added because while the end-user may remain the same, the destination may change, therefore requiring authorization from DDTC.

(1) The license number, written authorization, or exemption under which the defense article or defense service was previously authorized for export from the United States (Note: For exports under exemptions at § 126.16 or § 126.17 of this subchapter, the original end-use, program, project, or operation under which the item was exported must be identified.);

(2) A precise description, quantity, and value of the defense article or defense service;

(3) A description and identification of the new end-user, end-use, and destination; and

(4) With regard to any request for such approval relating to a defense article or defense service initially exported pursuant to an exemption contained in § 126.16 or § 126.17[165] of this subchapter, written request for the prior approval of the transaction from the Directorate of Defense Trade Controls must be submitted: By the original U.S. exporter, provided a written request is received from a member of the Australian Community, as identified in § 126.16 of this subchapter, or the United Kingdom Community, as identified in § 126.17 of this subchapter (where such a written request includes a written certification from the member of the Australian Community or the United Kingdom Community providing the information set forth in § 126.17 of this subchapter); or by a member of the Australian Community or the United Kingdom Community, where such request provides the information set forth in this section. All persons must continue to comply with statutory and regulatory requirements outside of this subchapter concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 C.F.R. Parts 447, 478, and 479, which are unaffected by the Defense Trade Cooperation Treaty between the United States and the United Kingdom and continue to apply fully to defense articles and defense services subject to either of the aforementioned treaties and the exemptions contained in § 126.17 of this subchapter.

(d) [Reserved.]

(e)[166] Reexports or retransfers of U.S.-origin components incorporated into a foreign defense article to NATO, NATO agencies, a government of a NATO country, or the governments of Australia, Israel, Japan, New Zealand, or the Republic of Korea are authorized without the prior written approval of the Directorate of Defense Trade Controls, provided:

(1) The U.S.-origin components were previously authorized for export from the United States, either by a license, written authorization, or an exemption other than those described in either § 126.16 or § 126.17 of this subchapter;

(2) The U.S.-origin components are not significant military equipment, the items are not major defense equipment sold under contract in the amount of $25,000,000 ($25 million) or more; the articles are not defense articles or defense services sold under a contract in the amount of $100,000,000 ($100 million) or more; and are not identified in part 121 of this subchapter as Missile Technology Control Regime (MTCR) items; and

(3) The person reexporting the defense article provides written notification to the Directorate of Defense Trade Controls of the retransfer not later than 30 days following the reexport. The notification must state the articles being reexported and the recipient government.

(4) The original license or other approval of the Directorate of Defense Trade Controls did not include retransfer or reexport restrictions prohibiting use of this exemption.

[58 FR 39299, July 22, 1993, as amended at 71 FR 20541, Apr. 21, 2006; 73 FR 15885, Mar. 26, 2008; 73 FR 38343, Aug. 3, 2009; 77 FR 16592, Mar. 21, 2012.]

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[165] *See* 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information:
One commenting party sought clarification of whether § 123.9(c)(4) set up a different process for a retransfer request if such were submitted for articles received under the new § 126.17. Section 123.9(c)(4) does not set up a new process; it identifies who may submit a retransfer request and is language reflective of Section 9(3) of the Implementing Arrangement.

[166] This part (sections 120.19, 120.33, 120.34, 120.35, and 120.36) was amended by 77 FR 16592-16643 (Mar. 21, 2012), and became effective on April 13, 2012.

§ 123.10 Nontransfer and Use Assurances

(a) A *nontransfer and use certificate* (Form DSP-83) is required for the export of significant military equipment and classified articles, including classified technical data.[167] A license will not be issued until a completed Form DSP-83 has been received by the Directorate of Defense Trade Controls. This form is to be executed by the foreign consignee, foreign end user, and the applicant. The certificate stipulates that, except as specifically authorized by prior written approval of the Department of State, the foreign consignee and foreign end user will not reexport, resell or otherwise dispose of the significant military equipment enumerated in the application outside the country named as the location of the foreign end use or to any other person.

(b) The Directorate of Defense Trade Controls may also require a DSP-83 for the export of any other defense articles, including technical data, or defense services.

(c) When a DSP-83 is required for an export of any defense article or defense service to a non-governmental foreign end user, the Directorate of Defense Trade Controls may require as a condition of issuing the license that the appropriate authority of the government of the country of ultimate destination also execute the certificate.

[71 FR 20541, Apr. 21, 2006]

§ 123.11 Movements of Vessels and Aircraft Covered by the U.S. Munitions List Outside the United States

(a) A license issued by the Directorate of Defense Trade Controls is required whenever a privately owned aircraft or vessel on the U.S. Munitions List makes a voyage outside the United States.

(b) *Exemption.* An export license is not required when a vessel or aircraft referred to in paragraph (a) of this section departs from the United States and does not enter the territorial waters or airspace of a foreign country if no defense articles are carried as cargo. Such a vessel or aircraft may not enter the territorial waters or airspace of a foreign country before returning to the United States, or carry as cargo any defense article, without a temporary export license (Form DSP-73) from the Department of State. (See § 123.5.)

[58 FR 39299, July 22, 1993, as amended at 71 FR 20541, Apr. 21, 2006]

§ 123.12 Shipments Between U.S. Possessions

An export license is not required for the shipment of defense articles between the United States, the Commonwealth of Puerto Rico, and U.S. possessions. A license is required, however, for the export of defense articles from these areas to foreign countries.

§ 123.13 Domestic Aircraft Shipments via a Foreign Country

A license is not required for the shipment by air of a defense article from one location in the United States to another location in the United States via a foreign country. The pilot of the aircraft must, however, file a written statement with the Port Director of U.S. Customs and Border Protection at the port of exit in the United States. The original statement must be filed at the time of exit with the Port Director of U.S. Customs and Border Protection. A duplicate must be filed at the port of reentry with the Port Director of U.S. Customs and Border Protection, who will duly endorse it and transmit it to the Port Director of U.S. Customs and Border Protection at the port of exit. The statement will be as follows:

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[167] Practice tip: A DSP-83 is required to be submitted to DDTC along with the executed copy of an MLA for manufacture of SME abroad. That initial DSP83 is for the data that is being exported to the foreign party. However, pursuant to ITAR 124.9(b)(1), which is one of the two additional clauses required in all MLAs for the manufacture of SME abroad, a completed non-transfer and use certificate (DSP-83) must also be executed by the foreign end-user of the SME defense article being manufactured under the MLA. So, before the final transfer of the finished product occurs, the foreign end-user signs the DSP-83 along with the manufacturer, who in this case is the foreign consignee. The DSP-83 is then returned to the applicant for submission to DTC. (Contributor: Tom Donovan, Northrop Grumman Corp., Thomas.P.Donovan@ngc.com, 202-799-3032.)

Domestic Shipment Via a Foreign Country of Articles on the U.S. Munitions List

Under penalty according to Federal law, the undersigned certifies and warrants that all the information in this document is true and correct, and that the equipment listed below is being shipped from (U.S. port of exit) *via* (foreign country) *to* (U.S. port of entry), *which is the final destination in the United States.*

Description of Equipment

Quantity: _____

Equipment _____

Value _____

Signed _____

Endorsement: U.S. Customs and Border Protection Inspector

Port of Exit _____

Date: _____

Signed: _____

Endorsement: U.S. Customs and Border Protection Inspector

Port of Entry _____

Date _____

[70 FR 50961, Aug. 29, 2005]

§ 123.14 Import Certificate/Delivery Verification Procedure

(a) The Import Certificate/Delivery Verification Procedure is designed to assure that a commodity imported into the territory of those countries participating in IC/DV procedures will not be diverted, transshipped, or reexported to another destination except in accordance with export control regulations of the importing country.

(b) *Exports*. The Directorate of Defense Trade Controls may require the IC/DV procedure on proposed exports of defense articles to non-government entities in those countries participating in IC/DV procedures. In such cases, U.S. exporters must submit both an export license application (the completed Form DSP-5) and the original Import Certificate, which must be provided and authenticated by the government of the importing country. This document verifies that the foreign importer complied with the import regulations of the government of the importing country and that the importer declared the intention not to divert, transship or reexport the material described therein without the prior approval of that government. After delivery of the commodities to the foreign consignee, the Directorate of Defense Trade Controls may also require U.S. exporters to furnish Delivery Verification documentation from the government of the importing country. This documentation verifies that the delivery was in accordance with the terms of the approved export license. Both the Import Certificate and the Delivery Verification must be furnished to the U.S. exporter by the foreign importer.

(c) *Triangular transactions.* When a transaction involves three or more countries that have adopted the IC/DV procedure, the governments of these countries may stamp a triangular symbol on the Import Certificate. This symbol is usually placed on the Import Certificate when the applicant for the Import Certificate (the importer) states either (1) that there is uncertainty whether the items covered by the Import Certificate will be imported into the country issuing the Import Certificate; (2) that he or she knows that the items will not be imported into the country issuing the Import Certificate; or (3) that, if the items are to be imported into the country issuing the Import Certificate, they will subsequently be reexported to another destination. All parties, including the ultimate consignee in the country of ultimate destination, must be shown on the completed Import Certificate.

[58 FR 39299, July 22, 1993, as amended at 71 FR 20541, Apr. 21, 2006]

§ 123.15 Congressional Certification Pursuant to § 36 (c) of the Arms Export Control Act[168]

(a) The Arms Export Control Act requires that a certification be provided to the Congress prior to the granting of any license or other approval for transactions, in the amounts described below, involving exports of any defense articles and defense services and for exports of major defense equipment, as defined in § 120.8 of this subchapter.[169] Approvals may not be granted when the Congress has enacted a joint resolution prohibiting the export. Certification is required for any transaction involving:

(1) A license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more, or for defense articles and defense services sold under a contract in the amount of $50,000,000 or more to any country that is not a member country of the North Atlantic Treaty Organization (NATO), or Australia, Israel,[170] Japan, New Zealand, or the Republic of Korea that does not authorize a new sales territory; or

(2) A license for export to a country that is a member country of NATO, or Australia, Israel, Japan, New Zealand, or the Republic of Korea, of major defense equipment sold under a contract in the amount in the amount of $25,000,000 or more, or for defense articles and defense services sold under a contract in the amount of $100,000,000 or more, and provided the transfer does not include any other countries; or

(3) A license for export of a firearm controlled under Category I of the United States Munitions List, of this subchapter, in an amount of $1,000,000 or more.[171]

(b) Unless an emergency exists which requires the proposed export in the national security interests of the United States, approval may not be granted for any transaction until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1) involving NATO, or Australia, Israel, Japan, New Zealand, or the Republic of Korea or at least 30 calendar days have elapsed for any other country; in the case of a license for an export of a commercial communications satellite for launch from, and by nationals of, the Russian Federation, Ukraine, or Kazakhstan, until at least 15 calendar days after the Congress receives such certification.

(c) Persons who intend to export defense articles and defense services pursuant to any exemption in this subchapter under the circumstances described in this section must provide written notification to the Directorate of Defense Trade Controls and include a signed contract and a DSP-83 signed by the applicant, the foreign consignee and the end user.

[70 FR 34654, June 15, 2005, as amended at 73 FR 38343, Aug. 3, 2009]

§ 123.16 Exemptions of General Applicability

(a) The following exemptions apply to exports of unclassified defense articles for which no approval is needed from the Directorate of Defense Trade Controls. These exemptions do not apply to: Proscribed destinations under § 126.1 of this subchapter;[172] exports for which Congressional notification is required (see § 123.15 of this subchapter); MTCR articles; Significant Military Equipment (SME);[173] and may not be used by persons

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[168] Supplementary Information in the announcement of Implementation of the Defense Trade Cooperation Treaty Between the U.S. and U.K., at 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stated in part, "Two commenting parties requested clarification on whether the congressional notification requirement under the Treaty is identical to that required under normal license authorization processes. DDTC confirms that the process will be the same."

[169] 22 USCS § 2776, Reports and Certifications to Congress on Military Exports.

[170] Added by 77 FR 16592 (Mar. 21, 2012), and effective April 15, 2012.

[171] *See* Dept. of State, DDTC, GUIDELINES FOR THE PERMANENT EXPORT, TEMPORARY EXPORT, AND TEMPORARY IMPORT OF FIREARMS AND AMMUNITION, U.S. MUNITIONS LIST CATEGORIES I AND III, 4 (Jan. 16, 2010), para. I.G, *available at* http://www.pmddtc.state.gov/licensing/documents/Guidelines_Firearms.pdf (last viewed Sept. 1, 2012), stating in part

> Congressional Notification. If the total value of the export is $1 million or higher, the following information MUST be provided: If the end user is a defense ministry or a law enforcement agency: What will happen to the weapons in their inventory? Provide information on the ultimate end user. If the end user is a firearms dealer importing the firearms for commercial resale: Provide information regarding the ultimate end use/end-use.

[172] *But see* 123.17(g), which permits use of exemption for temporary export of body armor to Iraq an Afghanistan.

[173] ITAR § 120.7.

who are generally ineligible as described in § 120.1(c) of this subchapter. All shipments of defense articles, including but not limited to those to Australia, Canada, and the United Kingdom, require an Electronic Export Information (EEI) filing or notification letter. If the export of a defense article is exempt from licensing, the EEI filing must cite the exemption. Refer to § 123.22 of this subchapter for EEI filing and letter notification requirements.

(b) The following exports are exempt from the licensing requirements of this subchapter.

(1) Port Directors of U.S. Customs and Border Protection shall permit the export without a license of defense hardware being exported in furtherance of a manufacturing license agreement, technical assistance agreement, distribution agreement or an arrangement for distribution of items identified in Category XIII(b)(1), approved in accordance with part 124, provided that:

(i) The defense hardware to be exported supports the activity and is identified by item, quantity and value in the agreement or arrangement; and

(ii) Any provisos or limitations placed on the authorized agreement or arrangement are adhered to; and

(iii) The exporter certifies in the EEI filing by selecting the appropriate code that the export is exempt from the licensing requirements of this subchapter; and

(iv) The total value of all shipments does not exceed the value authorized in the agreement or arrangement.

(v) In the case of a distribution agreement, export must be made directly to the approved foreign distributor.

(vi) The exporter must certify on the invoice, the bill of lading, air waybill, or shipping documents that the export is exempt from the licensing requirements of this subchapter. This is done by writing "22 CFR 123.16(b)(2) applicable."

(2) Port Directors of U.S. Customs and Border Protection shall permit the export of components or spare parts (for exemptions for firearms and ammunition see § 123.17) without a license when the total value does not exceed $500 in a single transaction and:

(i) The components or spare parts are being exported to support a defense article previously authorized for export; and

(ii) The spare parts or components are not going to a distributor, but to a previously approved end user of the defense articles; and

(iii) The spare parts or components are not to be used to enhance the capability of the defense article;

(iv) Exporters shall not split orders so as not to exceed the dollar value of this exemption;

(v) The exporter may not make more than 24 shipments per calendar year to the previously authorized end user;

(vi) The exporter must certify on the invoice, the bill of lading, air waybill, or shipping document that the export is exempt from the licensing requirements of this subchapter. This is done by writing *"22 CFR 123.16(b)(2) applicable."*

(3) Port Directors of U.S. Customs and Border Protection shall permit the export without a license, of packing cases specially designed to carry defense articles.

(4) Port Directors of U.S. Customs and Border Protection shall permit the export without a license, of unclassified models or mock-ups of defense articles, provided that such models or mock-ups are nonoperable and do not reveal any technical data in excess of that which is exempted from the licensing requirements of § 125.4(b) of this subchapter[174] and do not contain components covered by the U.S. Munitions List (see

[174] Practice tip: If the model reveals no technical data as defined by 120.10, and is not otherwise defined as a defense article under 120.6, it would not be subject to the AECA and ITAR license requirements.

§ 121.8(b) of this subchapter). Some models or mockups built to scale or constructed of original materials can reveal technical data. U.S. persons who avail themselves of this exemption must provide a written certification to the Port Director of U.S. Customs and Border Protection that these conditions are met. This exemption does not imply that the Directorate of Defense Trade Controls will approve the export of any defense articles for which models or mocks-ups have been exported pursuant to this exemption.

(5) Port Directors of U.S. Customs and Border Protection shall permit the temporary[175] export without a license of unclassified defense articles to any public exhibition, trade show, air show or related event if that article has previously been licensed for a public exhibition, trade show, air show or related event and the license is still valid. U.S. persons who avail themselves of this exemption must provide a written certification to the Port Director of U.S. Customs and Border Protection that these conditions are met.

(6) For exemptions for firearms and ammunition for personal use refer to § 123.17.

(7) For exemptions for firearms for personal use of members of the U.S. Armed Forces and civilian employees see § 123.18.

(8) For exports to Canada refer to § 126.5 of this subchapter.

(9) Port Directors of U.S. Customs and Border Protection shall permit the temporary export without a license by a U.S. person of any unclassified component, part, tool or test equipment to a subsidiary, affiliate or facility owned or controlled by the U.S. person (see §120.37 of this subchapter for definition of foreign ownership and foreign control) if the component, part, tool or test equipment is to be used for manufacture, assembly, testing, production, or modification provided:

(i) The U.S. person is registered with the Directorate of Defense Trade Controls and complies with all requirements set forth in part 122 of this subchapter;

(ii) No defense article exported under this exemption may be sold or transferred without the appropriate license or other approval from the Directorate of Defense Trade Controls.

(10) Port Directors of U.S. Customs and Border Protection shall permit, without a license, the permanent export, and temporary[176] export and return to the United States, by accredited U.S. institutions of higher learning of articles fabricated only for fundamental research purposes otherwise controlled by Category XV (a) or (e) in § 121.1 of this subchapter when all of the following conditions are met:

(i) The export is to an accredited institution of higher learning, a governmental research center or an established government funded private research center located within countries of the North Atlantic Treaty Organization (NATO) or countries which have been designated in accordance with section 517 of the Foreign Assistance Act of 1961 as a major non-NATO ally[177] (and as defined further in section 644(q) of that Act) for purposes of that Act and the Arms Export Control Act, or countries that are members of the European Space Agency[178] or the European Union[179] and involves exclusively nationals of such countries;

(ii) All of the information about the article(s), including its design, and all of the resulting information obtained through fundamental research involving the article will be published and shared broadly within

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[175] The word "temporary" is not defined in ITAR, but see §§ 123.4 and 123.5, which limit temporary imports to 4 years.
[176] The word "temporary" is not defined in ITAR, but see §§ 123.4 and 123.5, which limit temporary imports to 4 years.
[177] See list of major non-NATO allies at § 120.32.
[178] ESA is an international organization with 18 Member States. Members are Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom. Canada takes part in some projects under a Cooperation agreement. Hungary, Romania and Poland are 'European Cooperating States'. Estonia and Slovenia have recently signed cooperation agreements with ESA. http://www.esa.int/SPECIALS/About_ESA/SEMW16ARR1F_0.html (Sept. 3, 2012) (Last viewed Sept. 3, 2012).
[179] The 27 members of European Union are Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and United Kingdom. http://europa.eu/abc/european_countries/index_en.htm (last viewed Sept. 1, 2012).. Current candidates for EU membership are Croatia, Former Yugoslav Republic of Macedonia, Iceland, Montenegro, Serbia, and Turkey. Named potential candidates are Albania, Bosnia & Herzegovina, and Kosovo under UNSCR 1244. http://ec.europa.eu/enlargement/candidate-countries/index_en.htm (last viewed Sept. 1, 2012).

the scientific community, and is not restricted for proprietary reasons or specific U.S. Government access and dissemination controls or other restrictions accepted by the institution or its researchers on publication of scientific and technical information resulting from the project or activity (See § 120.11[180] of this subchapter); and

(iii) If the article(s) is for permanent export, the platform or system in which the article(s) may be incorporated must be a satellite covered by § 125.4(d)(1)(iii) of this subchapter and be exclusively concerned with fundamental research and only be launched into space from countries and by nationals of countries identified in this section.

[58 FR 39299, July 22, 1993, as amended at 59 FR 29951, June 10, 1994; 59 FR 45622, Sept. 2, 1994; 67 FR 15100, Mar. 29, 2002; 70 FR 50961, Aug. 29, 2005; 71 FR 20541, Apr. 21, 2006; 76 FR 45197, July 28, 2011]

§ 123.17 Exports of Firearms, Ammunition, and Personal Protective Gear[181]

(a) Except as provided in § 126.1 of this subchapter, Port Directors of U.S. Customs and Border Protection shall permit the export without a license of components and parts for Category I(a) firearms, except barrels, cylinders, receivers (frames) or complete breech mechanisms when the total value does not exceed $100 wholesale in any transaction.

(b) Port Directors of U.S. Customs and Border Protection shall permit the export without a license of nonautomatic firearms covered by Category I(a) of § 121.1 of this subchapter if they were manufactured in or before 1898, or are replicas of such firearms.

(c) Port Directors of U.S. Customs and Border Protection (CBP) shall permit U.S. persons to export temporarily[182] from the United States without a license not more than three nonautomatic firearms in Category I(a) of § 121.1 of this subchapter and not more than 1,000 cartridges therefor, provided that:

(1) The person declares the articles to a CBP officer upon each departure from the United States, presents the Internal Transaction Number from submission of the Electronic Export Information in the Automated Export System per § 123.22 of this subchapter, and the articles are presented to the CBP officer for inspection;

(2) The firearms and accompanying ammunition to be exported is with the individual's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(3)[183] The firearms and accompanying ammunition must be for that person's exclusive use and not for reexport or other transfer of ownership. The person must declare that it is his intention to return the article(s) on each return to the United States. The foregoing exemption is not applicable to the personnel referred to in § 123.18 of this subchapter. [184]

(d) Port Directors of U.S. Customs and Border Protection shall permit a foreign person to export without a license such firearms in Category I(a) of § 121.1 of this subchapter and ammunition therefor as the foreign person brought into the United States under the provisions of 27 CFR 478.115(d). (The latter provision specifically excludes from the definition of importation the bringing into the United States of firearms and ammunition by certain foreign persons for specified purposes.)

(e) Port Directors of U.S. Customs and Border Protection shall permit U.S. persons to export[185] without a license ammunition for nonautomatic firearms referred to in paragraph (a) of this section if the quantity does not exceed 1,000 cartridges (or rounds) in any shipment. The ammunition must also be for personal use and not

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[180] *See* § 120.11(a)(8).
[181] This section amended by 77 FR 25865 (May 2, 2012). See copy at Appendix C.
[182] No time limit is specified for the temporary export.
[183] *See also* 77 FR 25865 (May 2, 2012), Supplementary Information, stating in part: "Section (c)(3) is revised to remove what is in practice extraneous language. Subject to the requirements of (c)(1)-(3), the exemption applies to all eligible individuals (with the noted exceptions). Thus, while the text is revised, the meaning of (c)(3) is not changed."
[184] Members of the U.S. armed forces and civilian employees of the U.S. Government.
[185] Presumably a temporary export, as the firearm cannot be resold or transferred, although the permissible period abroad before return to the United States is not specified.

for resale or other transfer of ownership. The foregoing exemption is also not applicable to the personnel referred to in § 123.18.[186]

(f) Port Directors of U.S. Customs and Border Protection (CBP) shall permit U.S. persons to export temporarily from the United States without a license one set of body armor covered by U.S. Munitions List Category X(a)(1), which may include one helmet covered by U.S. Munitions List Category X(a)(6), or one set of chemical agent protective gear covered by U.S. Munitions List Category XIV(f)(4), which may include one additional filter canister, provided:[187]

(1) The person declares the articles to a CBP officer upon each departure from the United States, presents the Internal Transaction Number from submission of the Electronic Export Information in the Automated Export System (AES) per § 123.22 of this subchapter,[188] and the articles are presented to the CBP officer for inspection;[189]

(2) The body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, to be exported is with the individual's baggage or effects,[190] whether accompanied or unaccompanied (but not mailed);[191] and

(3) The body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, to be exported is for that person's exclusive use and not for reexport or other transfer of ownership. The person must declare it is his intention to return the article(s) to the United States at the end of tour, contract, or assignment for which the articles were temporarily exported.[192]

(g) The license exemption set forth in paragraph (f) of this section is also available for the temporary[193] export of body armor or chemical agent protective gear for personal use to countries listed in § 126.1 of this subchapter provided:[194]

(1) The conditions in paragraphs (f) of this section are met; and

(2) The person is affiliated with the U.S. Government traveling on official business or is traveling in support of a U.S. Government contract. The person shall present documentation to this effect, along with the Internal

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[186] Members of the U.S. armed forces and civilian employees of the U.S. Government.

[187] *See* 77 FR 25865, at 25866 (May 2, 2012), Supplementary Information, stating in part: "The Department … has added helmets covered by 22 CFR 121.1, Category X(a)(6) to the exemption for the temporary export of body armor, when the helmet is included with the body armor. The exemption is not available for the helmet alone."

[188] *See* 77 FR 25865, at 25866 (May 2, 2012), Supplementary Information, stating in part:
One commenting party recommended the removal of the requirement to file the export declaration through the Automated Export System (AES), with the explanation that AES is not available for individual use. The Department verified that AES is available for individual use. Therefore, the Department did not accept this recommendation.

[189] *See* 77 FR 25865 (May 2, 2012), Supplementary Information, stating in part:
Three commenting parties requested the elimination of the requirement for a U.S. Customs and Border Protection (CBP) inspection before export, citing logistical difficulties in certain instances (for example, departing on a U.S. military airplane from a U.S. military base). According to law and regulations, persons who claim this exemption must submit the articles for CBP inspection at departure, regardless of the type of aircraft used for departure from the United States. Therefore, the Department did not accept this recommendation.

[190] *See* 77 FR 25865, at 25866 (May 2, 2012), Supplementary Information, stating in part:
One commenting party recommended expanding the exemption to allow a U.S. person to export and distribute to employees the items covered by the exemption. While a company within the definition of "U.S. person" may claim the exemption for his employees, the individual employees must export the items and these items must be with the individual's baggage or effects, whether accompanied or unaccompanied (but not mailed).

[191] *See* 77 FR 25865 (May 2, 2012), Supplementary Information, stating in part:
Two commenting parties recommended the option of separate shipment or mailing of armor or gear exported using this exemption, stating that carrying the armor or gear is burdensome. We acknowledge that carrying the armor or gear may present certain logistical difficulties, but because this exemption is intentionally of limited scope, we are not prepared to authorize separate shipment or mailing as a mean of export at this time. Therefore, the Department did not accept this recommendation.

[192] *See* 77 FR 25865, at 25866 (May 2, 2012), Supplementary Information, stating in part:
One commenting party recommended providing the option of depositing the body armor or chemical agent protective gear with a U.S. Government depot and receiving a receipt in lieu of physical return of the articles to the United States, and another commenting party inquired whether this was permissible under the exemption. In order to avoid the requirement of obtaining a license from the Department for the export, the articles temporarily exported under this exemption must be physically returned to the United States. Therefore, the Department did not accept this recommendation.

[193] The word "temporary" is not defined in ITAR, but see §§ 123.4 and 123.5, which limit temporary imports to 4 years.

[194] Notwithstanding the 123.16(a) and 126.1(a) prohibitions against using exemptions for exports to 126.1(a) proscribed countries.

Transaction Number for the AES submission, to the CBP officer.

(h) The license exemption set forth in paragraph (f) of this section is available for the temporary export of body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister,[195] for personal use to Iraq, provided the conditions in paragraph (f) are met, and the person is either affiliated with the U.S. Government traveling on official business or is traveling in support of a U.S. Government contract, or is traveling to Iraq under a direct authorization by the Government of Iraq and engaging in activities for, on behalf of, or at the request of, the Government of Iraq.[196] The person shall present documentation to this effect, along with the Internal Transaction Number for the AES submission, to the CBP officer. Documentation regarding direct authorization from the Government of Iraq shall include an English translation.

(i) The license exemption set forth in paragraph (f) of this section is available for the temporary export of body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, for personal use to Afghanistan, provided the conditions in paragraph (f) are met.

(j)[197] If the articles temporarily exported pursuant to paragraphs (c) and (f) through (i) of this section are not returned to the United States, a detailed report must be submitted to the Office of Defense Trade Controls Compliance in accordance with the requirements of § 127.12(c)(2) of this subchapter.[198]

(k) To use the exemptions in this section, individuals are not required to be registered with the Department of State (the registration requirement is described in part 122 of this subchapter). All other entities must be registered and eligible, as provided in §§ 120.1(c) and (d) and part 122 of this subchapter.

[58 FR 39299, July 22, 1993, as amended at 64 FR 17534, Apr. 12, 1999; 70 FR 50962, Aug. 29, 2005; 71 FR 20541, Apr. 21, 2006; 74 FR 39213, Aug. 6, 2009; 77 FR 25865, May 2, 2012.]

§ 123.18 Firearms for Personal Use of Members of the U.S. Armed Forces and Civilian Employees of the U.S. Government

The following exemptions apply to members of the U.S. Armed Forces and civilian employees of the U.S. Government who are U.S. persons (both referred to herein as personnel). The exemptions apply only to such

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[195] *See* 77 FR 25865, at 25866 (May 2, 2012), Supplementary Information, stating in part:
One commenting party recommended including specific mention of the C2 canister as covered by the chemical agent protective gear exemption. Upon reflection, the Department determined that the exemption would be more useful if it provided for coverage of a spare filter canister (of which the C2 canister is one variant). Therefore, the Department in effect accepted this recommendation, although it opted for use of the more generic term of "filter canister" rather than "C2 canister."

[196] *See* 77 FR 25865, at 25866 (May 2, 2012), Supplementary Information, stating in part:
Two commenting parties inquired into what type of documentation may be used to satisfy the exemption requirements for Iraq. As the rule is written, various forms of documentation may be presented to fulfill the exemption requirements, including the examples proffered by the commenting parties (contract with or letter from the U.S. Government).

[197] *See* 77 FR 25865 (May 2, 2012), Supplementary Information, stating in part:
New § 123.17(j) specifies that if the chemical agent protective gear is not returned to the United States with the individual that temporarily exported the gear, a detailed report of the incident must be submitted to the Office of Defense Trade Controls Compliance in accordance with the requirements of ITAR § 127.12(c)(2). If the chemical agent protective gear is lost or stolen, the report should describe all attempts to locate the gear and explain the circumstances leading to its loss or theft. In the event the chemical agent protective gear is used and disposed of according to HAZMAT guidelines, the report should provide a disposal date and location details for the approved HAZMAT facility used, along with a receipt for disposal services. If a HAZMAT facility is not available, the report should describe the date, location, and method used to dispose of the protective gear. In the proposed rule, this disclosure provision was covered in paragraph (f) and applied only to the body armor and chemical agent protective gear provisions. In this final rule, we specify that, in addition to applying to the body armor and chemical agent protective gear exemptions, it also applies to the firearms exemption covered in paragraph (c). The change removes the requirement that assistance to the government of Iraq be "humanitarian" to more accurately match the language of United Nations Security Council restrictions, which do not limit assistance to humanitarian assistance.

[198] *See* 77 FR 25865, at 25866 (May 2, 2012), Supplementary Information, stating in part:
One commenting party recommended the removal of the requirement to submit a report to the Office of Defense Trade Controls Compliance in accordance with the requirements of § 127.12(c)(2) should the person temporarily exporting under this exemption not be able to return the exported items. The commenting party said it would be "wrong" to treat as a violation an instance where the impediment to return was the actual intended use and destruction of the body armor or chemical agent protective gear. The Department notes when an item authorized only for temporary export is not returned to the United States, by definition it is a violation. Section 127.12(c)(2) is the means by which such a violation is reported to the Department. The Department did not accept this recommendation.

personnel if they are assigned abroad for extended duty. These exemptions do not apply to dependents.

(a) *Firearms*. Port Directors of U.S. Customs and Border Protection shall permit nonautomatic firearms in Category I(a) of § 121.1 of this subchapter and parts therefor to be exported, except by mail, from the United States without a license if:

(1) They are consigned to servicemen's clubs abroad for uniformed members of the U.S. Armed Forces; or,

(2) In the case of a uniformed member of the U.S. Armed Forces or a civilian employee of the Department of Defense, they are for personal use and not for resale or other transfer of ownership,[199] and if the firearms are accompanied by a written authorization from the commanding officer concerned; or

(3) In the case of other U.S. Government employees, they are for personal use and not for resale or other transfer of ownership,[200] and the Chief of the U.S. Diplomatic Mission or his designee in the country of destination has approved in writing to Department of State the import of the specific types and quantities of firearms into that country. The exporter shall provide a copy of this written statement to the Port Director of U.S. Customs and Border Protection.

(b) *Ammunition*. Port Directors of U.S. Customs and Border Protection shall permit not more than 1,000 cartridges (or rounds) of ammunition for the firearms referred to in paragraph (a) of this section to be exported (but not mailed) from the United States without a license when the firearms are on the person of the owner or with his baggage or effects, whether accompanied or unaccompanied (but not mailed).

[58 FR 39299, July 22, 1993, as amended at 70 FR 50962, Aug. 29, 2005]

§ 123.19 Canadian and Mexican Border Shipments

A shipment originating in Canada or Mexico which incidentally transits the United States en route to a delivery point in the same country that originated the shipment is exempt from the requirement for an in transit license.

§ 123.20 Nuclear Related Controls

(a) The provisions of this subchapter do not apply to equipment, technical data or services in Category VI(e) and Category XVI of §121.1 of this subchapter to the extent such equipment, technical data or services are under the export control of the Department of Energy or the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as amended, or is a government transfer authorized pursuant to these Acts.

(b) The transfer of materials, including special nuclear materials, nuclear parts of nuclear weapons, or other non-nuclear parts of nuclear weapons systems involving Restricted Data or of assistance involving any person directly or indirectly engaging in the production or use thereof is prohibited except as authorized by the Atomic Energy Act of 1954, as amended. The transfer of Restricted Data or such assistance is prohibited except as authorized by the Atomic Energy Act of 1954, as amended. The technical data or defense services relating to nuclear weapons, nuclear weapons systems or related defense purposes (and such data or services relating to applications of atomic energy for peaceful purposes, or related research and development) may constitute Restricted Data or such assistance, subject to the foregoing prohibition.

(c) A license for the export of any machinery, device, component, equipment, or technical data relating to equipment referred to in Category VI(e) of §121.1 of this subchapter will not be granted unless the proposed equipment comes within the scope of an existing Agreement for Cooperation for Mutual Defense Purposes concluded pursuant to the Atomic Energy Act of 1954, as amended, with the government of the country to which the Article is to be exported. Licenses may be granted in the absence of such an agreement only:

(1) If the proposed export involves an article which is identical to that in use in an unclassified civilian

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[199] Presumably a temporary export, as the firearm cannot be resold or transferred, although the permissible period abroad before return to the United States is not specified.
[200] *Id.*.

nuclear power plant,

(2) If the proposed export has no relationship to naval nuclear propulsion, and

(3) If it is not for use in a naval propulsion plant.

[67 FR 58988, Sept. 19, 2002]

§ 123.21 Duration, Renewal, and Disposition of Licenses[201]

(a) A license is valid for four years.[202] The license expires when the total value or quantity authorized has been shipped or when the date of expiration has been reached, whichever occurs first. Defense articles to be shipped thereafter require a new application and license. The new application should refer to the expired license. It should not include references to any defense articles other than those of the unshipped balance of the expired license.

(b) Unused, expired, suspended, or revoked licenses must be handled in accordance with §123.22(c) of this subchapter.

[58 FR 39299, July 22, 1993, as amended at 76 FR 68312, Nov. 4, 2011]

§ 123.22 Filing, Retention, and Return of Export Licenses and Filing of Export Information[203]

(a) Any export, as defined in this subchapter, of a defense article controlled by this subchapter, to include defense articles transiting the United States, requires the electronic reporting of export information. The reporting of the export information shall be to the U.S. Customs and Border Protection using the Automated Export System (AES) or directly to the Directorate of Defense Trade Controls (DDTC).[204] Any license or other approval authorizing the permanent export of hardware must be filed at a U.S. Port before any export. Licenses or other approvals for the permanent export of technical data and defense services shall be retained by the applicant who will send the export information directly to DDTC. Temporary export or temporary import licenses for such items need not be filed with the U.S. Customs and Border Protection, but must be presented to the U.S. Customs and Border Protection for decrementing of the shipment prior to departure and at the time of entry. The U.S. Customs and Border Protection will only decrement a shipment after the export information has been filed correctly using the AES. Before the export of any hardware using an exemption in this subchapter, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically provide export information using the AES (see paragraph (b) of this section). In addition to electronically providing the export information to the U.S. Customs and Border Protection before export, all the mandatory documentation must be presented to the port authorities (*e.g.,* attachments, certifications, proof of AES filing; such as the Internal Transaction Number (ITN)). Export authorizations shall be filed, retained, decremented or returned to DDTC as follows:

(1) *Filing of licenses and documentation for the permanent export of hardware.* For any permanent export of

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[201] Amended by 76 FR 68311 (Nov. 4, 2011).

[202] Usage note: The ITAR uses "four years" at § 123.21(a) and "five years" at §§ 122.5(a), 126.18(a)(2), and 130.14, but "4 years" at §§ 123.4(a) and 123.5(a), and "5 years" at § 125.6(a), (b). The preferred usage for U.S. Government documents is to use numbers for years and other periods of time. Rule 12.9, GPO Style Manual (2008).

[203] As an example of CPB procedures for ITAR exports and temporary imports, see CBP, DHS/CBP PORT OF CHICAGO GUIDANCE ON CBP REQUIREMENTS FOR SHIPMENTS OF DEFENSE ARTICLES (NOV. 5, 2010), *reprinted at* Appendix C.

[204] *See* 70 FR 1278 (Jan. 6, 2005) ("The electronic reporting procedure will use DS-4071, "Export Declaration of Defense Technical Data or Services," once the system is implemented."); *but see* State Dept., DDTC notice, "DS-4071: NOTIFICATION OF INITIAL EXPORTS OF TECHNICAL DATA AND/OR DEFENSE SERVICES PER 22 CFR 123.22(B)(3)", *available at* http://www.pmddtc.state.gov/licensing/documents/WebNotice_DS4071.pdf (undated) (last viewed Sept. 1, 2012):

> Pursuant to 22 CFR 123.22(b)(3), the exporter of record (e.g., license applicant or agreement holder) must notify the Directorate of Defense Trade Controls (DDTC) of the initial export of technical data and/or defense services. Currently, the International Traffic in Arms Regulations (ITAR) requires this notification to be provided to DDTC electronically. The electronic mechanism to meet this requirement, the DS-4071, is not available at this time. The required notification must be provided to DDTC via paper submission. DDTC is continuing to work on the implementation of the DS-4071 and will provide status updates via web notice. The final implementation of the DS-4071, and instructions, will be provided via Federal Register notice.

hardware using a license (*e.g.*, DSP-5, DSP-94) or an exemption in this subchapter, the exporter must, prior to an AES filing, deposit the license and provide any required documentation for the license or the exemption with the U.S. Customs and Border Protection, unless otherwise directed in this subchapter (*e.g.*, § 125.9). If necessary, an export may be made through a port other than the one designated on the license if the exporter complies with the procedures established by the U.S. Customs and Border Protection.

(2) *Presentation and retention by the applicant of temporary licenses and related documentation for the export of unclassified defense articles.* Licenses for the temporary export or temporary import of unclassified defense articles need not be filed with the U.S. Customs and Border Protection, but must be retained by the applicant and presented to the U.S. Customs and Border Protection at the time of temporary import and temporary export. When a defense article is temporarily exported from the United States and moved from one destination authorized on a license to another destination authorized on the same or another temporary license, the applicant, or an agent acting on the applicant's behalf, must ensure that the U.S. Customs and Border Protection decrements both temporary licenses to show the exit and entry of the hardware.

(b) *Filing and Reporting of Export Information*

(1) *Filing of Export Information with the U.S. Customs and Border Protection.* Before exporting any hardware controlled by this subchapter, using a license or exemption, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically file the export information with the U.S. Customs and Border Protection using the Automated Export System (AES) in accordance with the following timelines:

(i) *Air or Truck Shipments.* The export information must be electronically filed at least 8 hours prior to departure.

(ii) *Sea or Rail Shipments.* The export information must be electronically filed at least 24 hours prior to departure.

(2) *Emergency Shipments of Hardware that Cannot Meet the Pre-departure Filing requirements.* U.S. Customs and Border Protection may permit an emergency export of hardware by truck (*e.g.*, departures to Mexico or Canada) or air, by a U.S. registered person, when the exporter is unable to comply with the Electronic Export Information (EEI) filing timeline in paragraph (b)(1)(i) of this section. The applicant, or an agent acting on the applicant's behalf, in addition to providing the EEI using the AES, must provide documentation required by the U.S. Customs and Border Protection and this subchapter. The documentation provided to U.S. Customs and Border Protection at the port of exit must include the Internal Transaction Number (ITN)[205] for the shipment and a copy of a notification to DDTC stating that the shipment is urgent and must be accompanied by an explanation for the urgency. The original of the notification must be immediately provided to the Directorate of Defense Trade Controls. The AES filing of the export information must be made at least two hours prior to any departure by air from the United States. When shipping via ground, the AES filing must be made at the time when the exporter provides the articles to the carrier or at least one hour prior to departure from the United States, when the permanent export of the hardware has been authorized for export:

(i) In accordance with § 126.4 of this subchapter, or

(ii) On a valid license (*i.e.*, DSP-5, DSP-94) and the ultimate recipient and ultimate end user identified on the license is a foreign government.

(3) *Reporting of Export Information on Technical Data and Defense Service.* When an export is being made using a DDTC authorization (*e.g.*, technical data license, agreement or a technical data exemption provided in this subchapter), the DDTC registered exporter will retain the license or other approval and provide the export information electronically to DDTC as follows:

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[205] The Internal Transaction Number (ITN) is a number generated by the Automated Export System, assigned to a shipment confirming that an EEI transaction was accepted and is on file in the AES. Foreign Transaction Regulations § 30.1(c), 15 CFR § 30.1(c).

(i) *Technical Data License.* Prior to the permanent export of technical data licensed using a Form DSP-5, the applicant shall electronically provide export information using the system for direct electronic reporting to DDTC of export information and self validate the original of the license. When the initial export of all the technical data authorized on the license has been made, the license must be returned to DDTC. Exports of copies of the licensed technical data should be made in accordance with existing exemptions in this subchapter. Should an exemption not apply, the applicant may request a new license.

(ii) *Manufacturing License and Technical Assistance Agreements.* Prior to the initial export of any technical data and defense services authorized in an agreement the U.S. agreement holder must electronically inform DDTC that exports have begun.[206] In accordance with this subchapter, all subsequent exports of technical data and services are not required to be filed electronically with DDTC except when the export is done using a U.S. Port. Records of all subsequent exports of technical data shall be maintained by the exporter in accordance with this subchapter and shall be made immediately available to DDTC upon request. Exports of technical data in furtherance of an agreement using a U.S. Port shall be made in accordance with § 125.4 of this subchapter and made in accordance with the procedures in paragraph (b)(3)(iii) of this section.

(iii) *Technical Data and Defense Service Exemptions.* In any instance when technical data is exported using an exemption in this subchapter (*e.g.*, §§ 125.4(b)(2), 125.4(b)(4), 126.5) from a U.S. port, the exporter is not required to report using AES, but must, effective January 18, 2004, provide the export data electronically to DDTC.[207] A copy of the electronic notification to DDTC must accompany the technical data shipment and be made available to the U.S. Customs and Border Protection upon request.

NOTE to Paragraph (b)(3)(iii): Future changes to the electronic reporting procedure will be amended by publication of a rule in the Federal Register. Exporters are reminded to continue maintaining records of all export transactions, including exemption shipments, in accordance with this subchapter.

(c) *Return of licenses.* Per §123.21 of this subchapter, all DSP licenses issued by the Directorate of Defense Trade Controls (DDTC) must be disposed of in accordance with the following:

(1) A DSP-5 license issued electronically by DDTC and decremented electronically by the U.S. Customs and Border Protection through the Automated Export System (AES) is not required to be returned to DDTC. If a DSP-5 license issued electronically is decremented physically in one or more instance the license must be returned DDTC. A copy of the DSP-5 license must be maintained by the applicant in accordance with §122.5[208] of this subchapter.

(2) DSP-5, DSP-61, DSP-73, and DSP-85 licenses issued by DDTC but not decremented electronically by the U.S. Customs and Border Protection through AES (*e.g.*, oral or visual technical data releases or temporary import and export licenses retained in accordance with paragraph (a)(2) of this section), must be returned by the applicant, or the government agency with which the license was filed, to DDTC upon expiration, to include when the total authorized value or quantity has been shipped. A copy of the license must be maintained by the applicant in accordance with §122.5 of this subchapter. AES does not decrement the DSP-61, DSP-73, and DSP-85 licenses. Submitting the Electronic Export Information is not considered to be decremented electronically for these licenses.

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[206] So in original. The practical meaning is that exporters should inform DDTC that the export is intended, as it would be impossible to inform DDTC that those exports *have begun* "prior to the initial export."

[207] *But see* State Dept., DDTC notice, "DS-4071: NOTIFICATION OF INITIAL EXPORTS OF TECHNICAL DATA AND/OR DEFENSE SERVICES PER 22 CFR 123.22(B)(3)", *available at* http://www.pmddtc.state.gov/licensing/documents/WebNotice_DS4071.pdf (undated) (last viewed Sept. 1, 2012):

> Pursuant to 22 CFR 123.22(b)(3), the exporter of record (e.g., license applicant or agreement holder) must notify the Directorate of Defense Trade Controls (DDTC) of the initial export of technical data and/or defense services. Currently, the International Traffic in Arms Regulations (ITAR) requires this notification to be provided to DDTC electronically. The electronic mechanism to meet this requirement, the DS-4071, is not available at this time. The required notification must be provided to DDTC via paper submission. DDTC is continuing to work on the implementation of the DS-4071 and will provide status updates via web notice. The final implementation of the DS-4071, and instructions, will be provided via Federal Register notice.

[208] § 122.5, Maintenance of Records by Registrants.

(3) A DSP-94 authorization filed with the U.S. Customs and Border Protection must be returned by the applicant, or the government agency with which the authorization was filed, to DDTC upon expiration, to include when the total authorized value or quantity has been shipped, or when all shipments against the Letter of Offer and Acceptance have been completed. AES does not decrement the DSP-94 authorization. Submitting the Electronic Export Information is not considered to be decremented electronically for the DSP-94. A copy of the DSP-94 must be maintained by the applicant in accordance with §122.5 of this subchapter.

(4) A license issued by DDTC but not used by the applicant does not need to be returned to DDTC, even when expired.

(5) A license revoked by DDTC is considered expired and must be handled in accordance with paragraphs (c)(1) and (c)(2) of this section.

[68 FR 61101, Oct. 27, 2003, as amended at 70 FR 50962, Aug. 29, 2005, and 76 FR 68312, Nov. 4, 2011]

§ 123.23 Monetary Value of Shipments

Port Directors of U.S. Customs and Border Protection shall permit the shipment of defense articles identified on any license when the total value of the export does not exceed the aggregate monetary value (not quantity) stated on the license by more than ten percent, provided that the additional monetary value does not make the total value of the license or other approval for the export of any major defense equipment sold under a contract reach $14,000,000 or more, and provided that the additional monetary value does not make defense articles or defense services sold under a contract reach the amount of $50,000,000 or more.

[70 FR 50963, Aug. 29, 2005]

§ 123.24 Shipments by U.S. Postal Service

(a) The export of any defense hardware using a license or exemption in this subchapter by the U.S. Postal Service must be filed with the U.S. Customs and Border Protection using the Automated Export System (AES) and the license must be filed with the U.S. Customs and Border Protection before any hardware is actually sent abroad by mail. The exporter must certify the defense hardware being exported in accordance with this subchapter by clearly marking on the package:

"This export is subject to the controls of the ITAR, 22 CFR (identify section for an exemption) *or* (state license number) *and the export has been electronically filed with the U.S. Customs and Border Protection using the Automated Export System (AES)."*

(b) The export of any technical data using a license in this subchapter by the U.S. Postal Service must be notified electronically directly to the Directorate of Defense Trade Controls (DDTC). The exporter, using either a license or exemption, must certify, by clearly marking on the package:

"This export is subject to the controls of the ITAR, 22 CFR (identify section for an exemption) or (state license number)."

For those exports using a license, the exporter must also state:

"The export has been electronically notified directly to DDTC."

The license must be returned to DDTC upon completion of the use of the license (*see* § 123.22(c)).

[68 FR 61102, Oct. 27, 2003, as amended at 70 FR 50963, Aug. 29, 2005]

§ 123.25 Amendments to Licenses

(a) The Directorate of Defense Trade Controls may approve an amendment to a license for permanent export, temporary export and temporary import of unclassified defense articles. A suggested format is available from the Directorate of Defense Trade Controls.

(b) The following types of amendments to a license will be considered: Addition of U.S. freight forwarder or

U.S. consignor; change due to an obvious typographical error; change in source of commodity; and change of foreign intermediate consignee if that party is only transporting the equipment and will not process (*e.g.*, integrate, modify) the equipment. For changes in U.S. dollar value[209] see § 123.23.

(c) The following types of amendments to a license will not be approved: Additional quantity, changes in commodity, country of ultimate destination, end use or end user, foreign consignee and/or extension of duration. The foreign intermediate consignee may only be amended if that party is acting as freight forwarder and the export does not involve technical data. A new license is required for these changes. Any new license submission must reflect only the unshipped balance of quantity and dollar value.

[58 FR 39299, July 22, 1993, as amended at 71 FR 20542, Apr. 21, 2006; 77 FR 22671, Apr. 17, 2012]

§ 123.26 Recordkeeping Requirement for Exemptions

Any person engaging in any export, reexport, transfer, or retransfer of a defense article or defense service pursuant to an exemption must maintain records of each such export, reexport, transfer, or retransfer. The records shall, to the extent applicable to the transaction and consistent with the requirements of § 123.22 of this subchapter, include the following information: A description of the defense article, including technical data, or defense service; the name and address of the end-user and other available contact information (e.g., telephone number and electronic mail address); the name of the natural person responsible for the transaction; the stated end-use of the defense article or defense service; the date of the transaction; the Electronic Export Information (EEI) Internal Transaction Number (ITN); and the method of transmission. The person using or acting in reliance upon the exemption shall also comply with any additional recordkeeping requirements enumerated in the text of the regulations concerning such exemption (*e.g.*, requirements specific to the Defense Trade Cooperation Treaties in § 126.16 and § 126.17 of this subchapter).

§ 123.27 Special Licensing Regime for Export to U.S. Allies of Commercial Communications Satellite Components, Systems, Parts, Accessories, Attachments, and Associated Technical Data

(a) U.S. persons engaged in the business of exporting specifically designed or modified components, systems, parts, accessories, attachments, associated equipment and certain associated technical data for commercial communications satellites, and who are so registered with the Directorate of Defense Trade Controls pursuant to part 122 of this subchapter, may submit license applications for multiple permanent and temporary exports and temporary imports of such articles for expeditious consideration without meeting the documentary requirements of § 123.1(c)(4) and (5) concerning purchase orders, letters of intent, contracts and non-transfer and end use certificates, or the documentary requirements of § 123.9, concerning approval of re-exports or re-transfers, when all of the following requirements are met:

(1) The proposed exports or re-exports concern exclusively one or more countries of the North Atlantic Treaty Organization (see § 120.31 of this subchapter) and/or one or more countries which have been designated in accordance with section 517 of the Foreign Assistance Act of 1961 and with section 1206 of the Foreign Relations Authorization Act, Fiscal Year 2003 as a major non-NATO ally (see § 120.32 of this subchapter).

(2) The proposed exports concern exclusively one or more foreign persons (*e.g.*, companies or governments)

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[209] See DDTC web notice, DSP AMENDMENTS FOR VALUE OR QUANTITY CHANGES (Sept. 30, 2009), *available at* http://www.pmddtc.state.gov/licensing/documents/WebNotice_AmendmentValueChange.pdf (last viewed Sept. 1, 2012):

> Pursuant to 22 CFR 123.25(b), changes can be approved under a DSP amendment for obvious typographical errors. While an erroneously entered unit price or quantity may be an obvious typographical error when supported by the provided purchase documentation, the approved amendments are not provided to Customs nor the information updated in AES. Thus the original value or quantity of the DSP license remains unchanged in AES. As such, amendments for DSP licenses (DSP-6, 62, 74 and 119) must be limited to administrative changes only that do not impact AES filings. Effective immediately, DDTC will no longer process DSP amendments for value or quantity changes. These changes must be the subject of a replacement license. The applicant must explicitly state in block 20 that the replacement license is to correct erroneously entered value or quantity and cite the original license number.

located within the territories of the countries identified in paragraph (a)(1) of this section, and one or more commercial communications satellite programs included within a list of such persons and programs approved by the U.S. Government for purposes of this section, as signified in a list of such persons and programs that will be publicly available through the Internet Web site of the Directorate of Defense Trade Controls and by other means.

(3) The articles are not major defense equipment sold under a contract in the amount of $14,000,000 or more or defense articles or defense services sold under a contract in the amount of $50,000,000 or more (for which purpose, as is customary, exporters may not split contracts or purchase orders). Items meeting these statutory thresholds must be submitted on a separate license application to permit the required notification to Congress pursuant to section 36(c) of the Arms Export Control Act.[210]

(4) The articles are not detailed design, development, manufacturing or production data and do not involve the manufacture abroad of significant military equipment.

(5) The U.S. exporter provides complete shipment information to the Directorate of Defense Trade Controls within 15 days of shipment by submitting a report containing a description of the item and the quantity, value, port of exit, and end user and country of destination of the item, and at that time meets the documentary requirements of § 123.1(c)(4) and (5), the documentary requirements of § 123.9 in the case of re-exports or re-transfers, and, other documentary requirements that may be imposed as a condition of a license (*e.g.*, parts control plans for MTCR-controlled items). The shipment information reported must include a description of the item and quantity, value, port of exit and end user and country of destination of the item.

(6) At any time in which an item exported pursuant to this section is proposed for retransfer outside of the approved territory, programs or persons (*e.g.*, such as in the case of an item included in a satellite for launch beyond the approved territory), the detailed requirements of § 123.9 apply with regard to obtaining the prior written consent of the Directorate of Defense Trade Controls.

(b) The re-export or retransfer of the articles authorized for export (including to specified re-export destinations) in accordance with this section do not require the separate prior written approval of the Directorate of Defense Trade Controls provided all of the requirements in paragraph (a) of this section are met.

(c) The Directorate of Defense Trade Controls will consider, on a case-by-case basis, requests to include additional foreign companies and satellite programs[211] within the geographic coverage of a license application submitted pursuant to this section from countries not otherwise covered, who are members of the European Space Agency[212] or the European Union.[213] In no case, however, can the provisions of this section apply or be

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[210] See § 123.15(a)(2) re increases in thresholds for NATO countries, Australia, Japan, and New Zealand.

[211] See DDTC website posting of June 25, 2012, at http://pmddtc.state.gov/licensing/documents/123-27ApprovedComSatList.pdf (last viewed Sept. 1, 2012), stating in part:

> COMSAT Programs Approved for Purposes of 22 CFR 123.27" (June 25, 2012). Only Commercial Communications Satellites owned and operated by an entity or entities exclusively within the countries that comprise NATO and Major Non-NATO Allies are eligible for entry onto this list. COMSATS can be added to this list by General Correspondence (GC) request to DDTC from the satellite manufacturer only. The request must contain the below information and a description of the satellite functionality (e.g., provides voice, internet, and video communications to Central and South America). If TBA information is identified, this information must be updated as it becomes available via simple letter request to DDTC Space & Missile Technology Division providing the updated information for a particular satellite already on the list. Entries will automatically be removed from this list 2 years after scheduled projected launch date unless updated information is provided. (GC request will receive a DDTC response, update requests will not.)

[212] ESA is an international organization with 18 Member States. Members are Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom. Canada takes part in some projects under a Cooperation agreement. Hungary, Romania and Poland are 'European Cooperating States'. Estonia and Slovenia have recently signed cooperation agreements with ESA. http://www.esa.int/SPECIALS/About_ESA/SEMW16ARR1F_0.html (Updated Sept. 3, 2012) (last viewed Sept. 3, 2012).

[213] The 27 members of European Union are Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and United Kingdom. http://europa.eu/abc/european_countries/index_en.htm (last viewed Sept. 1, 2012).. Current candidates for EU membership are Croatia, Former Yugoslav Republic of Macedonia, Iceland, Montenegro, Serbia, and Turkey. Named potential candidates are Albania, Bosnia & Herzegovina, and Kosovo under UNSCR 1244. http://ec.europa.eu/enlargement/candidate-countries/index_en.htm (last viewed Sept. 1, 2012).

relied upon by U.S. exporters in the case of countries who are subject to the mandatory requirements of Section 1514 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261), concerning national security controls on satellite export licensing.

(d) Registered U.S. exporters may request at the time of a license application submitted pursuant to this section that additional foreign persons or communications satellite programs be added to the lists referred to in paragraph (a)(2) of this section, which additions, if approved, will be included within the publicly available lists of authorized recipients and programs.

[65 FR 34091, May 26, 2000, as amended at 67 FR 58988, Sept. 19, 2002; 69 FR 40314, July 2, 2004; 70 FR 50963, Aug. 29, 2005; 71 FR 20542, Apr. 21, 2006]

PART 124: AGREEMENTS, OFFSHORE PROCUREMENT, AND OTHER DEFENSE SERVICES[214]

Section

124.1 Manufacturing License Agreements and Technical Assistance Agreements
124.2 Exemptions for Training and Military Service
124.3 Exports of Technical Data in Furtherance of an Agreement
124.4 Deposit of Signed Agreements with the Directorate of Defense Trade Controls
124.5 Proposed Agreements That are Not Concluded
124.6 Termination of Manufacturing License Agreements and Technical Assistance Agreements
124.7 Information Required in All Manufacturing License Agreements and Technical Assistance Agreements
124.8 Clauses Required Both in Manufacturing License Agreements and Technical Assistance Agreements
124.9 Additional Clauses Required Only in Manufacturing License Agreements
124.10 Nontransfer and Use Assurances
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124.12 Required Information in Letters of Transmittal
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124.14 Exports to Warehouses or Distribution Points Outside the United States
124.15 Special Export Controls for Defense Articles and Defense Services Controlled under Category XV: Space Systems and Space Launches
124.16 Special Retransfer Authorizations for Unclassified Technical Data and Defense Services to Member States of NATO and the European Union, Australia, Japan, New Zealand, and Switzerland

Authority: *Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261.*
Source: *58 FR 39305, July 22, 1993, unless otherwise noted.*

§ 124.1 Manufacturing License Agreements and Technical Assistance Agreements

(a) *Approval*. The approval of the Directorate of Defense Trade Controls must be obtained before the defense services described in § 120.9(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement to the Directorate of Defense Trade Controls. Such agreements are generally characterized as manufacturing license agreements, technical assistance agreements, distribution agreements, or off-shore procurement agreements, and may not enter into force[215] without the prior written

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[214] This part (edits throughout and adding Israel to 124.11) was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012).

[215] *See* Dept. of State, DDTC, Web Notice, REQUIREMENT FOR FULL EXECUTION OF AGREEMENTS/AMENDMENTS PRIOR TO EXPORT OR TEMPORARY IMPORT (Undated; posted Mar. 20, 2009), *available at* http://www.pmddtc.state.gov/licensing/documents/WebNotice_ApprovalLetterNotice.pdf (last viewed Sept. 1, 2012):

> This notice is to inform applicants that the format for Agreement and Amendment Approval Letters issued by DTCL [DDTC Office of Defense Trade Controls Licensing] has been modified to specifically address the requirement that "No U.S. signatories may export or temporarily import defense articles, technical data, or defense services against an agreement until all parties have executed the agreement." This modification has been made to the preamble of the approval letter for agreements and amendments issued to the applicant from this office and reads as follows:
>
> "Dear Applicant:
>
> The Department of State approves the request as identified subject to the limitations, provisos, and requirements stated below as well as the requirements contained in the International Traffic in Arms Regulation. This agreement may not enter into force until these requirements have been satisfied. No U.S. signatories may export or temporarily import defense articles, technical data, or defense services against this agreement until all parties have executed the agreement.
>
> Purpose of Modification:
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> On December 12, 2008, Agreement and Amendment Approval Letters issued by DTCL were revised to eliminate redundancy and enhance clarity by minimizing informative and acknowledgement provisos. As part of that revision, a proviso specifying that exports or temporarily imports against the agreement were not authorized until all parties have executed the agreement was removed, being deemed an informative proviso. Since this revision, DTCL has received numerous queries as to whether a fully executed agreement was still required prior to export or temporary import, noting the requirement is not clearly described within the International Traffic In Arms Regulation (ITAR).
>
> This modification is necessary to ensure applicants are properly informed of the requirement to fully execute agreements and amendments prior to export or temporary import of defense articles, technical data or defense services in furtherance of the agreement or amendment."
>
> **Implementation**
>
> Effective March 18, 2009, this revision will be included in all agreement and amendment approval letter issued by DTCL.

approval of the Directorate of Defense Trade Controls. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with §§ 124.3 and 125.4(b)(2) of this subchapter. The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services described in § 120.9(a) of this subchapter (*e.g.*, all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from the licensing requirements of this subchapter pursuant to § 125.4 of this subchapter). This requirement also applies to the training of any foreign military forces, regular and irregular, in the use of defense articles. Technical assistance agreements must be submitted in such cases. In exceptional cases, the Directorate of Defense Trade Controls, upon written request, will consider approving the provision of defense services described in § 120.9(a) of this subchapter by granting a license under part 125 of this subchapter.[216]

(b) *Classified Articles.* Copies of approved agreements involving the release of classified defense articles will be forwarded by the Directorate of Defense Trade Controls to the Defense Security Service of the Department of Defense.

(c) *Amendments.* Changes to the scope of approved agreements, including modifications, upgrades, or extensions must be submitted for approval. The amendments may not enter into force until approved by the Directorate of Defense Trade Controls.

(d) *Minor Amendments.* Amendments which only alter delivery or performance schedules, or other minor administrative amendments which do not affect in any manner the duration of the agreement or the clauses or information which must be included in such agreements because of the requirements of this part, do not have to be submitted for approval. One copy of all such minor amendments must be submitted to the Directorate of Defense Trade Controls within thirty days after they are concluded.

[71 FR 20542, Apr. 21, 2006, and 75 FR 52624, Aug. 2010.]

§ 124.2 Exemptions for Training and Military Service

(a) Technical assistance agreements are not required for the provision of training in the basic operation and maintenance of defense articles lawfully exported or authorized for export to the same recipient. This does not include training in intermediate and depot level maintenance.[217]

(b) Services performed as a member of the regular military forces of a foreign nation by U.S. persons who have been drafted into such forces are not deemed to be defense services for purposes of § 120.9 of this subchapter.

(c) NATO countries,[218] Australia, Japan, and Sweden, in addition to the basic maintenance training exemption provided in § 124.2(a) and basic maintenance information exemption in § 125.4(b)(5) of this subchapter, no technical assistance agreement is required for maintenance training or the performance of maintenance, including the export of supporting technical data, when the following criteria can be met:

(1) Defense services are for unclassified U.S. origin defense articles lawfully exported or authorized for export and owned or operated by and in the inventory of NATO or the Federal Governments of NATO countries, Australia, Japan or Sweden.

(2) This defense service exemption does not apply to any transaction involving defense services for which congressional notification is required in accordance with § 123.15 and § 124.11 of this subchapter.

(3) Maintenance training or the performance of maintenance must be limited to inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components; and excluding any modification, enhancement, upgrade or other form of alteration or

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Specific revisions to individual approval letters issued between December 12, 2008 and March 18, 2009 will not be published. A copy of this notice should be included with approval letters in cases where a specific revision is desired.

[216] *But see* DDTC, LICENSING OF FOREIGN PERSONS EMPLOYED BY A U.S. PERSON – UPDATED (July 18, 2012), *available at* http://pmddtc.state.gov/licensing/documents/WebNotice_LicensingForeign2.pdf (last viewed Sept. 1, 2012) (*reprinted infra* at Appendix C).

[217] *Compare* § 125.4(b)(5) for technical data.

[218] See list at § 120.31.

improvement that enhances the performance or capability of the defense article. This does not preclude maintenance training or the performance of maintenance that would result in enhancements or improvements only in the reliability or maintainability of the defense article, such as an increased mean time between failure (MTBF).

(4) Supporting technical data must be unclassified and must not include software documentation on the design or details of the computer software, software source code, design methodology, engineering analysis or manufacturing know-how such as that described in paragraphs (c)4)(i) through (c)(4)(iii) as follows:

(i) *Design Methodology,* such as: The underlying engineering methods and design philosophy utilized (*i.e.*, the "why" or information that explains the rationale for particular design decision, engineering feature, or performance requirement); engineering experience (*e.g.* lessons learned); and the rationale and associated databases (*e.g.* design allowables, factors of safety, component life predictions, failure analysis criteria) that establish the operational requirements (*e.g.*, performance, mechanical, electrical, electronic, reliability and maintainability) of a defense article.

(ii) *Engineering Analysis,* such as: Analytical methods and tools used to design or evaluate a defense article's performance against the operational requirements. Analytical methods and tools include the development and/or use of mockups, computer models and simulations, and test facilities.

(iii) *Manufacturing Know-how,* such as: Information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a qualified, finished defense article.

(5) This defense service exemption does not apply to maintenance training or the performance of maintenance and service or the transfer of supporting technical data for the following defense articles:

(i) All Missile Technology Control Regime Annex Items;

(ii) Firearms listed in Category I; and ammunition listed in Category III for the firearms in Category I;

(iii) Nuclear weapons strategic delivery systems and all components, parts, accessories and attachments specifically designed for such systems and associated equipment;

(iv) Naval nuclear propulsion equipment listed in Category VI(e);

(v) Gas turbine engine hot sections covered by Categories VI(f) and VIII(b);

(vi) Category VIII(f);

(vii) Category XII(c);

(viii) Chemical agents listed in Category XIV (a), biological agents in Category XIV (b), and equipment listed in Category XIV (c) for dissemination of the chemical agents and biological agents listed in Categories XIV (a) and (b);

(ix) Nuclear radiation measuring devices manufactured to military specifications listed in Category XVI(c);

(x) Category XV;

(xi) Nuclear weapons design and test equipment listed in Category XVI(c);

(xii) Submersible and oceanographic vessels and related articles listed in Category XX(a) through (d);

(xiii) Miscellaneous articles covered by Category XXI.

(6) *Eligibility Criteria for Foreign Persons.* Foreign persons eligible to receive technical data or maintenance training under this exemption are limited to nationals of the NATO countries, Australia, Japan, or Sweden.

[58 FR 39305, July 22, 1993, as amended at 65 FR 45283, July 21, 2000; 66 FR 35899, July 10, 2001; 71 FR 20543, Apr. 21, 2006]

§ 124.3 Exports of Technical Data in Furtherance of an Agreement

(a) *Unclassified Technical Data.* The U.S. Customs and Border Protection or U.S. Postal authorities shall

permit the export without a license of unclassified technical data if the export is in furtherance of a manufacturing license or technical assistance agreement which has been approved in writing by the Directorate of Defense Trade Controls (DDTC) and the technical data does not exceed the scope or limitations of the relevant agreement. The approval of the DDTC must be obtained for the export of any unclassified technical data that may exceed the terms of the agreement.

(b) *Classified Technical Data.* The export of classified information in furtherance of an approved manufacturing license or technical assistance agreement which provides for the transmittal of classified information does not require further approval from the Directorate of Defense Trade Controls when:

(1) The United States party certifies to the Department of Defense transmittal authority that the classified information does not exceed the technical or product limitations in the agreement; and

(2) The U.S. party complies with the requirements of the Department of Defense National Industrial Security Program Operating Manual[219] concerning the transmission of classified information (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) and any other requirements of cognizant U.S. departments or agencies.

[58 FR 39305, July 22, 1993, as amended at 68 FR 61102, Oct. 27, 2003; 70 FR 50963, Aug. 29, 2005; 71 FR 20543, Apr. 21, 2006]

§ 124.4 Deposit of Signed Agreements with the Directorate of Defense Trade Controls

(a) The United States party to a manufacturing license or a technical assistance agreement must file one copy of the concluded agreement with the Directorate of Defense Trade Controls not later than 30 days after it enters into force. If the agreement is not concluded within one year of the date of approval, the Directorate of Defense Trade Controls must be notified in writing and be kept informed of the status of the agreement until the requirements of this paragraph or the requirements of § 124.5 are satisfied.

(b) In the case of concluded agreements involving coproduction or licensed production outside of the United States of defense articles of United States origin, a written statement must accompany filing of the concluded agreement with the Directorate of Defense Trade Controls, which shall include:

(1) The identity of the foreign countries, international organization, or foreign firms involved;

(2) A description and the estimated value of the articles authorized to be produced, and an estimate of the quantity of the articles authorized to be produced:

(3) A description of any restrictions on third-party transfers of the foreign manufactured articles; and

(4) If any such agreement does not provide for United States access to and verification of quantities of articles produced overseas and their disposition in the foreign country, a description of alternative measures and controls to ensure compliance with restrictions in the agreement on production quantities and third-party transfers.

[62 FR 67276, Dec. 24, 1997, as amended at 71 FR 20543, Apr. 21, 2006]

§ 124.5 Proposed Agreements That Are Not Concluded

The United States party to any proposed manufacturing license agreement or technical assistance agreement must inform the Directorate of Defense Trade Controls if a decision is made not to conclude the agreement. The information must be provided within 60 days of the date of the decision. These requirements apply only if the approval of the Directorate of Defense Trade Controls was obtained for the agreement to be concluded (with or without any provisos).

[71 FR 20543, Apr. 21, 2006]

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[219] DoD Manual 5220.22-M, National Industrial Security Program Operating Manual ("NISPOM") (Feb 28, 2006), *available at* http://www.dtic.mil/whs/directives/corres/pdf/522022m.pdf (Sept. 1, 2011).

§ 124.6 Termination of Manufacturing License Agreements and Technical Assistance Agreements

The U.S. party to a manufacturing license or a technical assistance agreement must inform the Directorate of Defense Trade Controls in writing of the impending termination of the agreement not less than 30 days prior to the expiration date of such agreement.

[71 FR 20543, Apr. 21, 2006]

§ 124.7 Information Required in All Manufacturing License Agreements and Technical Assistance Agreements

The following information must be included in all proposed manufacturing license agreements and technical assistance agreements. The information should be provided in terms which are as precise as possible. If the applicant believes that a clause or that required information is not relevant or necessary, the applicant may request the omission of the clause or information. The transmittal letter accompanying the agreement must state the reasons for any proposed variation in the clauses or required information.

(1) The agreement must describe the defense article to be manufactured and all defense articles to be exported, including any test and support equipment or advanced materials. They should be described by military nomenclature, contract number, National Stock Number, nameplate data, or other specific information. Supporting technical data or brochures should be submitted in seven copies. Only defense articles listed in the agreement will be eligible for export under the exemption in § 123.16(b)(1) of this subchapter.

(2) The agreement must specifically describe the assistance and technical data, including the design and manufacturing know-how involved, to be furnished and any manufacturing rights to be granted;

(3) The agreement must specify its duration; and

(4) The agreement must specifically identify the countries or areas in which manufacturing, production, processing, sale or other form of transfer is to be licensed.

§ 124.8 Clauses Required Both in Manufacturing License Agreements and Technical Assistance Agreements

The following statements must be included both in manufacturing license agreements and in technical assistance agreements:

(1) *"This agreement shall not enter into force, and shall not be amended or extended, without the prior written approval of the Department of State of the U.S. Government."*

(2) *"This agreement is subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations."*

(3) *"The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."*

(4) *"No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement."*

(5) *"The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a foreign person except pursuant to §§ 124.16 and 126.18, as specifically authorized in this agreement, or where prior written approval of the Department of State has been obtained."*

(6) *"All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."*

§ 124.9 Additional Clauses Required Only in Manufacturing License Agreements

(a) *Clauses for All Manufacturing License Agreements.* The following clauses must be included only in manufacturing license agreements:

(1) *"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 unless otherwise exempted by the U.S. Government. Sales or other transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained."*

(2) *"It is agreed that sales by licensee or its sub-licensees under contracts made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others."*

(3) *"If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sub-licensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly."*

(4) *"If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sub-licensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and subject to the provisions of paragraphs (a) (2) and (3) of this section, no other royalties, or fees or other charges may be assessed against U.S. Government funded purchases of such articles. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data."*

(5) *"The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State."* This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. See § 126.10(b) of this subchapter.

(6) (Licensee) *agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the licensed articles are sold or otherwise transferred:*

"These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State."

(b) *Special clause for agreements relating to significant military equipment.* With respect to an agreement for the production of significant military equipment, the following additional provisions must be included in the agreement:

(1) *"A completed nontransfer and use certificate (DSP-83) must be executed by the foreign end user and*

submitted to the Department of State of the United States before any transfer may take place."[220]

(2) *"The prior written approval of the U.S. Government must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside of the approved sales territory."*

§ 124.10 Nontransfer and Use Assurances

(a) Types of Agreements Requiring Assurances. With respect to any manufacturing license agreement or technical assistance agreement which relates to significant military equipment or classified defense articles, including classified technical data, a Nontransfer and Use Certificate (Form DSP-83) (see § 123.10 of this subchapter) signed by the applicant and the foreign party must be submitted to the Directorate of Defense Trade Controls. With respect to all agreements involving classified articles, including classified technical data, an authorized representative of the foreign government must sign the DSP-83 (or provide the same assurances in the form of a diplomatic note), unless the Directorate of Defense Trade Controls has granted an exception to this requirement. The Directorate of Defense Trade Controls may require that a DSP-83 be provided in conjunction with an agreement that does not relate to significant military equipment or classified defense articles. The Directorate of Defense Trade Controls may also require with respect to any agreement that an appropriate authority of the foreign party's government also sign the DSP-83 (or provide the same assurances in the form of a diplomatic note).

(b) *Timing of Submission of Assurances.* Submission of a Form DSP-83 and/or diplomatic note must occur as follows:

(1) Agreements which have been signed by all parties before being submitted to the Directorate of Defense Trade Controls may only be submitted along with any required DSP-83 and/or diplomatic note.

(2) If an agreement has not been signed by all parties before being submitted, the required DSP-83 and/or diplomatic note must be submitted along with the signed agreement.

Note to paragraph (b): In no case may a transfer occur before a required DSP-83 and/or diplomatic note has been submitted to the Directorate of Defense Trade Controls.

[58 FR 39305, July 22, 1993, as amended at 76 FR 28177, May 16, 2011]

§ 124.11 Congressional Certification Pursuant to Section 36(d) of the Arms Export Control Act[221]

(a) The Arms Export Control Act requires that a certification be provided to the Congress prior to the granting of any approval of a manufacturing license agreement or technical assistance agreement as defined in §§ 120.21 and 120.22 respectively for the manufacturing abroad of any item of significant military equipment (see § 120.7 of this subchapter) that is entered into with any country regardless of dollar value.[222] Additionally, any manufacturing license agreement or technical assistance agreement providing for the export of major defense equipment, as defined in § 120.8 of this subchapter shall also require a certification when meeting the requirements of § 123.15 of this subchapter.[223]

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[220] Practice tip: A DSP-83 is required to be submitted to DDTC along with the executed copy of an MLA for manufacture of SME abroad. That initial DSP83 is for the data that is being exported to the foreign party. However, pursuant to ITAR 124.9(b)(1), which is one of the two additional clauses required in all MLAs for the manufacture of SME abroad, a completed non-transfer and use certificate (DSP-83) must also be executed by the foreign end-user of the SME defense article being manufactured under the MLA. So, before the final transfer of the finished product occurs, the foreign end-user signs the DSP-83 along with the manufacturer, who in this case is the foreign consignee. The DSP-83 is then returned to the applicant for submission to DTC. (Contributor: Tom Donovan, Northrop Grumman Corp., Thomas.P.Donovan@ngc.com, 202-799-3032.)

[221] Supplementary Information in the announcement of Implementation of the Defense Trade Cooperation Treaty Between the U.S. and U.K., at 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stated in part, "Two commenting parties requested clarification on whether the congressional notification requirement under the Treaty is identical to that required under normal license authorization processes. DDTC confirms that the process will be the same."

[222] 22 U.S.C. 2276(a)(12).

[223] So in original. Should probably read "Additionally, any manufacturing license agreement or technical assistance agreement shall also

(b) Unless an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States, approval may not be granted until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(d)(1) involving the North Atlantic Treaty Organization, any member country of that Organization, or Australia, Israel, Japan, New Zealand, or The Republic of Korea or at least 30 calendar days have elapsed for any other country. Approvals may not be granted when the Congress has enacted a joint resolution prohibiting the export.

(c) Persons who intend to export defense articles and defense services pursuant to any exemption in this subchapter under the circumstances described in this section and § 123.15 must provide written notification to the Directorate of Defense Trade Controls and include a signed contract and a DSP-83 signed by the applicant, the foreign consignee and the end user.

[70 FR 34654, June 15, 2005, as amended at 73 FR 38343, Aug. 3, 2009]

§ 124.12 Required Information in Letters of Transmittal

(a) An application for the approval of a manufacturing license or technical assistance agreement with a foreign person must be accompanied by an explanatory letter. The original letter and seven copies of the letter and eight copies of the proposed agreement shall be submitted to the Directorate of Defense Trade Controls. The explanatory letter shall contain:

(1) A statement giving the applicant's Directorate of Defense Trade Controls registration number.

(2) A statement identifying the licensee and the scope of the agreement.

(3) A statement identifying the U.S. Government contract under which the equipment or technical data was generated, improved, or developed and supplied to the U.S. Government, and whether the equipment or technical data was derived from any bid or other proposal to the U.S. Government.

(4) A statement giving the military security classification of the equipment or technical data.

(5) A statement identifying any patent application which discloses any of the subject matter of the equipment or technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office.

(6) A statement of the actual or estimated value of the agreement, including the estimated value of all defense articles to be exported in furtherance of the agreement or amendments thereto. If the value is $500,000 or more, an additional statement must be made regarding the payment of political contributions, fees or commissions, pursuant to part 130 of this subchapter.

(7) A statement indicating whether any foreign military sales credits or loan guarantees are or will be involved in financing the agreement.

(8) The agreement must describe any classified information involved and identify, from Department of Defense form DD-254, the address and telephone number of the U.S. Government office that classified the information.

(9) For agreements that may require the export of classified information, the Defense Investigative Service[224] [sic] cognizant security offices that have responsibility for the facilities of the U.S. parties to the agreement shall be identified. The facility security clearance codes of the U.S. parties shall also be provided.

(10) A statement specifying whether the applicant is requesting retransfer of defense articles and defense services pursuant to § 124.16 of this subchapter.

(b) The following statements must be made in the letter of transmittal:

(1) *"If the agreement is approved by the Department of State, such approval will not be construed by (the applicant) as passing on the legality of the agreement from the standpoint of antitrust laws or other*

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requires a certification when meeting the requirements of § 123.15(a) of this subchapter."

[224] So in original. Renamed Defense Security Service in November 1987.

applicable statutes, nor will (the applicant) construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."

(2) *"The (applicant) will not permit the proposed agreement to enter into force until it has been approved by the Department of State."*

(3) *"The (applicant) will furnish the Department of State with one copy of the signed agreement (or amendment) within 30 days from the date that the agreement is concluded and will inform the Department of its termination not less than 30 days prior to expiration and provide information on the continuation of any foreign rights or the flow of technical data to the foreign party. If a decision is made not to conclude the proposed agreement, the applicant will so inform the Department within 60 days."*

(4) *"If this agreement grants any rights to sub-license, it will be amended to require that all sub-licensing arrangements incorporate all the provisions of the basic agreement that refer to the U.S. Government and the Department of State (i.e., 22 CFR 124.9 and 124.10)."*[225]

[58 FR 39305, July 22, 1993, as amended at 71 FR 20543, Apr. 21, 2006; 72 FR 71786, Dec. 19, 2007]

§ 124.13 Procurement by United States Persons in Foreign Countries (Offshore Procurement)

Notwithstanding the other provisions in part 124 of this subchapter, the Directorate of Defense Trade Controls may authorize by means of a license (DSP-5) the export of unclassified technical data to foreign persons for offshore procurement of defense articles, provided that:

(a) The contract or purchase order for offshore procurement limits delivery of the defense articles to be produced only to the person in the United States or to an agency of the U.S. Government; and

(b) The technical data of U.S. origin to be used in the foreign manufacture of defense articles does not exceed that required for bid purposes on a build-to-print basis (*build-to-print* means producing an end-item (*i.e.*, system, subsystem or component) from technical drawings and specifications (which contain no process or know-how information) without the need for additional technical assistance). Release of supporting documentation (*e.g.*, acceptance criteria, object code software for numerically controlled machines) is permissible. Build-to-print does not include the release of any information which discloses design methodology, engineering analysis, detailed process information or manufacturing know-how); and

(c) The contract or purchase order between the person in the United States and the foreign person:

(1) Limits the use of the technical data to the manufacture of the defense articles required by the contract or purchase order only; and

(2) Prohibits the disclosure of the data to any other person except subcontractors within the same country; and

(3) Prohibits the acquisition of any rights in the data by any foreign person; and

(4) Provides that any subcontracts between foreign persons in the approved country for manufacture of equipment for delivery pursuant to the contract or purchase order contain all the limitations of this paragraph (c); and

(5) Requires the foreign person, including subcontractors, to destroy or return to the person in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of their terms; and

(6) Requires delivery of the defense articles manufactured abroad only to the person in the United States or to an agency of the U.S. Government; and

(d) The person in the United States provides the Directorate of Defense Trade Controls with a copy of each

[225] So in original. Should refer to 22 CFR 124.8 and 124.9.

contract, purchase order or subcontract for offshore procurement at the time it is accepted. Each such contract, purchase order or subcontract must clearly identify the article to be produced and must identify the license number or exemption under which the technical data was exported; and

(e) Licenses issued pursuant to this section must be renewed prior to their expiration if offshore procurement is to be extended beyond the period of validity of the original approved license. In all instances a license for offshore procurement must state as the purpose "Offshore procurement in accordance with the conditions established in the ITAR, including § 124.13. No other use will be made of the technical data." If the technical data involved in an offshore procurement arrangement is otherwise exempt from the licensing requirements of this subchapter (*e.g.*, § 126.4), the DSP-5 referred to in the first sentence of this section is not required. However, the exporter must comply with the other requirements of this section and provide a written certification to the Directorate of Defense Trade Controls annually of the offshore procurement activity and cite the exemption under which the technical data was exported. The exemptions under § 125.4 of this subchapter may not be used to establish offshore procurement arrangements.

[58 FR 39305, July 22, 1993, as amended at 64 FR 17534, Apr. 12, 1999; 71 FR 20543, Apr. 21, 2006]

§ 124.14 Exports to Warehouses or Distribution Points Outside the United States

(a) *Agreements.* Agreements (*e.g.*, contracts) between U.S. persons and foreign persons for the warehousing and distribution of defense articles must be approved by the Directorate of Defense Trade Controls before they enter into force. Such agreements will be limited to unclassified defense articles and must contain conditions for special distribution, end use and reporting. Licenses for exports pursuant to such agreements must be obtained prior to exports of the defense articles unless an exemption under § 123.16(b)(1) of this subchapter is applicable.

(b) *Required Information.* Proposed warehousing and distribution agreements (and amendments thereto) shall be submitted to the Directorate of Defense Trade Controls for approval. The following information must be included in all such agreements:

(1) A description of the defense articles involved including test and support equipment covered by the U.S. Munitions List. This shall include when applicable the military nomenclature, the Federal stock number, nameplate data, and any control numbers under which the defense articles were developed or procured by the U.S. Government. Only those defense articles specifically listed in the agreement will be eligible for export under the exemption in § 123.16(b)(1) of this subchapter.

(2) A detailed statement of the terms and conditions under which the defense articles will be exported and distributed;

(3) The duration of the proposed agreement;

(4) Specific identification of the country or countries that comprise the distribution territory. Distribution must be specifically limited to the governments of such countries or to private entities seeking to procure defense articles pursuant to a contract with a government within the distribution territory or to other eligible entities as specified by the Directorate of Defense Trade Controls. Consequently, any deviation from this condition must be fully explained and justified. A nontransfer and use certificate (DSP-83) will be required to the same extent required in licensing agreements under § 124.9(b).

(c) *Required Statements.* The following statements must be included in all warehousing and distribution agreements:

(1) *"This agreement shall not enter into force, and may not be amended or extended, without the prior written approval of the Department of State of U.S. Government."*

(2) *"This agreement is subject to all United States laws and regulations related to exports and to all administrative acts of the United States Government pursuant to such laws and regulations."*

(3) *"The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have*

individually or collectively with the U.S. Government."

(4) *"No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign by reason of the U.S. Government's approval of this agreement."*

(5) *"No export, sale, transfer, or other disposition of the defense articles covered by this agreement is authorized to any country outside the distribution territory without the prior written approval of the Directorate of Defense Trade Controls of the U.S. Department of State."*

(6) *"The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient shall be provided by* (applicant or licensee) *to the Department of State."* This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. (See § 126.10(b) of this subchapter.)

(7) (Licensee) *agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the articles covered by this agreement are sold or otherwise transferred: "These commodities are authorized for export by the U.S. Government only to* (country of ultimate destination or approved sales territory). *They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State."*

(8) *"All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."*

(9) *Additional Clause.* Unless the articles covered by the agreement are in fact intended to be distributed to private persons or entities (*e.g.*, sporting firearms for commercial resale, cryptographic devices and software for financial and business applications), the following clause must be included in all warehousing and distribution agreements:

"Sales or other transfers of the licensed article shall be limited to governments of the countries in the distribution territory and to private entities seeking to procure the licensed article pursuant to a contract with a government within the distribution territory, unless the prior written approval of the U.S. Department of State is obtained."

(d) *Special Clauses for Agreements Relating to Significant Military Equipment.* With respect to agreements for the warehousing and distribution of significant military equipment, the following additional provisions must be included in the agreement:

(1) A completed nontransfer and use certificate (DSP-83) must be executed by the foreign end user and submitted to the U.S. Department of State before any transfer may take place.

(2) The prior written approval of the U.S. Department of State must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside the approved distribution territory.

(e) *Transmittal Letters.* Requests for approval of warehousing and distribution agreements with foreign persons must be made by letter. The original letter and seven copies of the letter and seven copies of the proposed agreement shall be submitted to the Directorate of Defense Trade Controls. The letter shall contain:

(1) A statement giving the applicant's Directorate of Defense Trade Controls registration number.

(2) A statement identifying the foreign party to the agreement.

(3) A statement identifying the defense articles to be distributed under the agreement.

(4) A statement identifying any U.S. Government contract under which the equipment may have been generated, improved, developed or supplied to the U.S. Government, and whether the equipment was derived from any bid or other proposal to the U.S. Government.

(5) A statement that no classified defense articles or classified technical data are involved.

(6) A statement identifying any patent application which discloses any of the subject matter of the equipment or related technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office.

(f) *Required Clauses.* The following statements must be made in the letter of transmittal:

(1) *"If the agreement is approved by the Department of State, such approval will not be construed by* (applicant) *as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will* (the applicant) *construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."*

(2) *"The* (applicant) *will not permit the proposed agreement to enter into force until it has been approved by the Department of State."*

(3) *"*(Applicant) *will furnish the Department of State with one copy of the signed agreement (or amendment thereto) within 30 days from the date that the agreement is concluded, and will inform the Department of its termination not less than 30 days prior to expiration. If a decision is made not to conclude the proposed agreement,* (applicant) *will so inform the Department within 60 days."*

[58 FR 39305, July 22, 1993, as amended at 71 FR 20544, Apr. 21, 2006]

§ 124.15 Special Export Controls for Defense Articles and Defense Services Controlled under Category XV: Space Systems and Space Launches

(a) The export of any satellite or related item (see § 121.1, Category XV(a) and (e)) or any defense service controlled by this subchapter associated with the launch in, or by nationals of, a country that is not a member of the North Atlantic Treaty Organization or a major non-NATO ally of the United States always requires special exports controls, in addition to other export controls required by this subchapter, as follows:

(1) All licenses and other requests for approval require a technology transfer control plan (TTCP) approved by the Department of Defense and an encryption technology control plan approved by the National Security Agency. Drafts reflecting advance discussions with both agencies must accompany submission of the license application or proposed technical assistance agreement, and the letter of transmittal required in § 124.12 must identify the U.S. Government officials familiar with the preparation of the draft TTCPs. The TTCP must require any U.S. person or entity involved in the export to notify the Department of Defense in advance of all meetings and interactions with any foreign person or entity that is a party to the export and require such U.S. person or entity to certify that it has complied with this notification requirement within 30 days after launch.

(2) The U.S. person must make arrangements with the Department of Defense for monitoring. The costs of such monitoring services must be fully reimbursed to the Department of Defense by the U.S. person receiving such services. The letter of transmittal required under § 124.12 must also state that such reimbursement arrangements have been made with the Department of Defense and identify the specific Department of Defense official with whom these arrangements have been made. As required by Public Law 105-261, such monitoring will cover, but not be limited to—

(i) Technical discussions and activities, including the design, development, operation, maintenance, modification, and repair of satellites, satellite components, missiles, other equipment, launch facilities, and launch vehicles;

(ii) Satellite processing and launch activities, including launch preparation, satellite transportation, integration of the satellite with the launch vehicle, testing and checkout prior to launch, satellite launch, and return of equipment to the United States;

(iii) Activities relating to launch failure, delay, or cancellation, including post-launch failure investigations or analyses with regard to either the launcher or the satellite; and

(iv) All other aspects of the launch.

(b) *Mandatory Licenses for Launch Failure (Crash) Investigations or Analyses.* In the event of a failure of a launch from a foreign country (including a post liftoff failure to reach proper orbit)—

(1) The activities of U.S. persons or entities in connection with any subsequent investigation or analysis of the failure continue to be subject to the controls established under § 38 of the Arms Export Control Act, including the requirements under this subchapter for express approval prior to participation in such investigations or analyses, regardless of whether a license was issued under this subchapter for the initial export of the satellite or satellite component;

(2) Officials of the Department of Defense must monitor all activities associated with the investigation or analyses to insure against unauthorized transfer of technical data or services and U.S. persons must follow the procedures set forth in paragraphs (a)(1) and (a)(2) of this Category.

(c) Although Public Law 105-261 does not require the application of special export controls for the launch of U.S. origin satellites and components from or by nationals of countries that are members of NATO or major non-NATO allies, such export controls may nonetheless be applied, in addition to any other export controls required under this subchapter, as appropriate in furtherance of the security and foreign policy of the United States. Further, the export of any article or defense service controlled under this subchapter to any destination may also require that the special export controls identified in paragraphs (a)(1) and (a)(2) of this category be applied in furtherance of the security and foreign policy of the United States.

(d) *Mandatory Licenses for Exports to Insurance Providers and Underwriters:* None of the exemptions or sublicensing provisions available in this subchapter may be used for the export of technical data in order to obtain or satisfy insurance requirements.[226] Such exports are always subject to the prior approval and retransfer requirements of sections 3 and 38 of the Arms Export Control Act, as applied by relevant provisions of this subchapter.

[64 FR 13681, Mar. 22, 1999]

§ 124.16 Special Retransfer Authorizations for Unclassified Technical Data and Defense Services to Member States of NATO and the European Union, Australia, Japan, New Zealand, and Switzerland

The provisions of § 124.8(5)[227] of this subchapter notwithstanding, the Department may approve access to unclassified defense articles exported in furtherance of or produced as a result of a TAA/MLA, and retransfer of technical data and defense services to individuals who are dual national or third-country national[228]

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[226] This is an apparent exception to technical data exemptions in ITAR sections 124.2, 124.3, 125.4, and part 125, which do not mention this exception.

[227] Required TAA clause which prohibits transfers of data or services to a person in, or a national of a third country, except as authorized in the agreement or by DDTC.

[228] Although the terms "dual national" and "third-country national" are not defined in the ITAR, Guidelines for Preparing Electronic Agreements (Revision 3.0), GUIDELINES FOR PREPARING, ELECTRONIC AGREEMENTS (Aug. 17, 2011), *available at* http://pmddtc.state.gov/licensing/documents/Guidelines%20for%20Preparing%20Electronic%20Agreements%20Revision%203%20(2).pdf (last viewed Sept. 1, 2012), states in part at page 23 and 27:

> Option 2 (DDTC Vetting): The applicant identifies the countries of the foreign parties' DN/TCNs pursuant to § 124.8(5) and § 124.16 in the agreement. This method places the ultimate responsibility of vetting DN/TCNs with DDTC-L. When DDTC is requested to make the determination, DDTC does consider the country of origin or birth in addition to citizenship. A request pursuant to § 124.8(5) under Option 2 can cover classified as well as unclassified transactions. . . . Pursuant to 72 FR 71785 and §124.16, when determining nationality, the Department of State considers country of origin or birth in addition to citizenship."

See also 72 FR 71786 (Dec. 19, 2007) stating in part in Supplementary Information:

> The Department of State, Directorate of Defense Trade Controls (DDTC) has recently completed a review of licensing requirements for technical assistance and manufacturing license agreements (TAAs/MLAs) under Part 124 of the ITAR. The Department has long followed a procedure to license to all countries of ultimate destination, including to nationals of countries other than the country to which the items are to be exported under the TAA/MLA. In particular, § 124.8(5) precludes any retransfer of defense articles (hardware or technical data) or defense services pursuant to an approved TAA/MLA to third countries or nationals of third countries

employees of the foreign signatory or its approved sub-licensees, including the transfer to dual nationals or third-country nationals who are bona fide regular employees, directly employed by the foreign signatory or approved sub-licensees, provided they are nationals exclusively of countries that are members of NATO [sic][229] the European Union, Australia, Japan, New Zealand, and Switzerland and their employer is a signatory to the agreement or has executed a Non Disclosure[230] Agreement. The retransfer must take place completely within the physical territories of these countries or the United States. Permanent retransfer of hardware is not authorized.

[76 FR 28177, May 16, 2011]

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unless specifically authorized in the agreement or for which prior written approval has been granted by the Department. For export control purposes, DDTC has considered a **third country national** to be an individual from a country other than the country which is the foreign signatory to the agreement. A third country national may also be a dual national if he holds nationality from more than one country. In addition to citizenship, DDTC considers country of birth a factor in determining nationality. Current procedures require that third country/dual nationals authorized under TAA/MLA's execute Non Disclosure Agreements (NDAs) before they receive access to defense articles or defense services. The changes to Part 124 would revise these procedures to permit the U.S. applicant to request further release of technical data and defense services and access to defense articles exported pursuant to or produced as a result of the TAA/MLA to third country/dual national employees of the foreign signatory who are nationals exclusively from countries that are members of the North Atlantic Treaty Organization (NATO), the European Union (EU), Australia, Japan, New Zealand, and Switzerland. These procedural changes would also apply to employees of sub-licensees authorized under the agreement. Execution of NDAs by individuals who are third country or dual nationals meeting the preceding criteria would not be required. These changes are being implemented by an additional clause in the transmittal letter required under § 124.12 (c) whereby the applicant will request retransfer of defense articles and services to third country/dual nationals from these countries under the authority of a new ITAR § 124.16 entitled ''Special Retransfer Authorizations for Unclassified Technical Data and Defense Services to Member States of NATO and the European Union, Australia, Japan, New Zealand, and Switzerland." (Emphasis added.)

[229] Missing comma after "NATO". Should read: "of NATO, the European Union . . . ."

[230] So in original. Printed as "nondisclosure" in 120.39(a)(2), and "Non-Disclosure" in 126.4(c)(4) and 126.18(c)(2).

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

Section

125.1 Exports Subject to this Part
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125.4 Exemptions of General Applicability
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125.8 [Reserved]
125.9 Filing of Licenses and Other Authorizations for Exports of Classified Technical Data and Classified Defense Articles

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.*
Source: *58 FR 39310, July 22, 1993, unless otherwise noted.*

§ 125.1 Exports Subject to this Part

(a) The controls of this part apply to the export of technical data and the export of classified defense articles. Information which is in the public domain (see § 120.11 of this subchapter and § 125.4(b)(13)) is not subject to the controls of this subchapter.

(b) A license for the export of technical data and the exemptions in § 125.4 may not be used for foreign production purposes or for technical assistance unless the approval of the Directorate of Defense Trade Controls has been obtained. Such approval is generally provided only pursuant to the procedures specified in part 124 of this subchapter.

(c) Technical data authorized for export may not be reexported, transferred or diverted from the country of ultimate end use or from the authorized foreign end user (as designated in the license or approval for export) or disclosed to a national of another country without the prior written approval of the Directorate of Defense Trade Controls.

(d) The controls of this part apply to the exports referred to in paragraph (a) of this section regardless of whether the person who intends to export the technical data produces or manufactures defense articles if the technical data is determined by the Directorate of Defense Trade Controls to be subject to the controls of this subchapter.

(e) The provisions of this subchapter do not apply to technical data related to articles in Category VI(e)[231] and Category XVI.[232] The export of such data is controlled by the Department of Energy and the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978.[233]

[58 FR 39310, July 22, 1993, as amended at 71 FR 20544, Apr. 21, 2006]

§ 125.2 Exports of Unclassified Technical Data

(a) *License.* A license (DSP-5) is required for the export of unclassified technical data unless the export is exempt from the licensing requirements of this subchapter. In the case of a plant visit, details of the proposed discussions must be transmitted to the Directorate of Defense Trade Controls for an appraisal of the technical data. Seven copies of the technical data or the details of the discussion must be provided.

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[231] Naval nuclear propulsion plants.
[232] Nuclear Weapons, Design, and Testing Related Items.
[233] *See also* § 121.1 Cat. VI(e), (g), and § 123.20.

(b) *Patents.* A license issued by the Directorate of Defense Trade Controls is required for the export of technical data whenever the data exceeds that which is used to support a domestic filing of a patent application or to support a foreign filing of a patent application whenever no domestic application has been filed. Requests for the filing of patent applications in a foreign country, and requests for the filing of amendments, modifications or supplements to such patents, should follow the regulations of the U.S. Patent and Trademark Office in accordance with 37 CFR part 5. The export of technical data to support the filing and processing of patent applications in foreign countries is subject to regulations issued by the U.S. Patent and Trademark Office pursuant to 35 U.S.C. 184.[234]

(c) *Disclosures.* Unless otherwise expressly exempted in this subchapter, a license is required for the oral, visual or documentary disclosure of technical data by U.S. persons to foreign persons. A license is required regardless of the manner in which the technical data is transmitted (*e.g.*, in person, by telephone, correspondence, electronic means, etc.). A license is required for such disclosures by U.S. persons in connection with visits to foreign diplomatic missions and consular offices.

[58 FR 39310, July 22, 1993, as amended at 71 FR 20544, Apr. 21, 2006]

§ 125.3 Exports of Classified Technical Data and Classified Defense Articles

(a) A request for authority to export defense articles, including Technical data, classified by a foreign government or pursuant to Executive Order 12356, successor orders, or other legal authority must be submitted to the Directorate of Defense Trade Controls for approval. The application must contain full details of the proposed transaction. It should also list the facility security clearance code of all U.S. parties on the license and include the Defense Security Service cognizant security office of the party responsible for packaging the commodity for shipment. A non-transfer and use certificate (Form DSP-83) executed by the applicant, foreign consignee, end user and an authorized representative of the foreign government involved will be required.

(b) Classified technical data which is approved by the Directorate of Defense Trade Controls either for export or reexport after a temporary import will be transferred or disclosed only in accordance with the requirements in the Department of Defense National Industrial Security Program Operating Manual[235] (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). Any other requirements imposed by cognizant U.S. departments and agencies must also be satisfied.

(c) The approval of the Directorate of Defense Trade Controls must be obtained for the export of technical data by a U.S. person to a foreign person in the U.S. or in a foreign country unless the proposed export is exempt under the provisions of this subchapter.

(d) All communications relating to a patent application covered by an invention secrecy order are to be addressed to the U.S. Patent and Trademark Office (see 37 CFR 5.11).

[58 FR 39310, July 22, 1993, as amended at 71 FR 20544, Apr. 21, 2006]

§ 125.4 Exemptions of General Applicability

(a) The following exemptions apply to exports of technical data for which approval is not needed from the Directorate of Defense Trade Controls. The exemptions, except for paragraph (b)(13) of this section, do not apply to exports to proscribed destinations under § 126.1 of this subchapter or for persons considered generally ineligible under § 120.1(c) of this subchapter. The exemptions are also not applicable for purposes of establishing offshore procurement arrangements or producing defense articles offshore (see § 124.13), except

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[234] Practice tip: A PTO license will authorize the export of technical data from the U.S. "for purposes relating to the preparation, filing or possible filing and prosecution of a foreign patent application." 37 CFR 5.11(b). For ITAR-controlled technical data, if the PTO has issued a foreign filing license, a DDTC license is not required to export it for these purposes, unless the data being exported exceeds that which is used to support a patent application in a foreign country. See 37 CFR 5.11(b), 5.18(a). (Contributor: Susan Kovarovics, Esq., Susan.Kovarovics@bryancave.com, 202-508-6132).

[235] DoD Manual 5220.22-M, National Industrial Security Program Operating Manual ("NISPOM") (Feb 28, 2006), *available at* http://www.dtic.mil/whs/directives/corres/pdf/522022m.pdf (last viewed Sept. 1, 2011).

as authorized under § 125.4 (c). Transmission of classified information must comply with the requirements of the Department of Defense National Industrial Security Program Operating Manual[236] (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) and the exporter must certify to the transmittal authority that the technical data does not exceed the technical limitation of the authorized export.

(b) The following exports are exempt from the licensing requirements of this subchapter.

(1) Technical data, including classified information, to be disclosed pursuant to an official written request or directive from the U.S. Department of Defense;

(2) Technical data, including classified information, in furtherance of a manufacturing license or technical assistance agreement approved by the Department of State under part 124 of this subchapter and which meet the requirements of § 124.3 of this subchapter;

(3) Technical data, including classified information, in furtherance of a contract between the exporter and an agency of the U.S. Government, if the contract provides for the export of the data and such data does not disclose the details of design, development, production, or manufacture of any defense article;

(4) Copies of technical data, including classified information, previously authorized for export to the same recipient. Revised copies of such technical data are also exempt if they pertain to the identical defense article, and if the revisions are solely editorial and do not add to the content of technology previously exported or authorized for export to the same recipient;

(5) Technical data, including classified information, in the form of basic operations, maintenance, and training information relating to a defense article lawfully exported or authorized for export to the same recipient. Intermediate or depot level repair and maintenance information may be exported only under a license or agreement approved specifically for that purpose; [237]

(6) Technical data, including classified information, related to firearms not in excess of caliber .50 and ammunition for such weapons, except detailed design, development, production or manufacturing information;

(7) Technical data, including classified information, being returned to the original source of import;

(8) Technical data directly related to classified information which has been previously exported or authorized for export in accordance with this part to the same recipient, and which does not disclose the details of the design, development, production, or manufacture of any defense article;

(9)[238] Technical data, including classified information, and regardless of media or format,[239] sent or taken by a

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[236] DoD Manual 5220.22-M, National Industrial Security Program Operating Manual ("NISPOM") (Feb 28, 2006), *available at* http://www.dtic.mil/whs/directives/corres/pdf/522022m.pdf (last viewed Sept. 1, 2011).

[237] *Compare* § 124.2(a) for defense services.

[238] Practice tips from contributor: John M. Hynes, Esq., jhynes@sheppardmullin.com, 213-617-5430; Sheppard Mullin Richter & Hampton LLP:

> The Department of State explained that the amendments to ITAR section 125.4(b)(9) are intended to clarify 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." 75 Fed. Reg. 52625. The Department of State further made clear that the exemption explicitly allows "hand carrying technical data" outside the United States provided that the other requirements for the exemption are met. *Id.* Moreover, the exemption allows the U.S. person who carries the technical data outside the United States to access the data him or herself. *Id.*
>
> The Department of State also made clear that the exemption applies only to the sending or taking of technical data by a U.S. person who is an employee of a U.S. corporation or U.S. Government agency to another U.S. person who is an employee of that same U.S. corporation or to a U.S. Government agency. The Department of State rejected a recommendation that the exemption apply to an exporter who is a U.S. person and an employee of "any entity, organization, or group incorporated or organized to do business in the United States" and a recipient who is a U.S. person and an employee of that same entity, organization or group. 75 Fed. Reg. 52625-52626 (emphasis added). It likewise rejected a recommendation that the exemption apply to employees of "accredited institutions of higher learning." *Id.* at 52626. While the ITAR do not define "accredited institution of higher learning," the term is generally understood to mean a college or university accredited by a regional, national or professional accrediting agency. Accordingly, the exemption in ITAR section 125.4(b)(9) is narrow in scope and applies only to U.S. persons who are employees of U.S. corporations and U.S. Government agencies, and not any other entities, groups or organizations.

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.[240] This exemption is subject to the limitations of Sec. 125.1(b)[241] 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[242] (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).

(10) Disclosures of unclassified technical data in the U.S. by U.S. institutions of higher learning to foreign persons who are their bona fide and full time regular employees. This exemption is available only if:

(i) The employee's permanent abode throughout the period of employment is in the United States;

(ii) The employee is not a national of a country to which exports are prohibited pursuant to § 126.1 of this subchapter; and

(iii) The institution informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of the Directorate of Defense Trade Controls;

(11) Technical data, including classified information, for which the exporter, pursuant to an arrangement with the Department of Defense, Department of Energy or NASA which requires such exports, has been

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The Department of State also offered some guidance on the duty imposed on U.S. corporations using the exemption to send or carry technical data to an employee of a U.S. Government agency outside the United States. U.S. corporations must take "reasonable precautions" to ensure that the data will be used outside the United States solely by U.S. persons and that the recipient is in fact employed by a U.S. Government agency. 75 Fed Reg. 52625.

Implications of The Amendments

Before the amendments to ITAR section 125.4(b)(9), the exemption allowed U.S. corporations to send ITAR-controlled technical data to their employees and to U.S. Government agencies outside the United States, but did not allow for the hand-carrying (*i.e.,* taking) of technical data outside the United States. Thus, for an employee of a U.S. corporation to possess technical data outside the United States, that U.S. corporation had to send the technical data to the employee after the employee had arrived in the foreign country. U.S. persons were not permitted to take or carry technical data in any form outside the United States. For example, U.S. persons could not travel overseas with a laptop computer containing technical data.

The amendments make clear that U.S. persons are now permitted to hand-carry ITAR-controlled technical data outside the United States provided that certain requirements are met. The amendments also clarify that the technical data can be hand-carried outside the United States in any media or format. Thus, U.S. persons who are employees of U.S. corporations or U.S. Government agencies can now freely travel outside the United States with information that fits the ITAR definition of "technical data" in any form. For example, U.S. employees may carry outside the United States, among other things, hard copy documents, laptop computers, compact discs, cellular phones and flash drives containing technical data.

Those seeking to use ITAR section 125.4(b)(9) must remain mindful of the narrowly drawn requirements that must be met for the exemption to apply. First, they must be aware that the exemption will not apply if the technical data is being carried for foreign production purposes or for technical assistance. Second, they must be certain that the employee carrying the technical data outside the United States is a U.S. person. Third, they must take all the necessary precautions to ensure that the data is shared only with (1) other U.S. persons who are employees of the same U.S. corporation as the U.S. person carrying the data (and not a foreign subsidiary of that corporation) or (2) an employee of a U.S. Government agency. Finally, if the technical data includes classified information, it must be carried outside the United States in accordance with the requirements of the Department of Defense National Industrial Security Program Operating Manual (unless such requirements conflicts with guidance of the Directorate of Defense Trade Controls, which must be followed).

[239] Practice tip: The most frequently used method of exporting technical data under this exemption is probably email to employees of U.S. exports sent overseas to maintain or repair defense articles. Users are reminded that the recordkeeping requirements of ITAR §§ 122.5(a) and 123.26, the exemption certification requirement of § 125.6(b), and the restrictions against use of the exemption in § 126.1(a) countries apply to the use of this exemption. The ease with which an email may be sent, the lack of review of the contents of emails by trained export compliance specialists, and the uncertainty of the whereabouts of the email recipient when the email is received and read, make compliance with the listed requirement more difficult than with physical shipments of copies of technical data.

[240] Although §§ 123.16(a) and 126.1(a) prohibit use of exemptions in § 126.1(a) list countries, DDTC has authorized the use of 125.4(b)(9) in Iraq and Afghanistan in response to a request by general correspondence. Such authorization is limited to the requesting exporter.

[241] Technical data under the exemption "may not be used for foreign production purposes or for technical assistance" unless approved by DDTC. ITAR § 125.1(a).

[242] DoD Manual 5220.22-M, National Industrial Security Program Operating Manual ("NISPOM") (Feb 28, 2006), *available at* http://www.dtic.mil/whs/directives/corres/pdf/522022m.pdf (last viewed Sept. 1, 2011).

granted an exemption in writing from the licensing provisions of this part by the Directorate of Defense Trade Controls. Such an exemption will normally be granted only if the arrangement directly implements an international agreement to which the United States is a party and if multiple exports are contemplated. The Directorate of Defense Trade Controls, in consultation with the relevant U.S. Government agencies, will determine whether the interests of the United States Government are best served by expediting exports under an arrangement through an exemption (see also paragraph (b)(3) of this section for a related exemption);

(12) Technical data which is specifically exempt under part 126 of this subchapter; or

(13) Technical data approved for public release (*i.e.*, unlimited distribution) by the cognizant U.S. Government department or agency or Office of Freedom of Information and Security Review.[243] This exemption is applicable to information approved by the cognizant U.S. Government department or agency for public release in any form. It does not require that the information be published in order to qualify for the exemption.

(c) Defense services and related unclassified technical data are exempt from the licensing requirements of this subchapter, to nationals of NATO countries, Australia, Japan, and Sweden, for the purposes of responding to a written request from the Department of Defense for a quote or bid proposal. Such exports must be pursuant to an official written request or directive from an authorized official of the U.S. Department of Defense. The defense services and technical data are limited to paragraphs (c)(1), (c)(2), and (c)(3) of this section and must not include paragraphs (c)(4), (c)(5), and (c)(6) of this section which follow:

(1) *Build-to-Print. "Build-to-Print"* means that a foreign consignee can produce a defense article from engineering drawings without any technical assistance from a U.S. exporter. This transaction is based strictly on a "hands-off" approach since the foreign consignee is understood to have the inherent capability to produce the defense article and only lacks the necessary drawings. Supporting documentation such as acceptance criteria, and specifications, may be released on an as-required basis (*i.e.*, "must have") such that the foreign consignee would not be able to produce an acceptable defense article without this additional supporting documentation. Documentation which is not absolutely necessary to permit manufacture of an acceptable defense article (*i.e.*, "nice to have") is not considered within the boundaries of a "Build-to-Print" data package;

(2) *Build/Design-to-Specification. "Build/Design-to-Specification"* means that a foreign consignee can design and produce a defense article from requirement specifications without any technical assistance from the U.S. exporter. This transaction is based strictly on a "hands-off" approach since the foreign consignee is understood to have the inherent capability to both design and produce the defense article and only lacks the necessary requirement information;

(3) *Basic Research. "Basic Research"* means a systemic study directed toward greater knowledge or understanding of the fundamental aspects of phenomena and observable facts without specific applications towards processes or products in mind. It does not include "*Applied Research*" (*i.e.*, a systemic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met. It is a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.);

(4) *Design Methodology*, such as: The underlying engineering methods and design philosophy utilized (*i.e.*, the "why" or information that explains the rationale for particular design decision, engineering feature, or performance requirement); engineering experience (*e.g.*, lessons learned); and the rationale and associated databases (*e.g,*. design allowables, factors of safety, component life predictions, failure analysis criteria) that establish the operational requirements (*e.g.*, performance, mechanical, electrical, electronic, reliability and

[243] So in original. The office was renamed "Office of Security Review" in 2005. WHS Action Memo of Aug. 16, 2005. Practice tip: Obtain clearance for releasing marketing material containing descriptions and specifications for ITAR-controlled products from DoD Office of Security Review, 1777 N. Kent Street, Suite 12047, Arlington, VA 22209. (Contributor: Gary Stanley, Esq., 202-686-4854, gstanley@glstrade.com)

maintainability) of a defense article. (Final analytical results and the initial conditions and parameters may be provided.)

(5) *Engineering Analysis*, such as: Analytical methods and tools used to design or evaluate a defense article's performance against the operational requirements. Analytical methods and tools include the development and/or use of mock-ups, computer models and simulations, and test facilities. (Final analytical results and the initial conditions and parameters may be provided.)

(6) *Manufacturing Know-how*, such as: information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a qualified, finished defense article. (Information may be provided in a build-to-print package that is necessary in order to produce an acceptable defense article.)

(d)(1) Defense services for the items identified in § 123.16(b)(10) of this subchapter exported by accredited U.S. institutions of higher learning are exempt from the licensing requirements of this subchapter when the export is:

(i) To countries identified in § 123.16(b)(10)(i) of this subchapter and exclusively to nationals of such countries when engaged in international fundamental research conducted under the aegis of an accredited U.S. institution of higher learning; and

(ii) In direct support of fundamental research as defined in § 120.11 (8) of this subchapter being conducted either at accredited U.S. institutions of higher learning or an accredited institution of higher learning, a governmental research center or an established government funded private research center located within the countries identified in § 123.16(b)(10)(i) of this subchapter; and

(iii) Limited to discussions on assembly of any article described in § 123.16(b)(10) of this subchapter and or integrating any such article into a scientific, research, or experimental satellite.

(2) The exemption in paragraph (d)(1) of this section, while allowing accredited U.S. institutions of higher learning to participate in technical meetings with foreign nationals [sic][244] from countries specified in § 123.16(b)(10)(i) of this subchapter for the purpose of conducting space scientific fundamental research either in the United States or in these countries when working with information that meets the requirements of § 120.11 of this subchapter in activities that would generally be controlled as a defense service in accordance with § 124.1(a) of this subchapter, does not cover:

(i) Any level of defense service or information involving launch activities including the integration of the satellite or spacecraft to the launch vehicle;

(ii) Articles and information listed in the Missile Technology Control Regime (MTCR) Annex or classified as significant military equipment; or

(iii) The transfer of or access to technical data, information, or software that is otherwise controlled by this subchapter.

[58 FR 39310, July 22, 1993, as amended at 65 FR 45284, July 21, 2000; 66 FR 35900, July 10, 2001; 67 FR 15101, Mar. 29, 2002; 71 FR 20545, Apr. 21, 2006, and 75 FR 52626, Aug. 27, 2010.]

§ 125.5 Exemptions for Plant visits

(a) A license is not required for the oral and visual disclosure of unclassified technical data during the course of a classified plant visit by a foreign person, provided: The classified visit has itself been authorized pursuant to a license issued by the Directorate of Defense Trade Controls; or the classified visit was approved in connection with an actual or potential government-to-government program or project by a U.S. Government agency having classification jurisdiction over the classified defense article or classified technical data involved under Executive Order 12356 or other applicable Executive Order; and the unclassified information to be released is directly related to the classified defense article or technical data for which approval was obtained and does not

[244] So in original. Should be "foreign persons", as the term "foreign national" is not defined in the ITAR, and could include either U.S. persons or foreign persons.

disclose the details of the design, development, production or manufacture of any other defense articles. In the case of visits involving classified information, the requirements of the Department of Defense National Industrial Security Program Operating Manual[245] must be met (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).

(b) The approval of the Directorate of Defense Trade Controls is not required for the disclosure of oral and visual classified information to a foreign person during the course of a plant visit approved by the appropriate U.S. Government agency if: The requirements of the Department of Defense National Industrial Security Program Operating Manual have been met (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); the classified information is directly related to that which was approved by the U.S. Government agency; it does not exceed that for which approval was obtained; and it does not disclose the details of the design, development, production or manufacture of any defense articles.

(c) A license is not required for the disclosure to a foreign person of unclassified technical data during the course of a plant visit (either classified or unclassified) approved by the Directorate of Defense Trade Controls or a cognizant U.S. Government agency provided the technical data does not contain information in excess of that approved for disclosure. This exemption does not apply to technical data which could be used for design, development, production or manufacture of a defense article.

[71 FR 20545, Apr. 21, 2006]

§ 125.6 Certification Requirements for Exemptions

(a) To claim an exemption for the export of technical data under the provisions of this subchapter (*e.g.*, §§ 125.4 and 125.5), the exporter must certify that the proposed export is covered by a relevant section of this subchapter, to include the paragraph and applicable subparagraph. Certifications consist of clearly marking the package or letter containing the technical data *"22 CFR* [insert ITAR exemption] *applicable."* This certification must be made in written form and retained in the exporter's files for a period of 5 years[246] (see § 123.22 of this subchapter).

(b) For exports that are oral, visual, or electronic the exporter must also complete a written certification as indicated in paragraph (a) of this section and retain it for a period of 5 years.

[68 FR 61102, Oct. 27, 2003]

§ 125.7 Procedures for the Export of Classified Technical Data and Other Classified Defense Articles

(a) All applications for the export or temporary import of classified technical data or other classified defense articles must be submitted to the Directorate of Defense Trade Controls on Form DSP-85.[247]

(b) An application for the export of classified technical data or other classified defense articles must be accompanied by seven copies of the data and a completed Form DSP-83 (see § 123.10 of this subchapter). Only one copy of the data or descriptive literature must be provided if a renewal of the license is requested. All classified materials accompanying an application must be transmitted to the Directorate of Defense Trade Controls in accordance with the procedures contained in the Department of Defense National Industrial

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[245] DoD Manual 5220.22-M, National Industrial Security Program Operating Manual ("NISPOM") (Feb 28, 2006), *available at* http://www.dtic.mil/whs/directives/corres/pdf/522022m.pdf (last viewed Sept. 1, 2011).

[246] This period may be based upon the general Federal statute of limitations for enforcement of civil fines, penalties, or forfeitures stated in 28 U.S.C. § 2462, Time for Commencing Proceedings. Usage note: The ITAR uses "four years" at § 123.21(a) and "five years" at §§ 122.5(a), 126.18(a)(2), and 130.14, but "4 years" at §§ 123.4(a) and 123.5(a), and "5 years" at § 125.6(a) and (b). The preferred usage for U.S. Government documents is to use numbers for years and other periods of time. Rule 12.9, GPO Style Manual (2008).

[247] Per DDTC announcement on May 13, 2011, at http://pmddtc.state.gov/, DDTC no longer accepts the multi-page DSP-85 license application paper form. Submissions must be now be made using the DSP-85 downloadable and fillable form, and mailed or delivered to DDTC. No changes have been made to the content of the form itself. Download the form at: http://pmddtc.state.gov/licensing/documents/DSP_85.pdf (last viewed Sept. 1, 2012).

Security Program Operating Manual[248] (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).

[71 FR 20546, Apr. 21, 2006]

§ 125.8 [Reserved]

§ 125.9 Filing of Licenses and Other Authorizations for Exports of Classified Technical Data and Classified Defense Articles

Licenses and other authorizations for the export of classified technical data or classified defense articles will be forwarded by the Directorate of Defense Trade Controls to the Defense Security Service of the Department of Defense in accordance with the provisions of the Department of Defense National Industrial 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). The Directorate of Defense Trade Controls will forward a copy of the license to the applicant for the applicant's information. The Defense Security Service will return the endorsed license to the Directorate of Defense Trade Controls upon completion of the authorized export or expiration of the license, whichever occurs first.

[71 FR 20546, Apr. 21, 2006]

[248] DoD Manual 5220.22-M, National Industrial Security Program Operating Manual ("NISPOM") (Feb 28, 2006), *available at* http://www.dtic.mil/whs/directives/corres/pdf/522022m.pdf (last viewed Sept. 1, 2011).

PART 126: GENERAL POLICIES AND PROVISIONS[249]

Section

126.1 Prohibited Exports, Imports, and Sales to Certain Countries
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126.18 Exemptions Regarding Intra-Company, Intra-Organization, and Intra-Governmental Transfers to Employees Who are Dual Nationals or Third-Country Nationals

Authority: *Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117, Pub. L. 111-266; Section 7045, Pub. L. 112-74; Section 7046, Pub. L. 112-74.* [250]

Source*: 58 FR 39312, July 22, 1993, unless otherwise noted.* [251]

§ 126.1 Prohibited Exports, Imports, and Sales to Certain Countries [252]

(a) *General*. It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services destined for or originating in certain countries. This policy applies to Belarus,[253] Cuba,[254] Eritrea,[255] Iran,[256] North Korea,[257] Syria,[258] and Venezuela.[259] This policy also applies to

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[249] This part (sections 126.5(b), 126.5(c). 126.16, and 126.17, plus added Supplement No. 1) was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012).
[250] This section amended by 77 FR 25865 (May 2, 2012), effective June 1, 2012.
[251] This section last amended by 77 FR 16670 (Mar. 21, 2012).
[252] See list of applicable Federal Register notices in DDTC, COUNTRIES, POLICIES & EMBARGOES (July 13, 2012), http://www.pmddtc.state.gov/embargoed_countries/index.html (last viewed Sept. 1, 2012), *reprinted infra* at Appendix C.
[253] Added to § 126.1 by 58 FR 39280 (July 22, 1993). *See also* 74 FR 28435-28437 (Jun, 15, 2009): Notice of June 12, 2009--CONTINUATION OF THE NATIONAL EMERGENCY WITH RESPECT TO THE ACTIONS AND POLICIES OF CERTAIN MEMBERS OF THE GOVERNMENT OF BELARUS AND OTHER PERSONS THAT UNDERMINE DEMOCRATIC PROCESSES OR INSTITUTIONS IN BELARUS.
[254] Added to § 126.1 by 49 FR 47682 (Dec. 6, 1984).
[255] Suspension notice 71 FR 11281 (Mar. 6, 2006). Added to § 126.1 by 73 FR 58041 (Oct. 16, 2008). This section last amended by 76 FR 76 FR 47990 (Aug. 8, 2011).
[256] Designated a terrorist country by 49 FR 2836 (Jan. 23, 1984). Added to § 126.1 by 56 FR 55630 (Oct. 29, 1991). This section last amended by 72 FR 71575 (Dec. 18, 2007). The Iranian Transactions Regulations, 31 CFR part 560, 31 CFR 560.521, authorize the exportation, reexportation, sale, or supply, directly or indirectly, from the United States or by a U.S. person, wherever located, of any goods or technology to a third-country government, or to its contractors or agents, for shipment to Iran via a diplomatic pouch. It also authorizes, to the extent necessary, the shipment by a third-country government to Iran of U.S.-origin goods or technology in a diplomatic pouch. 72 FR 15831-15832 (Apr. 3, 2007).
[257] Added to § 126.1 by 49 FR 47682 (Dec. 6, 1984). This section was last amended by 76 FR 47990 (Aug. 8, 2011), stating in part in Supplementary Information: "§ 126.1(d) is amended to remove mention of North Korea. However, North Korea is subject to an arms embargo according to the United Nations Security Council resolutions 1718 (2006) and 1874 (2009). Consequently, North Korea remains subject to the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in North Korea (§126.1(a))."
[258] Denial notice by 71 FR 47554 (Aug. 17, 2006); added to § 126.1 by 56 FR 55630 (Oct. 29, 1991).

countries with respect to which the United States maintains an arms embargo (*e.g.*, Burma, [260] China,[261] and the Republic of the Sudan[262]) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States.[263] Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a State Department notice published in the Federal Register. The exemptions provided in the regulations in this subchapter, except §123.17 of this subchapter, do not apply with respect to articles originating in or for export to any proscribed

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[259] Added to § 126.1 by 72 FR 5614 (Feb. 7, 2007).
[260] Suspension notice 58 FR 33293 (June 16, 1993); added to § 126.1 by 58 FR 39280 (July 22, 1993). *See also* 74 FR 40463-40466 (Aug. 11, 2009): 48 CFR pts. 4, 15, 25, and 52; FEDERAL ACQUISITION REGULATION; PROHIBITION ON RESTRICTED BUSINESS OPERATIONS IN SUDAN AND IMPORTS FROM BURMA.
[261] Suspension notice 54 FR 24539 (June 7, 1989); added to § 126.1 by 58 FR 39280 (July 22, 1993).
[262] Sudan: Suspension notice 58 FR 49741 (Nov. 3, 1993); added to § 126.1 by 58 FR 52523 (Oct. 8, 1993); revised by 76 FR 69612 (Nov. 9, 2011). *See also* 74 FR 40463-40466 (Aug. 11, 2009): 48 CFR pts. 4, 15, 25, and 52; Federal Acquisition Regulation; Prohibition on Restricted Business Operations in Sudan and Imports from Burma. The Republic of Sudan should not be confused with the Republic of South Sudan, which declared its independence from the Republic of Sudan on July 9, 2011, and was recognized by the United Nations on July 14, 2011.
[263] Restrictions on exports and import also exist for the following countries:

- **Guinea, Republic of.** *See* DDTC Web Notice on Exports to the Republic of Guinea (Oct. 26, 2009), *available at* http://pmddtc.state.gov/licensing/documents/WebNotice_Guinea.pdf (last viewed Sept. 1, 2012), stating in part: **"**There is no current U.S. or UN arms embargo on Guinea, the final decision on license applications for the export of U.S. Munitions List (USML) items to Guinea received from this date or currently in the review process may be delayed as the situation develops. License applications will continue to be reviewed on a case-by-case basis, but approval should not be assumed. We encourage exporters to take the current situation into account and if applying for a new license to export or re-export USML items to Guinea, that the license application provide detailed information on the end-use and end-user of the USML items. …" *See also* EUROPEAN UNION COUNCIL COMMON POSITION (EC) NO. 2009/788/CFSP (Oct. 27, 2009) (prohibiting the sale, supply, transfer, or export of arms and related materiel of all types to the Republic of Guinea from any EU Member State or by EU nationals overseas).
- **Kyrgyzstan.** *See* DDTC Web Notice on Exports to the Kyrgyz Republic (Apr. 9, 2010), *available at* http://www.pmddtc.state.gov/FR/2010/Kyrgyzstan.pdf (last viewed Sept. 1, 2012), stating in part: "In response to recent events in the Kyrgyz Republic (Kyrgyzstan), DDTC wishes to inform exporters that although there is no current U.S. or UN arms embargo on Kyrgyzstan, the final decision of license applications for the export of U.S. Munitions List (USML) items to Kyrgyzstan received from this date or currently in the review process may be delayed. License applications will continue to be reviewed on a case-by-case basis, but approval should not be assumed. We encourage exporters to take the current situation into account and if applying for a new license to export or re-export USML items to Kyrgyzstan, that the license application provide detailed information on the end-use and end-user of the USML items. …" *See also* WHITE HOUSE Office of the Press Secretary, statement by Press Secretary Robert Gibbs (Apr. 8, 2010) *available at* http://www.pmddtc.state.gov/FR/2010/Kyrgyzstan.pdf (last viewed Sept. 1, 2012).
- **Macau.** 22 USC 6901 (2010), codifying Sect. 203(b)(1) of the Macau Policy Act of 2000, states, "The export control laws, regulations, and practices of the United States shall apply to Macau in the same manner and to the same extent that such laws, regulations, and practices apply to the People's Republic of China, and in no case shall such laws, regulations, and practices be applied less restrictively to exports to Macau than to exports to the People's Republic of China." That policy is not in effect for Hong Kong, which, although also under the political control of the People's Republic of China, is treated differently by the United Sates-Hong Kong Policy Act of 1992, 22 USC 5713(8) (2010), which states: "The United States should continue to support access by Hong Kong to sensitive technologies controlled under the agreement of the Coordinating Committee for Multilateral Export Controls (commonly referred to as "COCOM") for so long as the United States is satisfied that such technologies are protected from improper use or export."
- **Niger.** *See* DDTC Web Notice on Exports to the Republic of Niger (Dec. 23, 2009), *available at* http://www.pmddtc.state.gov/FR/2010/Niger.pdf (last viewed Sept. 1, 2012), stating in part: "In response to recent events in the Republic of Niger (Niger), DDTC wishes to inform exporters that although there is no current U.S. or UN arms embargo on Niger, the final decision of license applications for the export of U.S. Munitions List (USML) items to Niger received from this date or currently in the review process may be delayed. License applications will continue to be reviewed on a case-by-case basis, but approval should not be assumed. We encourage exporters to take the current situation into account and if applying for a new license to export or re-export USML items to Niger, that the license application provide detailed information on the end-use and end-user of the USML items. …"
- **Pakistan.** Although not a § 126.1 presumed denial country, see DDTC NOTICE TO EXPORTERS, PAKISTAN POLICY UPDATE (Oct. 1, 2011) *available at* http://pmddtc.state.gov/FR/2011/Pakistan_WebNoticeExporters.pdf (last viewed Sept. 1, 2012):
  (October 1, 2011) Section 203 of the Enhanced Partnership with Pakistan Act of 2009 (Public Law 111-73) prohibits for fiscal years 2012-2014 the issuance of export licenses *for major defense equipment* (defined in 22 U.S.C. 2794(6)) to be exported to Pakistan absent an appropriate certification or waiver under Section 203 in the fiscal year. Since no certification or waiver has been issued for fiscal year 2012, exporters are advised not to submit such license requests to DDTC. A new notice will be issued in the event of a waiver or certification in fiscal year 2012 (emphasis added).
- **Palestinian Authority/Hamas.** 31 CFR 594.411 (2011), Palestinian Authority, stating:
  Following the January 2006 Palestinian elections, Hamas, a designated terrorist entity whose property and interests in property are blocked pursuant to 594.201, has been determined to have a property interest in the transactions of the Palestinian Authority. Accordingly, pursuant to §§ 594.201 and 594.204, U.S. persons are prohibited from engaging in transactions with the Palestinian Authority unless authorized. Certain transactions with the Palestinian Authority may be authorized by license, see subpart E of this part (§ 594.501.). [71 FR 27200, May 10, 2006.]

DDTC publishes restrictive guidance regarding restricted countries at DDTC, Countries, Policies & Embargoes (July 13, 2012), *available at* http://pmddtc.state.gov/embargoed_countries/index.html (last viewed Sept. 1, 2012), *reprinted infra* at Appendix B.

countries, areas, or persons in this §126.1.[264]

(b) *Shipments*. A defense article licensed for export under this subchapter may not be shipped on a vessel, aircraft or other means of conveyance which is owned or operated by, or leased to or from, any of the proscribed countries or areas.

(c) *Exports and Sales Prohibited by United Nations Security Council Embargoes*. Whenever the United Nations Security Council mandates an arms embargo, all transactions that are prohibited by the embargo and that involve U.S. persons (see §120.15[265] of this subchapter) anywhere, or any person in the United States, and defense articles or services of a type enumerated on the United States Munitions List (22 CFR part 121), irrespective of origin, are prohibited under the ITAR for the duration of the embargo, unless the Department of State publishes a notice in the Federal Register specifying different measures. This would include, but is not limited to, transactions involving trade by U.S. persons who are located inside or outside of the United States in defense articles or services of U.S. or foreign origin that are located inside or outside of the United States. United Nations Security Council arms embargoes include, but are not necessarily limited to, the following countries:

(1) Cote d'Ivoire[266] (see also paragraph (q) of this section).

(2) Democratic Republic of Congo[267] (see also paragraph (i) of this section).

(3) Eritrea.[268]

(4) Iraq[269] (see also paragraph (f) of this section).

(5) Iran.[270]

(6) Lebanon[271] (see also paragraph (t) of this section).

(7) Liberia[272] (see also paragraph (o) of this section).

(8) Libya[273] (see also paragraph (k) of this section).

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[264] This section last amended by 76 FR 47990 (Aug. 8, 2011).
[265] ITAR § 120.15, U.S. Person.
[266] A.k.a. Ivory Coast. Suspension notice 69 FR 74560 (Dec. 14, 2004). Added to § 126.1 by 72 FR 71575 (Dec. 18, 2007).
[267] Suspension Notice 58 FR 26024 (Apr 19, 1993). Added to § 126.1 by 58 FR 39280 (July 22, 1993). The Democratic Republic of the Congo ("DRC"), named Zaire from 1971 to 1997, should not be confused with the neighboring Republic of the Congo.
[268] Eritrea: Suspension notice 71 FR 11281 (Mar. 6, 2006). Added to § 126.1 by 73 FR 58041 (Oct. 16, 2008). This section last amended by 76 FR 76 FR 47990 (Aug. 8, 2011).
[269] Iraq: Added to § 126.1 by 56 FR 55630 ((Oct. 29, 1991). *See also* DDTC, GUIDANCE FOR EXPORTS TO AFGHANISTAN (Jan. 31, 2012), available at http://pmddtc.state.gov/licensing/documents/gl-ExportstoAfghanistan.pdf (last viewed Sept. 1, 2012).
[270] Iran: Designated a terrorist country by 49 FR 2836 (Jan. 23, 1984). Added to § 126.1 by 56 FR 55630 (Oct. 29, 1991). The Iranian Transactions Regulations, 31 CFR part 560, 31 CFR 560.521, authorize the exportation, reexportation, sale, or supply, directly or indirectly, from the United States or by a U.S. person, wherever located, of any goods or technology to a third-country government, or to its contractors or agents, for shipment to Iran via a diplomatic pouch. It also authorizes, to the extent necessary, the shipment by a third-country government to Iran of U.S.-origin goods or technology in a diplomatic pouch. 72 FR 15831-15832 (Apr. 3, 2007).
[271] Lebanon: Added to § 126.1 by 72 FR 75609 (Dec. 15, 2006); last amended by 76 FR 47990 (Aug. 8, 2011), stating in part in Supplementary Information: "On August 11, 2006, the United Nations Security Council adopted resolution 1701, establishing an arms embargo, with the exception that it would not apply to arms and related materiel for the United Nations Interim Force in Lebanon [UNIFIL] or as authorized by the Government of Lebanon. …"
[272] Liberia: This section was added by 76 FR 47990 (Aug. 8, 2011), stating in part in Supplementary Information: "On December 17, 2009, the United Nations Security Council adopted resolution 1903, which modified the existing Liberia arms embargo…. Section 126.1(o) is added to reflect the arms embargo and exceptions thereto. In addition, §126.1(a) is revised to remove Liberia as an example of a country with which the United States maintains an arms embargo."
[273] Libya: Added to § 126.1 by 56 FR 55630 (Oct. 29, 1991); last amended by 76 FR 30001 (May 24, 2011). On September 23, 2011, DDTC posted the following notice at http://pmddtc.state.gov/FR/2011/Libya_WebNoticeExporters.pdf:

> Notice to Exporters – Libya Policy Update
> On September 16, 2011, the United Nations Security Council (UNSC) adopted resolution 2009, which modifies the arms embargo against Libya put in place by the adoption in February and March of resolutions 1970 and 1973, respectively.
> UNSC Resolutions 1970 and 1973
> On February 26, 2011, the United Nations Security Council adopted Resolution 1970, paragraph 9 of which provides that UN member states shall immediately take the necessary measures to prevent the sale, supply, or transfer of arms and related materiel of all types to the Libyan Arab Jamahiriya, with certain exceptions. On March 17, 2011, the UN Security Council adopted Resolution 1973, paragraph 4 of which authorizes member states to take all necessary measures, notwithstanding the arms embargo

(9) North Korea. [274]

(10) Somalia[275] (see also paragraph (m) of this section).

(11) The Republic of Sudan (see also paragraph (v) of this section).[276]

(d)[277] *Terrorism.* Exports to countries which the Secretary of State has determined to have repeatedly provided support for acts of international terrorism are contrary to the foreign policy of the United States and are thus subject to the policy specified in paragraph (a) of this section and the requirements of section 40 of the Arms Export Control Act (22 U.S.C. 2780) and the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986 (22 U.S.C. 4801, note). The countries in this category are: Cuba, Iran, The Republic of Sudan, and Syria.

(e) *Final sales.* No sale, export, transfer, reexport, or retransfer and no proposal to sell, export, transfer, reexport, or retransfer any defense articles or defense services subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of the Directorate of Defense Trade Controls. However, in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny[278] licenses and approvals in such cases.

(1) *Duty to Notify:* Any person who knows or has reason to know of such a final or actual sale, export, transfer, reexport, or retransfer of such articles, services, or data must immediately inform the Directorate of Defense Trade Controls. Such notifications should be submitted to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.

(2) [Reserved]

(f) *Iraq.*[279] It is the policy of the United States to deny[280] licenses or other approvals for exports and imports of defense articles and defense services, destined for or originating in Iraq, except that a license or other approval

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established by paragraph 9 of Resolution 1970, to protect civilians and civilian populated areas under threat of attack in Libya. On May 24, 2011, the Department amended the ITAR to implement the Security Council's actions within the ITAR by adding Libya to §126.1(c), which identifies countries subject to UN Security Council arms embargoes, and revising the previous policy on Libya contained in §126.1(k) to announce a policy of denial for all requests for licenses or other approvals to export or otherwise transfer defense articles and services to Libya, except where not prohibited under UNSC embargo and determined to be in the interests of the national security and foreign policy of the United States.

UNSC Resolution 2009

To the existing exceptions to the arms embargo, delineated in resolutions 1970 and 1973, resolution 2009 adds the supply, sale, or transfer to Libya of arms and related materiel, including technical assistance and training, intended solely for security or disarmament assistance to the Libyan authorities, and small arms, light weapons, and related materiel temporarily exported to Libya for the sole use of UN personnel, representatives of the media, and humanitarian and development workers and associated personnel. Items for export pursuant to the exceptions must first be notified to the Committee of the Security Council concerning Libya, which has the option of disapproving the export.

U.S. Policy

The ITAR will be amended to reflect these exceptions. It continues to be the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Libya, except where it determines, upon case-by-case review, that the transaction (or activity) is not prohibited under applicable UN Security Council resolutions and that the transaction (or activity) is in furtherance of the national security and foreign policy of the United States.

[274] North Korea: Added to § 126.1 by 49 FR 47682 (Dec. 6, 1984). Further amendment by 76 FR 47990 (Aug. 8, 2011), stating in part in Supplementary Information: "§ 126.1(d) is amended to remove mention of North Korea. However, North Korea is subject to an arms embargo according to the United Nations Security Council resolutions 1718 (2006) and 1874 (2009). Consequently, North Korea remains subject to the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in North Korea (§126.1(a))."

[275] Somalia: This section was last amended by 76 FR 47990 (Aug. 8, 2011), stating in part in Supplementary Information: "§126.1(m) is amended to reflect the statutory bar on issuance of licenses for defense articles for the purpose of developing security sector institutions in Somalia."

[276] Sudan: Suspension notice 58 FR 49741 (Nov. 3, 1993); added to § 126.1 by 58 FR 52523 (Oct. 8, 1993); revised by 76 FR 69612 (Nov. 9, 2011). *See also* 74 FR 40463-40466 (Aug. 11, 2009): 48 CFR pts. 4, 15, 25, and 52; Federal Acquisition Regulation; Prohibition on Restricted Business Operations in Sudan and Imports from Burma. The Republic of Sudan should not be confused with the Republic of South Sudan, which declared its independence from the Republic of Sudan on July 9, 2011, and was recognized by the United Nations on July 14, 2011.

[277] This section last amended by 76 FR 69612 (Nov. 9, 2011).

[278] *But see* exemptions for body armor in 123.17 and dual/3rd-country nationals in 126.18.

[279] *See also* DDTC, GUIDANCE FOR EXPORTS TO AFGHANISTAN (Jan. 31, 2012), available at http://pmddtc.state.gov/licensing/documents/gl-ExportstoAfghanistan.pdf (last viewed Sept. 1, 2012).

[280] *But see* exemptions for body armor in 123.17 and dual/3rd-country nationals in 126.18.

may be issued, on a case-by-case basis for:

(1) Non-lethal military equipment; and

(2) Lethal military equipment required by the Government of Iraq or coalition forces.

(g) *Afghanistan.*[281] It is the policy of the United States to deny[282] licenses or other approvals for exports and imports of defense articles and defense services, destined for or originating in Afghanistan, except that a license or other approval may be issued, on a case-by-case basis, for the Government of Afghanistan or coalition forces. In addition, the names of individuals, groups, undertakings, and entities subject to broad prohibitions, including arms embargoes, due to their affiliation with the Taliban, Al-Qaida, or those associated with them, are published in lists maintained by the Security Council committees established pursuant to United Nations Security Council resolutions 1267 and 1988.

(h) [Reserved.]

(i)[283] *Democratic Republic of the Congo*. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Democratic Republic of the Congo, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services for the Government of the Democratic Republic of the Congo as notified in advance to the Committee of the Security Council concerning the Democratic Republic of the Congo;

(2) Defense articles and defense services intended solely for the support of or use by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC);

(3) Personal protective gear temporarily exported to the Democratic Republic of the Congo by United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only; and

(4) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as notified in advance to the Committee of the Security Council concerning the Democratic Republic of the Congo.

(j) *Haiti*[284]

(1) It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Haiti, except that a license or other approval may be issued, on a case-by-case basis, for:

(i) Defense articles and defense services intended solely for the support of or use by security units that operate under the command of the Government of Haiti, to include the Coast Guard;

(ii) Defense articles and defense services intended solely for the support of or use by the United Nations or a United Nations-authorized mission; and

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[281] Added to § 126.1 by 61 FR 33313 (June 27, 1996); last amended by 76 FR 47990 (Aug. 8, 2011), containing, in part: "Section 126.1(g) is amended to delete reference to the "Afghan Interim Authority." The Islamic Republic of Afghanistan has replaced the Afghan Interim Authority as the Government of Afghanistan." *See generally,* DDTC, Guidance for Exports to Afghanistan (Jan 31, 2012), available at http://pmddtc.state.gov/licensing/documents/gl-ExportstoAfghanistan.pdf (last viewed Sept. 1, 2012). Afghanistan was added to the Major Non-NATO Allies list on July 7, 2012. *See* http://www.state.gov/r/pa/prs/ps/2012/07/194662.htm. Although this status permits sales to the government of Afghanistan, ITAR § 126.1 restrictions continue to apply to the sales of defense articles to non-governmental entities in Afghanistan until the ITAR is amended to remove Afghanistan from § 126.1.

[282] *But see* exemptions for body armor in 123.17 and dual/3rd-country nationals in 126.18.

[283] Suspension notice 58 FR 26024 (Apr. 29, 1993). This section was last amended by 76 FR 47990 (Aug. 8, 2011), stating in part in Supplementary Information: "On March 31, 2008, the United Nations Security Council adopted resolution 1807, which modified the existing Democratic Republic of the Congo arms embargo. … Section 126.1(i) is amended to reflect the prohibitions contained in resolution 1807."

[284] Suspension notice 56 FR 50968 (Oct. 9, 1991); added to § 126.1 by 59 FR 15624 (April 4, 1994). This section was last amended by 77 FR 12370 (Feb 29., 2012), stating in part in Supplementary Information: "This rule implements section 7045(c) of Public Law 112-74 by amending ITAR § 126.1(j) to clarify that U.S. policy on arms exports to the Government of Haiti includes the Coast Guard as an eligible end-user."

(iii) Personal protective gear for use by personnel from the United Nations and other international organizations, representatives of the media, and development workers and associated personnel.

(2) All shipments of arms and related materials consistent with the above exemptions shall only be made to Haitian security units as designated by the Government of Haiti, in coordination with the U.S. Government.

(k) *Libya.*[285] It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Libya, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Arms and related materiel of all types, including technical assistance and training, intended solely for security or disarmament assistance to the Libyan authorities and notified in advance to the Committee of the Security Council concerning Libya and in the absence of a negative decision by the Committee within five working days of such a notification;

(2) Small arms, light weapons, and related materiel temporarily exported to Libya for the sole use of UN personnel, representatives of the media, and humanitarian and development workers and associated personnel, notified in advance to the Committee of the Security Council concerning Libya and in the absence of a negative decision by the Committee within five working days of such a notification; or

(3) Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee.

For non-lethal defense end-items, no distinction will be made between Libya's existing and new inventory.

(l) *Vietnam.*[286] It is the policy of the United States to deny licenses, other approvals, exports or imports of defense articles and defense services destined for or originating in Vietnam except, on a case-by-case basis, for:

(1) Non-lethal defense articles and defense services, and

(2) Non-lethal, safety-of-use defense articles (*e.g.,* cartridge actuated devices, propellant actuated devices and technical manuals for military aircraft for purposes of enhancing the safety of the aircraft crew) for lethal end-items.

For non-lethal defense end-items, no distinction will be made between Vietnam's existing and new inventory.

(m) *Somalia*.[287] It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Somalia, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services intended solely for support for the African Union Mission to Somalia (AMISOM); and

(2) Defense services for the purpose of helping develop security sector institutions in Somalia that further the objectives of peace, stability and reconciliation in Somalia, after advance notification of the proposed export by the United States Government to the UNSC Somalia Sanctions Committee and the absence of a negative decision by that committee.

Exemptions from the licensing requirement may not be used with respect to any export to Somalia unless specifically authorized in writing by the Directorate of Defense Trade Controls.

(n) *Sri Lanka*.[288] It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Sri Lanka, except that a license or other approval may be issued, on a case-by-case basis, for humanitarian demining and aerial or maritime

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[285] Added to § 126.1 by 56 FR 55630 (Oct. 29, 1991); last amended by 76 FR 68313 (Nov. 4, 2011).
[286] Added to § 126.1 by 49 FR 47682 (Dec. 6, 1984); last amended by 76 FR 47990 (Aug. 8, 2011).
[287] Suspension notice 57 FR 59851 (Dec. 16, 1992); added to § 126.1 by 57 FR 59851 (Dec. 16, 1992); last amended by 76 FR 47990 (Aug. 8, 2011), stating in part in Supplementary Information: "§126.1(m) is amended to reflect the statutory bar on issuance of licenses for defense articles for the purpose of developing security sector institutions in Somalia."
[288] Added to § 126.1 by 73 FR 15409 (Mar. 24, 2008); last amended by 77 FR 16670 (Mar. 22, 2012).

surveillance.

(o) *Liberia.*[289] It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Liberia, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services for the Government of Liberia as notified in advance to the Committee of the Security Council concerning Liberia;

(2) Defense articles and defense services intended solely for support of or use by the United Nations Mission in Liberia (UNMIL);

(3) Personal protective gear temporarily exported to Liberia by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only; and

(4) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as notified in advance to the Committee of the Security Council concerning Liberia.

(p) *Fiji.*[290] It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Fiji, except that a license or other approval may be issued, on a case-by-case basis, for defense articles and defense services intended solely in support of peacekeeping activities.

(q) *Côte d'Ivoire.*[291] It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Côte d'Ivoire, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services intended solely for support of or use by the United Nations Operations in Côte d'Ivoire (UNOCI) and the French forces that support them;

(2) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as approved in advance to the Committee of the Security Council concerning Côte d'Ivoire;

(3) Personal protective gear temporarily exported to Côte d'Ivoire by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only;

(4) Supplies temporarily exported to Côte d'Ivoire to the forces of a State which is taking action, in accordance with international law, solely and directly to facilitate the evacuation of its nationals and those for whom it has consular responsibility in Côte d'Ivoire, as notified in advance to the Committee of the Security Council concerning Côte d'Ivoire; and

(5) Non-lethal equipment intended solely to enable the Ivorian security forces to use only appropriate and proportionate force while maintaining public order, as approved in advance by the Sanctions Committee.

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[289] Added to § 126.1 by 57 FR 60265 (Dec. 18, 1992). This section was added by 76 FR 47990 (Aug. 8, 2011), stating in part in Supplementary Information: "On December 17, 2009, the United Nations Security Council adopted resolution 1903, which modified the existing Liberia arms embargo…. Section 126.1(o) is added to reflect the arms embargo and exceptions thereto. In addition, §126.1(a) is revised to remove Liberia as an example of a country with which the United States maintains an arms embargo."

[290] This section was added by 76 FR 47990 (Aug. 8, 2011), stating in part in Supplementary Information: "As a result of a military coup in Fiji, as of December 2006, the United States suspended all sales and deliveries of defense articles and defense services to Fiji. Such sales in support of peacekeeping activities are excepted, and will be reviewed on a case-by-case basis."

[291] Suspension notice 69 FR 74560 (Dec. 14, 2004); added to § 126.1 by 72 FR 71575 (Dec. 18, 2007). This section was added by 76 FR 47990 (Aug. 8, 2011), stating in part in Supplementary Information:

> On November 15, 2004, the United Nations Security Council adopted resolution 1572, which provided for an arms embargo with certain exceptions. Resolution 1946 of October 15, 2010, reaffirmed the embargo, and added to the exceptions provided in resolution 1572. Resolution 1980 of April 28, 2011, renewed the terms of the modified arms embargo. Section 126.1(q) is added to reflect the arms embargo and exceptions thereto.

(r) *Cyprus.*[292] It is the policy of the United States to deny licenses or other approvals, for exports or imports of defense articles and defense services destined for or originating in Cyprus, except that a license or other approval may be issued, on a case-by-case basis, for the United Nations Forces in Cyprus (UNFICYP) or for civilian end-users.

(s) *Zimbabwe.*[293] It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Zimbabwe, except that a license or other approval may be issued, on a case-by-case basis, for the temporary export of firearms and ammunition for personal use by individuals (not for resale or retransfer, including to the Government of Zimbabwe). Such exports may meet the licensing exemptions of §123.17 of this subchapter.

(t) Lebanon.[294] It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Lebanon, except that a license or other approval may be issued, on a case-by-case basis, for the United Nations Interim Force in Lebanon (UNIFIL) and [sic][295] as authorized by the Government of Lebanon.

(u) [Reserved].[296]

(v) Sudan. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Republic of the Sudan, except a license or other approval may be issued, on a case-by-case basis, for:

(1) Supplies and related technical training and assistance to monitoring, verification, or peace support operations, including those authorized by the United Nations or operating with the consent of the relevant parties;

(2) Supplies of non-lethal military equipment intended solely for humanitarian, human rights monitoring, or protective uses and related technical training and assistance;

(3) Personal protective gear for the personal use of United Nations personnel, human rights monitors, representatives of the media, and humanitarian and development workers and associated personnel; or

(4) Assistance and supplies provided in support of implementation of the Comprehensive Peace Agreement.

Note to § 126.1. On July 9, 2011, the Republic of South Sudan declared independence from Sudan and was recognized as a sovereign state by the United States. This policy does not apply to the Republic of South Sudan. Licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Republic of the South Sudan will be considered on a case-by-case basis.

[58 FR 39312, July 22, 1993]

§ 126.2 Temporary Suspension or Modification of this Subchapter

The Deputy Assistant Secretary for Defense Trade Controls or the Managing Director, Directorate of Defense Trade Controls, may order the temporary suspension or modification of any or all of the regulations of this subchapter in the interest of the security and foreign policy of the United States.

[71 FR 20546, Apr. 21, 2006]

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[292] Denial notice 57 FR 60265 (Dec. 18, 1992). This section was added by 76 FR 47990 (Aug. 8, 2011).
[293] Suspension notice 67 FR 18978 (Apr. 17, 2002); use of exemption § 123.7 authorized by 67 FR 48242 (July 23, 2002). This section was added by 76 FR 47990 (Aug. 8, 2011).
[294] Suspension notice 71 FR 75609 (Dec. 15, 2006); added to § 126.1 by 72 FR 71575 (Dec. 18, 2007). This section was last amended by 76 FR 47990 (Aug. 8, 2011), stating in part in Supplementary Information: "On August 11, 2006, the United Nations Security Council adopted resolution 1701, establishing an arms embargo, with the exception that it would not apply to arms and related materiel for the United Nations Interim Force in [UNIFIL] or as authorized by the Government of Lebanon."
[295] So in original. Should be "or". *See* UN Resolution 1701 (*portions reprinted at* 76 FR 47990 (Aug. 8, 2011)), stating in part in Supplementary Information: "[T]he United Nations Security Council adopted resolution 1701, establishing an arms embargo, with the exception that it would not apply to arms and related materiel for the United Nations Interim Force in [UNIFIL] **or** as authorized by the Government of Lebanon."
[296] Yemen was removed from § 126.1 by 77 FR 39392 (July 3, 2012).

§ 126.3 Exceptions

In a case of exceptional or undue hardship, or when it is otherwise in the interest of the United States Government, the Managing Director, Directorate of Defense Trade Controls, may make an exception to the provisions of this subchapter.[297]

§ 126.4 Shipments By or For United States Government Agencies

(a) A license is not required for the temporary import, or temporary export, of any defense article,[298] including technical data or the performance of a defense service,[299] by or for any agency of the U.S. Government for official use by such an agency, or for carrying out any foreign assistance, cooperative project or sales program authorized by law and subject to control by the President by other means. This exemption applies only when all aspects of a transaction (export, carriage, and delivery abroad) are affected[300] by a United States Government agency or when the export is covered by a United States Government Bill of Lading. This exemption, however, does 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. The approval of the Directorate of Defense Trade Controls must be obtained before defense articles previously exported pursuant to this exemption are permanently transferred (*e.g.*, property disposal of surplus defense articles overseas) unless 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 the defense articles have been rendered useless for military purposes beyond the possibility of restoration.

NOTE: Special Definition. For purposes of this section, defense articles exported abroad for incorporation into a foreign launch vehicle or for use on a foreign launch vehicle or satellite that is to be launched from a foreign country shall be considered a permanent export.

(b) This section does not authorize any department or agency of the U.S. Government to make any export which is otherwise prohibited by virtue of other administrative provisions or by any statute.

(c) A license is not required for the temporary import, or temporary or permanent export, of any classified or unclassified defense articles, including technical data or the performance of a defense service, for end use by a U.S. Government Agency in a foreign country under the following circumstances:

(1) The export or temporary import is pursuant to a contract with, or written direction by, an agency of the U.S. Government; and

(2) The end user in the foreign country is a U.S. Government agency or facility, and the defense articles or technical data will not be transferred to any foreign person; and

(3) The urgency of the U.S. Government requirement is such that the appropriate export license or U.S. Government Bill of Lading could not have been obtained in a timely manner.

(d) An Electronic Export Information (EEI) filing, required under § 123.22 of this subchapter, and a written statement by the exporter certifying that these requirements have been met must be presented at the time of export to the appropriate Port Directors of U.S. Customs and Border Protection or Department of Defense

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[297] Practice tip: This is an exception, not an exemption, available to DDTC to authorize an export when nothing else will work, usually because of an urgent need, but also because the request for permission doesn't fit the requirements of a license or agreement application. There is no specified form for a request under this section. Requests are submitted as "general correspondence" request on company letterhead. Some exporters have received 126.3 authorization by email under urgent circumstances.

[298] Practice tip: Several defense contractors have received written authorization from DDTC permitting use of the ITAR 126.4(a) exemption for the temporary export of personal protective equipment not covered under 123.17(g) in support of U.S. Government Contracts in Iraq and Afghanistan, which, due to the 123.16(a) prohibition on using exemptions in 126.1 prohibited countries, would not otherwise be permissible.

[299] An interpretation of § 126.4(a) in the Society of International Affairs, Exemptions Under the International Traffic in Arms Regulations (5th Ed., Apr. 2004) ("SIA ITAR Exemptions Handbook"), states that § 126.4(a) "may not be used 'for technical assistance' without prior DTC approval." SIA ITAR Exemptions Handbook, at 112. That interpretation conflicts with a literal reading of the exemption, which contains no such requirement.

[300] So in original. Probably intended to be "effected".

transmittal authority. A copy of the EEI filing and the written certification statement shall be provided to the Directorate of Defense Trade Controls immediately following the export.

[58 FR 39312, July 22, 1993, as amended at 70 FR 50964, Aug. 29, 2005]

§ 126.5 Canadian Exemptions[301]

(a) *Temporary Import of Defense Articles.* Port Directors of U.S. Customs and Border Protection and postmasters shall permit the temporary import and return to Canada without a license of any unclassified defense articles (see § 120.6 of this subchapter) that originate in Canada for temporary use in the United States and return to Canada. All other temporary imports shall be in accordance with §§ 123.3 and 123.4 of this subchapter.

(b)[302] *Permanent and Temporary Export of Defense Articles.*[303] Except as provided in Supplement No. 1 to part 126 of this subchapter and for exports that transit third countries, Port Directors of U.S. Customs and Border Protection and postmasters shall permit, when for end-use in Canada by Canadian Federal or Provincial governmental authorities acting in an official capacity or by a Canadian-registered person, or for return to the United States, the permanent and temporary export to Canada without a license of unclassified defense articles and defense services identified on the U.S. Munitions List (22 CFR 121.1). The exceptions are subject to meeting the requirements of this subchapter, to include 22 CFR 120.1(c) and (d), parts 122 and 123 (except insofar as exemption from licensing requirements is herein authorized) and § 126.1, and the requirement to obtain non-transfer and use assurances for all significant military equipment. For purposes of this section, "Canadian-registered person" is any Canadian national (including Canadian business entities organized under the laws of Canada), dual citizen of Canada and a third country other than a country listed in § 126.1 of this subchapter, and permanent resident registered in Canada in accordance with the Canadian Defense Production Act, and such other Canadian Crown Corporations identified by the Department of State in a list of such persons publicly available through the Internet website of the Directorate of Defense Trade Controls and by other means.

(c) [Reserved.]

(d) *Reexports/Retransfer.* Reexport/retransfer in Canada to another end-user or end-use or from Canada to another destination, except the United States, must in all instances have the prior approval of the Directorate of Defense Trade Controls. Unless otherwise exempt in this subchapter, the original exporter is responsible, upon request from a Canadian-registered person, for obtaining or providing reexport/retransfer approval. In any instance when the U.S. exporter is no longer available to the Canadian end-user the request for reexport/retransfer may be made directly to the Directorate of Defense Trade Controls. All requests must include the information in § 123.9(c) of this subchapter. Reexport/retransfer approval is acquired by:

(1) If the reexport/retransfer being requested could be made pursuant to this section (*i.e.,* a retransfer within Canada to another eligible Canadian recipient under this section) if exported directly from the U.S., upon receipt by the U.S. company of a request by a Canadian end user, the original U.S. exporter is authorized to grant on behalf of the U.S. Government by confirming in writing to the Canadian requester that the reexport/retransfer is authorized subject to the conditions of this section; or

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[301] *See generally* DDTC, EXPORTS TO CANADA--GUIDANCE ON ITAR EXEMPTION EFFECTIVE MAY 30, 2001 (6-page Q&A discussion), *available at* http://www.pmddtc.state.gov/licensing/documents/exports_canada.pdf (last viewed Sept. 1, 2012).

[302] *See* 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012), in which the Supplemental Information stated in part: "One commenting party requested § 126.5(b) be revised to reference screening programs developed pursuant to § 126.18. Guidance for using § 126.18 is available on DDTC's website and is not appropriate to add to this section."

[303] Practice Tip: U.S. companies exporting specifications and build-to-print drawings to Canadian suppliers under the authority of § 126.5 to procure parts must also comply with, among other things, § 124.13. Section 124.13(e) provides that if the technical data involved in an offshore procurement is otherwise exempt from the licensing requirements of the ITAR, the DSP-5 license referred to in the first sentence of § 124.13 is not required. However, the exporter must comply with the other requirements of this section (*e.g.*, § 124.13) and provide a written certification to DDTC annually of the offshore procurement activity and cite the exemption under which the technical data was exported. The requirements in § 124.13 include special terms and conditions for contracts and purchase orders relating to offshore procurement, and the U.S. exporter providing DDTC with a copy of each contract, purchase order, or subcontract for offshore procurement at the time it is accepted. (Contributor: Gary Stanley, Esq., 202-686-4854, gstanley@glstrade.com)

(2) If the reexport/retransfer is to an end use or end user that, if directly exported from the U.S. requires a license, retransfer must be handled in accordance with § 123.9 of this subchapter.

NOTES TO § 126.5:

1. In any instance when the exporter has knowledge that the defense article exempt from licensing is being exported for use other than by a qualified Canadian-registered person or for export to another foreign destination, other than the United States, in its original form or incorporated into another item, an export license must be obtained prior to the transfer to Canada.

2. Additional exemptions exist in other sections of this subchapter that are applicable to Canada, for example §§ 123.9, 125.4, and 124.2, that allow for the performance of defense services related to training in basic operations and maintenance, without a license, for certain defense articles lawfully exported, including those identified in Supplement No. 1 to part 126 of this subchapter.

[66 FR 10576, Feb. 16, 2001; 66 FR 36834, July 13, 2001, as amended at 67 FR 78686, Dec. 26, 2002; 70 FR 34654, June 15, 2005; 70 FR 39919, July 12, 2005; 70 FR 50964, Aug. 29, 2005; 71 FR 20546, Apr. 21, 2006; 77 FR 16592, Mar. 21, 2012.]

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

(a) A license from the Directorate 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. 40103) and naval visits must be obtained from the Bureau of Political-Military Affairs, Office of International Security Operations.

(c) *Foreign Military Sales Program.* A license from the Directorate 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 § 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 Directorate of Defense Trade Controls pursuant to part 122 of this subchapter, and

(ii) At the time of shipment, the Port Director of U.S. Customs and Border Protection 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 and Border Protection in carrying out its 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* _____,*"*[304] and

(iii) If, [sic][305] 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[306] 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 Directorate 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) [sic] identified in the contract employs a subcontractor, the subcontractor may only use this exemption when registered with DDTC, 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 Directorate of Defense Trade Controls using DDTC's Direct Shipment Verification Program.

[65 FR 45287, July 21, 2000, as amended at 70 FR 50964, Aug. 29, 2005; 71 FR 20546, Apr. 21, 2006]

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[304] This notice is commonly referred to as the "destination control statement".
[305] So in original. The comma is unnecessary.
[306] DoD Manual 5220.22-M, National Industrial Security Program Operating Manual ("NISPOM") (Feb 28, 2006), *available at* http://www.dtic.mil/whs/directives/corres/pdf/522022m.pdf (last viewed Sept. 1, 2011).

§ 126.7 Denial, Revocation, Suspension, or Amendment of Licenses and Other Approvals

(a) *Policy*. Licenses or approvals shall be denied or revoked whenever required by any statute of the United States (see §§ 127.7 and 127.11 of this subchapter). Any application for an export license or other approval under this subchapter may be disapproved, and any license or other approval or exemption granted under this subchapter may be revoked, suspended, or amended without prior notice whenever:

(1) The Department of State deems such action to be in furtherance of world peace, the national security or the foreign policy of the United States, or is otherwise advisable; or

(2) The Department of State believes that 22 U.S.C. 2778, any regulation contained in this subchapter, or the terms of any U.S. Government export authorization (including the terms of a manufacturing license or technical assistance agreement, or export authorization granted pursuant to the Export Administration Act, as amended) has been violated by any party to the export or other person having significant interest in the transaction; or

(3) An applicant is the subject of an indictment for a violation of any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(4) An applicant is the subject of a criminal complaint, other criminal charge (e.g., an information), or indictment for a violation of any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(5) An applicant is ineligible to contract with, or to receive a license or other authorization to import defense articles or defense services from, any agency of the U.S. Government; or

(6) An applicant, any party to the export or agreement, any source or manufacturer of the defense article or defense service or any person who has a significant interest in the transaction has been debarred, suspended, or otherwise is ineligible to receive an export license or other authorization from any agency of the U.S. government (*e.g.*, pursuant to debarment by the Department of Commerce under 15 CFR part 760 or by the Department of State under part 127 or 128 of this subchapter); or

(7) An applicant has failed to include any of the information or documentation expressly required to support a license application, exemption, or other request for approval under this subchapter, or as required in the instructions in the applicable Department of State form or has failed to provide notice or information as required under this subchapter; or

(8) An applicant is subject to sanctions under other relevant U.S. laws (*e.g.*, the Missile Technology Controls title of the National Defense Authorization Act for FY 1991 (Pub. L. 101-510); the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Pub. L. 102-182); or the Iran-Iraq Arms Non-Proliferation Act of 1992 (Pub. L. 101-484)).

(b) *Notification*. The Directorate of Defense Trade Controls will notify applicants or licensees or other appropriate United States persons of actions taken pursuant to paragraph (a) of this section. The reasons for the action will be stated as specifically as security and foreign policy considerations permit.

(c) *Reconsideration*. If a written request for reconsideration of an adverse decision is made within 30 days after a person has been informed of the decision, the U.S. person will be accorded an opportunity to present additional information. The case will then be reviewed by the Directorate of Defense Trade Controls.

(d) *Reconsideration of Certain Applications.* Applications for licenses or other requests for approval denied for repeated failure to provide information or documentation expressly required will normally not be reconsidered during the thirty-day period following denial. They will be reconsidered after this period only after a final decision is made on whether the applicant will be subject to an administrative penalty imposed pursuant to this subchapter. Any request for reconsideration shall be accompanied by a letter explaining the steps that have been taken to correct the failure and to ensure compliance with the requirements of this subchapter.

(e) *Special Definition*. For purposes of this section, the term *"Party to the Export"* means:

(1) The chief executive officer, president, vice-presidents, other senior officers and officials (*e.g.*, comptroller, treasurer, general counsel) and any member of the board of directors of the applicant;

(2) The freight forwarders or designated exporting agent of the applicant; and

(3) Any consignee or end user of any item to be exported.

[58 FR 39312, July 22, 1993, as amended at 71 FR 20546, Apr. 21, 2006]

§ 126.8 [Removed and Reserved]

§ 126.9 Advisory Opinions and Related Authorizations

(a) *Advisory Opinion.* Any person desiring information as to whether the Directorate of Defense Trade Controls would be likely to grant a license or other approval for the export or approval of a particular defense article or defense service to a particular country may request an advisory opinion from the Directorate of Defense Trade Controls. Advisory opinions are issued on a case-by-case basis and apply only to the particular matters presented to the Directorate of Defense Trade Controls. These opinions are not binding on the Department of State, and may not be used in future matters before the Department. A request for an advisory opinion must be made in writing and must outline in detail the equipment, its usage, the security classification (if any) of the articles or related technical data, and the country or countries involved. An original and seven copies of the letter must be provided along with seven copies of suitable descriptive information concerning the defense article or defense service.

(b) *Related Authorizations.* The Directorate of Defense Trade Controls may, as appropriate, in accordance with the procedures set forth in paragraph (a) of this section, provide export authorization, subject to all other relevant requirements of this subchapter, both for transactions that have been the subject of advisory opinions requested by prospective U.S. exporters, or for the Directorate's own initiatives. Such initiatives may cover pilot programs, or specifically anticipated circumstances for which the Directorate considers special authorizations appropriate.

[71 FR 20547, Apr. 21, 2006]

§ 126.10 Disclosure of Information

(a) *Freedom of Information.* Subchapter R of this title[307] contains regulations on the availability to the public of information and records of the Department of State. The provisions of subchapter R apply to such disclosures by the Directorate of Defense Trade Controls.

(b) *Determinations Required by Law.* Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778) provides by reference to certain procedures of the Export Administration Act that certain information required by the Department of State in connection with the licensing process may generally not be disclosed to the public unless certain determinations relating to the national interest are made in accordance with the procedures specified in that provision, except that the names of the countries and types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless the President determines that release of such information would be contrary to the national interest. Registration with the Directorate of Defense Trade Controls is required of certain persons, in accordance with section 38 of the Arms Export Control Act. The requirements and guidance are provided in the ITAR pursuant to parts 122 and 129. Registration is generally a precondition to the issuance of any license or other approvals under this subchapter, to include the use of any exemption. Therefore, information provided to the Department of State to effect registration, as well as that regarding actions taken by the Department of State related to registration, may not generally be disclosed to the public. Determinations required by section 38(e) shall be made by the Assistant Secretary for Political-Military Affairs.

(c) *Information Required Under Part 130.* Part 130 of this subchapter contains specific provisions on the

[307] 22 CFR pts. 171, 172.

disclosure of information described in that part.

(d) *National Interest Determinations.* In accordance with section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)), the Secretary of State has determined that the following disclosures are in the national interest of the United States:

(1) Furnishing information to foreign governments for law enforcement or regulatory purposes; and

(2) Furnishing information to foreign governments and other agencies of the U.S. Government in the context of multilateral or bilateral export regimes (*e.g.*, the Missile Technology Control Regime, the Australia Group, and Wassenaar Arrangement).

[58 FR 39312, July 22, 1993, as amended at 62 FR 67276, Dec. 24, 1997; 70 FR 50965, Aug. 29, 2005; 71 FR 20547, Apr. 21, 2006]

§ 126.11 Relations to Other Provisions of Law

The provisions in this subchapter are in addition to, and are not in lieu of, any other provisions of law or regulations. The sale of firearms in the United States, for example, remains subject to the provisions of the Gun Control Act of 1968 and regulations administered by the Department of Justice. The performance of defense services on behalf of foreign governments by retired military personnel continues to require consent pursuant to Part 3a of this title. Persons who intend to export defense articles or furnish defense services should not assume that satisfying the requirements of this subchapter relieves one of other requirements of law.

[71 FR 20547, Apr. 21, 2006].

§ 126.12 Continuation in Force

All determinations, authorizations, licenses, approvals of contracts and agreements and other action issued, authorized, undertaken, or entered into by the Department of State pursuant to section 414 of the Mutual Security Act of 1954, as amended, or under the previous provisions of this subchapter, continue in full force and effect until or unless modified, revoked or superseded by the Department of State.

§ 126.13 Required Information

(a) All applications for licenses (DSP–5, DSP–61, DSP–73, and DSP–85), all requests for approval of agreements and amendments thereto under part 124 of this subchapter, and all requests for other written authorizations (including requests for retransfer or reexport pursuant to § 123.9 of this subchapter) must include a letter signed by a responsible official empowered by the applicant and addressed to the Directorate of Defense Trade Controls, stating whether:

(1) The applicant or the chief executive officer, president, vice-presidents, other senior officers or officials (*e.g.*, comptroller, treasurer, general counsel) or any member of the board of directors is the subject of a criminal complaint, other criminal charge (*e.g.*, an information), or indictment for or has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter since the effective date of the Arms Export Control Act, Public Law 94–329, 90 Stat. 729 (June 30, 1976);

(2) The applicant or the chief executive officer, president, vice-presidents, other senior officers or officials (*e.g.*, comptroller, treasurer, general counsel) or any member of the board of directors is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government;

(3) To the best of the applicant's knowledge, any party to the export as defined in § 126.7(e) has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter since the effective date of the Arms Export Control Act, Public Law 94-329, 90 Stat. 729 (June 30, 1976), or is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. Government; and

(4) The natural person signing the application, notification or other request for approval (including the statement required by this subchapter) is a citizen or national of the United States, has been lawfully admitted

to the United States for permanent residence (and maintains such lawful permanent residence status) under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a), section 101(a)20, 60 Stat. 163) [sic] [308], or is an official of a foreign government entity in the United States, or is a foreign person making a request pursuant to § 123.9 of this subchapter.

(b) In addition, all applications for licenses must include, on the application or an addendum sheet, the complete names and addresses of all U.S. consignors and freight forwarders, and all foreign consignees and foreign intermediate consignees involved in the transaction. If there are multiple consignors, consignees or freight forwarders, and all the required information cannot be included on the application form, an addendum sheet and seven copies containing this information must be provided. The addendum sheet must be marked at the top as follows: *"Attachment to Department of State License Form (insert DSP-5, 61, 73, or 85, as appropriate) for Export of* (insert commodity) *valued at* (insert U.S. dollar amount) *to* (insert country of ultimate destination)." The Directorate of Defense Trade Controls will impress one copy of the addendum sheet with the Department of State seal and return it to the applicant with each license. The sealed addendum sheet must remain attached to the license as an integral part thereof. Port Directors of U.S. Customs and Border Protection and Department of Defense transmittal authorities will permit only those U.S. consignors or freight forwarders listed on the license or sealed addendum sheet to make shipments under the license, and only to those foreign consignees named on the documents. Applicants should list all freight forwarders who may be involved with shipments under the license to ensure that the list is complete and to avoid the need for amendments to the list after the license has been approved. If there are unusual or extraordinary circumstances that preclude the specific identification of all the U.S. consignors and freight forwarders and all foreign consignees, the applicant must provide a letter of explanation with each application.

(c) In cases when foreign nationals[309] are employed at or assigned to security-cleared facilities, provision by the applicant of a Technology Control Plan (available from the Defense Security Service) will facilitate processing.

[58 FR 39312, July 22, 1993, as amended at 70 FR 50965, Aug. 29, 2005; 71 FR 20547, Apr. 21, 2006, 75 FR 52624, Aug. 27, 2010]

§ 126.14 Special Comprehensive Export Authorizations for NATO, Australia, Japan, and Sweden

(a) *Comprehensive Authorizations.* With respect to NATO members, Australia, Japan, and Sweden, the Directorate of Defense Trade Controls may provide the comprehensive authorizations described in paragraphs (a) and (b) of this section for circumstances where the full parameters of a commercial export endeavor including the needed defense exports can be well anticipated and described in advance, thereby making use of such comprehensive authorizations appropriate.

(1) *Major Project Authorization.* With respect to NATO members, Australia, Japan, and Sweden, the Directorate of Defense Trade Controls may provide comprehensive authorizations for well circumscribed commercially developed "major projects", where a principal registered U.S. exporter/prime contractor identifies in advance the broad parameters of a commercial project including defense exports needed, other participants (*e.g.*, exporters with whom they have "teamed up," or subcontractors), and foreign government end users. Projects eligible for such authorization may include a commercial export of a major weapons system for a foreign government involving, for example, multiple U.S. suppliers under a commercial teaming agreement to design, develop and manufacture defense articles to meet a foreign government's requirements. U.S. exporters seeking such authorization must provide detailed information concerning the scope of the project, including other exporters, U.S. subcontractors, and planned exports (including re-exports) of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

(2) *Major Program Authorization.* With respect to NATO members, Australia, Japan, and Sweden, the Directorate of Defense Trade Controls may provide comprehensive authorizations for well circumscribed

[308] So in original. Should be "8 U.S.C. § 1101(a)(20)". Citation to the origin public law is unnecessary, but would be "66 Stat. 163".
[309] The term "foreign national" is not defined in the ITAR, and could include either U.S. persons or foreign persons.

commercially developed "major program". This variant would be available where a single registered U.S. exporter defines in advance the parameters of a broad commercial program for which the registrant will be providing all phases of the necessary support (including the needed hardware, technical data, defense services, development, manufacturing, and logistic support). U.S. exporters seeking such authorization must provide detailed information concerning the scope of the program, including planned exports (including re-exports) of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

(3)(i) *Global Project Authorization.* With respect to NATO members, Australia, Japan, and Sweden, the Directorate of Defense Trade Controls may provide a comprehensive "Global Project Authorization" to registered U.S. exporters for exports of defense articles, technical data or defense services in support of government to government cooperative projects (covering research and development or production) with one of these countries undertaken pursuant to an agreement between the U.S. Government and the government of such country, or a memorandum of understanding/agreement between the Department of Defense and the country's Ministry of Defense.

(ii) A set of standard terms and conditions derived from and corresponding to the breadth of the activities and phases covered in such a cooperative MOU will provide the basis for this comprehensive authorization for all U.S. exporters (and foreign end users) identified by DOD as participating in such cooperative project. Such authorizations may cover a broad range of defined activities in support of such programs including multiple shipments of defense articles and technical data and performance of defense services for extended periods, and reexports to approved end users.

(iii) Eligible end users will be limited to ministries of defense of MOU signatory countries and foreign companies serving as contractors of such countries.

(iv) Any requirement for non-transfer and use assurances from a foreign government may be deemed satisfied by the signature[310] by such government of a cooperative agreement or by its ministry of defense of a cooperative MOU/MOA where the agreement or MOU contains assurances that are comparable to that required by a DSP-83 with respect to foreign governments and that clarifies that the government is undertaking responsibility for all its participating companies. The authorized non-government participants or end users (*e.g.*, the participating government's contractors) will still be required to execute DSP-83s.

(4) *Technical Data Supporting an Acquisition, Teaming Arrangement, Merger, Joint Venture Authorization*. With respect to NATO member countries, Australia, Japan, and Sweden, the Directorate of Defense Trade Controls may provide a registered U.S. defense company a comprehensive authorization to export technical data in support of the U.S. exporter's consideration of entering into a teaming arrangement, joint venture, merger, acquisition, or similar arrangement with prospective foreign partners. Specifically, the authorization is designed to permit the export of a broadly defined set of technical data to qualifying well established foreign defense firms in NATO countries, Australia, Japan, or Sweden in order to better facilitate a sufficiently in depth assessment of the benefits, opportunities and other relevant considerations presented by such prospective arrangements. U.S. exporters seeking such authorization must provide detailed information concerning the arrangement, joint venture, merger or acquisition, including any planned exports of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

(b) *Provisions and Requirements for Comprehensive Authorizations.* Requests for the special comprehensive authorizations set forth in paragraph (a) of this section should be by letter addressed to the Directorate of Defense Trade Controls. With regard to a commercial major program or project authorization, or technical data supporting a teaming arrangement, merger, joint venture or acquisition, registered U.S. exporters may consult the Director of the Directorate of Defense Trade Controls about eligibility for and obtaining available comprehensive authorizations set forth in paragraph (a) of this section or pursuant to § 126.9(b).

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[310] The word "signature" includes a mark when the person making the same intended it as such. 1 U.S.C. § 1.

(1) Requests for consideration of all such authorizations should be formulated to correspond to one of the authorizations set out in paragraph (a) of this section, and should include:

(i) A description of the proposed program or project, including where appropriate a comprehensive description of all phases or stages; and

(ii) Its value; and

(iii) Types of exports needed in support of the program or project; and

(iv) Projected duration of same, within permissible limits; and

(v) Description of the exporter's plan for recordkeeping and auditing of all phases of the program or project; and

(vi) In the case of authorizations for exports in support of government to government cooperative projects, identification of the cooperative project.

(2) Amendments to the requested authorization may be requested in writing as appropriate, and should include a detailed description of the aspects of the activities being proposed for amendment.

(3) The comprehensive authorizations set forth in paragraph (a) of this section may be made valid for the duration of the major commercial program or project, or cooperative project, not to exceed 10 years.

(4) Included among the criteria required for such authorizations are those set out in part 124, *e.g.*, §§ 124.7, 124.8 and 124.9, as well as §§ 125.4 (technical data exported in furtherance of an agreement) and 123.16 (hardware being included in an agreement). Provisions required will also take into account the congressional notification requirements in §§ 123.15 and 124.11 of the ITAR. Specifically, comprehensive congressional notifications corresponding to the comprehensive parameters for the major program or project or cooperative project should be possible, with additional notifications such as those required by law for changes in value or other significant modifications.

(5) All authorizations will be consistent with all other applicable requirements of the ITAR, including requirements for non-transfer and use assurances (see §§ 123.10 and 124.10), congressional notifications (*e.g.*, §§ 123.15 and 124.11), and other documentation (*e.g.*, §§ 123.9 and 126.13).

(6) Special auditing and reporting requirements will also be required for these authorizations. Exporters using special authorizations are required to establish an electronic system for keeping records of all defense articles, defense services and technical data exported and comply with all applicable requirements for submitting shipping or export information within the allotted time.

[65 FR 45285, July 21, 2000, as amended at 66 FR 35900, July 10, 2001; 71 FR 20548, Apr. 21, 2006]

§ 126.15 Expedited Processing of License Applications for the Export of Defense Articles and Defense Services to Australia or the United Kingdom

(a) Any application submitted for authorization of the export of defense articles or services to Australia or the United Kingdom will be expeditiously processed by the Department of State, in consultation with the Department of Defense. Such license applications will not be referred to any other Federal department or agency, except when the defense articles or defense services are classified or exceptional circumstances apply. (See section 1225, Pub. L. 108-375).

(b) To be eligible for the expedited processing in paragraph (a) of this section, the destination of the prospective export must be limited to Australia or the United Kingdom. No other country may be included as intermediary or ultimate end user.

§§ 126.16 [Reserved]

§ 126.17[311] Exemption Pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom

(a) *Scope of Exemption and Required Conditions*

(1) *Definitions*[312]

(i) An *export* means, for purposes of this section only, the initial movement of defense articles or defense services from the United States Community to the United Kingdom Community.

(ii) A *transfer* means, for purposes of this section only, the movement of a previously exported defense article or defense service by a member of the United Kingdom Community within the United Kingdom Community, or between a member of the United States Community and a member of the United Kingdom Community.

(iii) *Retransfer* and *reexport* have the meaning provided in § 120.19 of this subchapter.

(iv) *Intermediate consignee* means, for purposes of this section, an entity or person who receives defense articles, including technical data, but who does not have access[313] to such defense articles, for the sole purpose of effecting onward movement to members of the Approved Community (see paragraph (k) of this section).

(2) Persons or entities exporting or transferring defense articles or defense services are exempt from the otherwise applicable licensing requirements if such persons or entities comply with the regulations set forth in this section. Except as provided in Supplement No. 1 to part 126 of this subchapter, Port Directors of U.S. Customs and Border Protection and postmasters shall permit the permanent and temporary export without a license from members of the U.S. Community to members of the United Kingdom Community (see paragraph (d) of this section regarding the identification of members of the United Kingdom Community) of defense articles and defense services not listed in Supplement No. 1 to part 126, for the end-uses specifically identified pursuant to paragraphs (e) and (f) of this section. The purpose of this section is to specify the requirements to export, transfer, reexport, retransfer, or otherwise dispose of a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom. All persons must continue to comply with statutory and regulatory requirements outside of this subchapter concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 C.F.R. Parts 447, 478, and 479, which are unaffected by the Defense Trade Cooperation Treaty between the United States and the United Kingdom and continue to apply fully to defense articles and defense services subject to either of the aforementioned treaties and the exemptions contained in § 126.17 of this subchapter.

(3) *Export*. In order for an exporter to export a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom, all of the following conditions must be met:

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[311] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012). DDTC posts Frequently Asked Questions (FAQs) on its website (Aug. 10, 2012) at http://pmddtc.state.gov/treaties/index.html (last viewed Sept. 1, 2012).

[312] *See* 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information: "[C]ommenting parties suggested that DDTC add a definition for defense articles to § 126.17(a)(1) to clarify that the definition also includes technical data for purposes of the exemption. DDTC does not believe this change is necessary as the definition in § 120.6 clearly identifies technical data as within the scope of the "defense article" definition. Unless specifically indicated otherwise, the use of the term "defense article" includes technical data."

[313] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information: "One commenting party requested clarification of the term "access" as used in § 126.17(a)(1)(iv), indicating that it is common for U.S. Customs and Border Protection (CBP) to authorize a physical manipulation of a container, which would result in an intermediate consignee having access to an item in the shipment. DDTC believes the meaning of "access" is plain and does not see a need to revise this paragraph. A directive from a CBP official to open a container is not the type of access that would require a license from DDTC."

(i) The exporter must be registered with the Directorate of Defense Trade Controls and must be eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency of the U.S. Government without restriction (see paragraphs (b) and (c) of this section for specific requirements);

(ii) The recipient of the export must be a member of the United Kingdom Community (see paragraph (d) of this section regarding the identification of members of the United Kingdom Community). United Kingdom non-governmental entities and facilities that become ineligible for such membership will be removed from the United Kingdom Community;

(iii) Intermediate consignees involved in the export must not be ineligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to handle or receive a defense article or defense service without restriction (see paragraph (k) of this section for specific requirements);

(iv) The export must be for an end-use specified in the Defense Trade Cooperation Treaty between the United States and the United Kingdom and mutually agreed to by the U.S. Government and the Government of the United Kingdom pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and the Implementing Arrangement thereto (United Kingdom Implementing Arrangement) (see paragraphs (e) and (f) of this section regarding authorized end-uses);

(v) The defense article or defense service is not excluded from the scope of the Defense Trade Cooperation Treaty between the United States and the United Kingdom (see paragraph (g) of this section and Supplement No. 1 to part 126 of this subchapter for specific information on the scope of items excluded from export under this exemption) and is marked or identified, at a minimum, as "Restricted USML" (see paragraph (j) of this section for specific requirements on marking exports);

(vi) All required documentation of such export is maintained by the exporter and recipient and is available upon the request of the U.S. Government (see paragraph (l) of this section for specific requirements); and

(vii) The Department of State has provided advance notification to the Congress, as required, in accordance with this section (see paragraph (o) of this section for specific requirements).

(4) *Transfers.* In order for a member of the Approved Community (*i.e.*, the U.S. Community and United Kingdom Community) to transfer a defense article or defense service under the Defense Trade Cooperation Treaty within the Approved Community, all of the following conditions must be met:

(i) The defense article or defense service must have been previously exported in accordance with paragraph (a)(3) of this section or transitioned from a license or other approval in accordance with paragraph (i) of this section;

(ii) The transferor and transferee of the defense article or defense service are members of the United Kingdom Community (see paragraph (d) of this section regarding the identification of members of the United Kingdom Community) or the United States Community (see paragraph (b) of this section for information on the United States Community/approved exporters);

(iii) The transfer is required[314] for an end-use specified in the Defense Trade Cooperation Treaty between the United States and the United Kingdom and mutually agreed to by the United States and the Government of United Kingdom pursuant to the terms of the Defense Trade Cooperation Treaty between the United States and the United Kingdom and the United Kingdom Implementing Arrangement (see paragraphs (e) and (f) of this section regarding authorized end-uses);

(iv) The defense article or defense service is not identified in paragraph (g) of this section and Supplement

[314] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information: "[C]ommenting parties requested DDTC change the word "required" to "pursuant to" in § 126.17(a)(4)(iii). This change has been rejected as the word "required" is a requirement of the Treaty."

No. 1 to part 126 of this subchapter as ineligible for export under this exemption, and is marked or otherwise identified, at a minimum, as "Restricted USML" (see paragraph (j) of this section for specific requirements on marking exports);

(v) All required documentation of such transfer is maintained by the transferor and transferee and is available upon the request of the U.S. Government (see paragraph (l) of this section for specific requirements); and

(vi) The Department of State has provided advance notification to the Congress in accordance with this section (see paragraph (o) of this section for specific requirements).

(5) This section does not apply to the export of defense articles or defense services from the United States pursuant to the Foreign Military Sales program. Once such items are delivered to Her Majesty's Government, they may be treated as if they were exported pursuant to the Treaty and then must be marked, identified, transmitted, stored and handled in accordance with the Treaty, the United Kingdom Implementing Arrangement, and the provisions of this section.

(b) *United States Community.* The following persons compose the United States Community and may export or transfer defense articles and defense services pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom:

(1) Departments and agencies of the U.S. Government, including their personnel acting in their official capacity, with, as appropriate, a security clearance and a need-to-know; and

(2) Non-governmental U.S. persons registered with the Directorate of Defense Trade Controls and eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency of the U.S. Government without restriction, including their employees acting in their official capacity with, as appropriate, a security clearance and a need-to-know.

(c) An exporter that is otherwise an authorized exporter pursuant to paragraph (b) of this section may not export or transfer pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom if the exporter's president, chief executive officer, any vice-president, any other senior officer or official (e.g., comptroller, treasurer, general counsel); any member of the board of directors of the exporter; any party to the export; or any source or manufacturer is ineligible to receive export licenses (or other forms of authorization to export) from any agency of the U.S. Government.

(d)[315] *United Kingdom Community.* For purposes of the exemption provided by this section, the United Kingdom Community consists of:

(1) Her Majesty's Government entities and facilities identified as members of the Approved Community through the Directorate of Defense Trade Controls website at the time of a transaction under this section; and

(2) The non-governmental United Kingdom entities and facilities identified as members of the Approved Community through the Directorate of Defense Trade Controls website at the time of a transaction under this section; non-governmental United Kingdom entities and facilities that become ineligible for such membership will be removed from the United Kingdom Community.

(e) *Authorized End-uses.* The following end-uses, subject to paragraph (f) of this section, are specified in the Defense Trade Cooperation Treaty between the United States and the United Kingdom:

(1) United States and United Kingdom combined military or counter-terrorism operations;

(2) United States and United Kingdom cooperative security and defense research, development, production,

[315] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information: "[C]ommenting parties suggested DDTC include additional information in § 126.17(d) to explain the vetting process for the UK Community. DDTC does not accept this suggestion. The vetting requirements are identified in the Treaty and Implementing Arrangement, which are available on DDTC's website."

and support programs;

(3) Mutually determined specific security and defense projects where the Government of the United Kingdom is the end-user; or

(4) U.S. Government end-use.

(f) Procedures for identifying authorized end-uses pursuant to paragraph (e) of this section:

(1) Operations, programs, and projects that can be publicly identified will be posted on the Directorate of Defense Trade Controls website;

(2) Operations, programs, and projects that cannot be publicly identified[316] will be confirmed in written correspondence from the Directorate of Defense Trade Controls; or

(3) U.S. Government end-use will be identified specifically in a U.S. Government contract or solicitation as being eligible under the Treaty.

(4) No other operations, programs, projects, or end-uses qualify for this exemption.

(g) *Items Eligible Under this Section*. With the exception of items listed in Supplement No. 1 to part 126 of this subchapter, defense articles and defense services may be exported under this section subject to the following:

(1) An exporter authorized pursuant to paragraph (b)(2) of this section may market a defense article to members of the United Kingdom Community if that exporter has been licensed by the Directorate of Defense Trade Controls to export (as defined by § 120.17 of this subchapter) the identical type of defense article to any foreign person and end-use of the article is for an end-use identified in paragraph (e) of this section.[317]

(2) The export of any defense article specific to the existence of (*e.g.*, reveals the existence of or details of) anti-tamper measures made at U.S. Government direction always requires prior written approval from the Directorate of Defense Trade Controls.

(3) U.S.-origin classified defense articles or defense services may be exported only pursuant to a written request, directive, or contract from the U.S. Department of Defense that provides for the export of the classified defense article(s) or defense service(s).

(4) U.S.-origin defense articles specific to developmental systems that have not obtained written Milestone B approval from the Department of Defense milestone approval authority are not eligible for export unless such export is pursuant to a written solicitation or contract issued or awarded by the Department of Defense for an end-use identified pursuant to paragraphs (e)(1), (2), or (4) of this section.[318]

(5) Defense articles excluded by paragraph (g) of this section or Supplement No. 1 to part 126 of this subchapter (*e.g.*, USML Category XI (a)(3) electronically scanned array radar excluded by Note 2) that are embedded in a larger system that is eligible to ship under this section (*e.g.*, a ship or aircraft) must separately

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[316] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information: "Three commenting parties requested DDTC provide additional guidance with respect to identification of operations, programs and projects that cannot be publicly identified (i.e., are classified). DDTC has not added additional language to § 126.17(f)(2), but will provide additional guidance on its website for requesting confirmation of Treaty eligibility for classified programs. One commenting party inquired whether DDTC will post on its website a complete list of U.S. Government contracts that are Treaty eligible. DDTC will not do so. The U.S. Department of Defense has updated the Defense Federal Acquisition Regulation Supplement (DFARS) and certain contract clauses, which will identify treaty eligibility when incorporated into a contract.

[317] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information: Three commenting parties requested clarifying language be added to § 126.17(g)(1) to indicate whether this paragraph applied to marketing to members of the Approved Community. These parties also requested clarification of the term "identical type." Finally, parties requested that this paragraph be removed in its entirety. DDTC cannot remove this requirement as it is part of the Treaty's Exempted Technology List. DDTC, however, has revised the paragraph to indicate that marketing may be to members of the United Kingdom Community so long as it is for an approved Treaty end-use and it meets the other requirements of § 126.17(g)(1).

[318] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information: "One commenting party recommended removal of § 126.17(g)(4) or, in the alternative, adding a parenthetical "(or foreign equivalent)" after "Milestone B." DDTC cannot remove this paragraph as it is part of the Treaty's Exempted Technology List. DDTC considered adding a parenthetical to include foreign equivalents, but has decided to reject this suggestion as there is no equivalent in the UK to "Milestone B.""

comply with any restrictions placed on that embedded defense article under this subchapter. The exporter must obtain a license or other authorization from the Directorate of Defense Trade Controls for the export of such embedded defense articles (for example, USML Category XI (a)(3) electronically scanned array radar systems that are exempt from this section that are incorporated in an aircraft that is eligible to ship under this section continue to require separate authorization from the Directorate of Defense Trade Controls for their export, transfer, reexport, or retransfer).

(6) No liability shall be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of an export conducted pursuant to this section.

(7) Sales by exporters made through the U.S. Government shall not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for information which the U.S. Government has a right to use and disclose to others, which is in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon its use and disclosure to others.

(8) Defense articles on the European Union Dual Use List (as described in Annex 1 to EC Council Regulation No. 428/2009) are not eligible for export under the Defense Trade Cooperation Treaty between the United States and the United Kingdom. These articles have been identified and included in Supplement No. 1 to part 126.

(h) *Transfers, Retransfers, and Reexports*[319]

(1) Any transfer of a defense article or defense service not exempted in Supplement No. 1 to part 126 of this subchapter by a member of the United Kingdom Community (see paragraph (d) of this section for specific information on the identification of the Community) to another member of the United Kingdom Community or the United States Community for an end-use that is authorized by this exemption (see paragraphs (e) and (f) of this section regarding authorized end-uses) is authorized under this exemption.

(2) Any transfer or other provision of a defense article or defense service for an end-use that is not authorized by the exemption provided by this section is prohibited without a license or the prior written approval of the Directorate of Defense Trade Controls (see paragraphs (e) and (f) of this section regarding authorized end-uses).

(3) Any retransfer or reexport, or other provision of a defense article or defense service by a member of the United Kingdom Community to a foreign person that is not a member of the United Kingdom Community, or to a U.S. person that is not a member of the United States Community, is prohibited without a license or the prior written approval of the Directorate of Defense Trade Controls (see paragraph (d) of this section for specific information on the identification of the United Kingdom Community).

(4) Any change in the use of a defense article or defense service previously exported, transferred, or obtained under this exemption by any foreign person, including a member of the United Kingdom Community, to an end-use that is not authorized by this exemption is prohibited without a license or other written approval of the Directorate of Defense Trade Controls (see paragraphs (e) and (f) of this section regarding authorized end-uses).

(5) Any retransfer, reexport, or change in end-use requiring such approval of the U.S. Government shall be made in accordance with § 123.9 of this subchapter.[320]

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[319] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information: "Two commenting parties raised concerns with the complexity of using § 126.17(h) with a diverse supply chain and requested clarification on the applicability of § 123.9(e) to this exemption. DDTC appreciates the diverse nature of global supply chains, but believes the mechanisms provided in § 126.17(h) are no more onerous than current retransfer or reexport requirements. Further, as indicated in § 126.17(h)(5), any retransfer, reexport, or change in end-use under § 126.17(h) shall be made in accordance with § 123.9, which includes § 123.9(e)."

[320] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information: "One commenting party requested changes to § 126.17(g)(5) to allow for the export of embedded exempted technologies in certain circumstances. DDTC is not, at this time, prepared to broaden this paragraph to include embedded exempted technologies."

(6) Defense articles excluded by paragraph (g) of this section or Supplement No. 1 to part 126 of this subchapter (e.g., USML Category XI (a)(3) electronically scanned array radar systems) that are embedded in a larger system that is eligible to ship under this section (e.g., a ship or aircraft) must separately comply with any restrictions placed on that embedded defense article unless otherwise specified. A license or other authorization must be obtained from the Directorate of Defense Trade Controls for the export, transfer, reexport, or retransfer or change in end-use of any such embedded defense article (for example, USML Category XI(a)(3) electronically scanned array radar systems that are excluded from this section by Supplement No. 1 to part 126, Note 2 that are incorporated in an aircraft that is eligible to ship under this section continue to require separate authorization from the Directorate of Defense Trade Controls for their export, transfer, reexport, or retransfer).

(7) A license or prior approval from the Directorate of Defense Trade Controls is not required for a transfer, retransfer, or reexport of an exported defense article or defense service under this section, if:

(i) The transfer of defense articles or defense services is made by a member of the United States Community to United Kingdom Ministry of Defence elements deployed outside the Territory of the United Kingdom and engaged in an authorized end-use (see paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels[321] or the provisions of this section;

(ii) The transfer of defense articles or defense services is made by a member of the United States Community to an Approved Community member (either U.S. or UK) that is operating in direct support of United Kingdom Ministry of Defence elements deployed outside the Territory of the United Kingdom and engaged in an authorized end-use (see paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section;

(iii) The reexport is made by a member of the United Kingdom Community to United Kingdom Ministry of Defence elements deployed outside the Territory of the United Kingdom engaged in an authorized end-use (see paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section;

(iv) The reexport is made by a member of the United Kingdom Community to an Approved Community member (either U.S. or UK) that is operating in direct support of United Kingdom Ministry of Defence elements deployed outside the Territory of the United Kingdom engaged in an authorized end-use (see paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section; or

(v) The defense article or defense service will be delivered to the United Kingdom Ministry of Defence for an authorized end-use (see paragraphs (e) and (f) of this section regarding authorized end-uses); the United Kingdom Ministry of Defence may deploy the item as necessary when conducting official business within or outside the Territory of the United Kingdom. The item must remain under the effective control of the United Kingdom Ministry of Defence while deployed and access may not be provided to unauthorized third parties.

(8) U.S. persons registered, or required to be registered, pursuant to part 122 of this subchapter and members of the United Kingdom Community must immediately notify the Directorate of Defense Trade Controls of any actual or proposed sale, retransfer, or reexport of a defense article or defense service on the U.S. Munitions List originally exported under this exemption to any of the countries listed in § 126.1 of this subchapter or any person acting on behalf of such countries, whether within or outside the United States. Any person knowing or having reason to know of such a proposed or actual sale, reexport, or retransfer shall submit such information in writing to the Office of Defense Trade Controls Compliance, Directorate of

[321] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information: "One commenting party requested definition of "United Kingdom Armed Forces transmission channels" in § 126.17(h)(7). This language is used in the Implementing Arrangement and DDTC believes § 126.17(h)(7) and the Implementing Arrangement are clear. Therefore, DDTC has not provided an additional definition."

Defense Trade Controls.

(i) *Transitions*

(1) Any previous export of a defense article under a license or other approval of the U.S. Department of State remains subject to the conditions and limitations of the original license or authorization unless the Directorate of Defense Trade Controls has approved in writing a transition to this section.

(2) If a U.S. exporter desires to transition from an existing license or other approval to the use of the provisions of this section, the following is required:

(i) The U.S. exporter must submit a written request[322] to the Directorate of Defense Trade Controls, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were originally exported, and the Treaty-eligible end-use for which the defense articles or defense services will be used. Any license(s) filed with U.S. Customs and Border Protection should remain on file until the exporter has received approval from the Directorate of Defense Trade Controls to retire the license(s) and transition to this section. When this approval is conveyed to U.S. Customs and Border Protection by the Directorate of Defense Trade Controls, the license(s) will be returned to the Directorate of Defense Trade Controls by U.S. Customs and Border Protection in accord with existing procedures for the return of expired licenses in § 123.22(c) of this subchapter.

(ii) Any license(s) not filed with U.S. Customs and Border Protection must be returned to the Directorate of Defense Trade Controls with a letter citing approval by the Directorate of Defense Trade Controls to transition to this section as the reason for returning the license(s).

(3) If a member of the United Kingdom Community desires to transition defense articles received under an existing license or other approval to the processes established under the Treaty, the United Kingdom Community member must submit a written request[323] to the Directorate of Defense Trade Controls, either directly or through the original U.S. exporter, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were received, and the Treaty-eligible end-use (see paragraphs (e) and (f) of this section regarding authorized end-uses) for which the defense articles or defense services will be used. The defense article or defense service shall remain subject to the conditions and limitations of the existing license or other approval until the United Kingdom Community member has received approval from the Directorate of Defense Trade Controls to transition to this section.

(4) Authorized exporters identified in paragraph (b)(2) of this section who have exported a defense article or defense service that has subsequently been placed on the list of exempted items in Supplement No. 1 to part 126 of this subchapter must review and adhere to the requirements in the relevant Federal Register notice announcing such removal. Once removed, the defense article or defense service will no longer be subject to this section, such defense article or defense service previously exported shall remain on the U.S. Munitions List and be subject to the International Traffic in Arms Regulations unless the applicable Federal Register notice states otherwise. Subsequent reexport or retransfer must be made pursuant to § 123.9 of this subchapter.

(5) Any defense article or defense service transitioned from a license or other approval to treatment under this section must be marked in accordance with the requirements of paragraph (j) of this section.

(j) *Marking of Exports*[324]

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[322] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information: "Three commenting parties requested clarification as to the form a written request under § 126.17(i)(2)(i) should take. Parties should submit such requests in the form of a General Correspondence (GC), the required elements of which are identified in § 126.17(i)(2)(i)."

[323] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information: "Three commenting parties requested clarification as to the form a written request under § 126.17(i)(2)(i) should take. Parties should also submit such requests in the form of a GC to DDTC."

[324] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information:

(1) All defense articles and defense services exported or transitioned pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section shall be marked or identified as follows:

(i) For classified defense articles and defense services the standard marking or identification shall read: "//CLASSIFICATION LEVEL USML//REL GBR and USA Treaty Community//." For example, for defense articles classified SECRET, the marking or identification shall be "//SECRET USML//REL GBR and USA Treaty Community//."

(ii) Unclassified defense articles and defense services exported under or transitioned pursuant to this section shall be handled while in the UK as "Restricted USML" and the standard marking or identification shall read "//RESTRICTED USML //REL GBR and USA Treaty Community//."

(2) Where U.S.-origin defense articles are returned to a member of the United States Community identified in paragraph (b) of this section, any defense articles marked or identified pursuant to paragraph (j)(1)(ii) of this section as "//RESTRICTED USML //REL GBR and USA Treaty Community//" will be considered unclassified and the marking or identification shall be removed; and

(3) The standard marking and identification requirements are as follows:

(i) Defense articles (other than technical data) shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section; or, where such labeling is impracticable (e.g., propellants, chemicals), shall be accompanied by documentation (such as contracts or invoices) clearly associating the defense articles with the appropriate markings as detailed in paragraph (j)(1)(i) and (ii) of this section;

(ii) Technical data (including data packages, technical papers, manuals, presentations, specifications, guides and reports), regardless of media or means of transmission (physical, oral, or electronic), shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section; or, where such labeling is impracticable shall be accompanied by documentation (such as contracts or invoices) or verbal notification clearly associating the technical data with the appropriate markings as detailed in paragraph (j)(1)(i) and (ii) of this section; and

(4) Defense services shall be accompanied by documentation (contracts, invoices, shipping bills, or bills of lading) clearly labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section.

(5) The exporter shall incorporate the following statement as an integral part of the bill of lading and the invoice whenever defense articles are to be exported:

> *"These U.S. Munitions List commodities are authorized by the U.S. Government under the U.S.-UK Defense Trade Cooperation Treaty for export only to United Kingdom for use in approved projects, programs or operations by members of the United Kingdom Community. They may not be retransferred or reexported or used outside of an approved project, program, or operation, 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."*

(k) *Intermediate Consignees*

(1) Unclassified exports under this section may only be handled by:

"Ten commenting parties expressed concerns with the marking requirements contained in § 126.17(j). Of most concern was a perception that the requirements of this section made using the exemption overly burdensome and costly. Various suggestions were provided ranging from removal of the paragraph, to rewording of certain sections. The majority of commenting parties requested DDTC remove the requirement in § 126.17(j)(2) for exporters to remove Treaty markings. DDTC appreciates the concerns expressed. However, the requirements contained in 126.17(j) are reflective of the requirements in the Treaty and its Implementing Arrangement. DDTC has made some minor edits to provide clarity in this paragraph, but the requirement to remove certain markings will not be removed from the regulations at this time."

(i) U.S. intermediate consignees who are:

(A) Exporters registered with the Directorate of Defense Trade Controls and eligible;

(B) Licensed customs brokers who are subject to background investigation and have passed a comprehensive examination administered by U.S. Customs and Border Protection; or

(C) Commercial air freight and surface shipment carriers, freight forwarders, or other parties not exempt from registration under § 129.3(b)(3) of this subchapter, that are identified at the time of export as being on the U.S. Department of Defense Civil Reserve Air Fleet (CRAF) list of approved air carriers, a link to which is available on the Directorate of Defense Trade Controls website.

(ii) United Kingdom intermediate consignees[325] who are:

(A) Members of the United Kingdom Community; or

(B) Freight forwarders, customs brokers, commercial air freight and surface shipment carriers, or other United Kingdom parties that are identified at the time of export as being on the list of Authorized United Kingdom Intermediate Consignees, which is available on the Directorate of Defense Trade Controls website.

(2) Classified exports must comply with the security requirements of the National Industrial Security Program Operating Manual (DoD 5220.22-M and supplements or successors).

(l) *Records*

(1) All exporters authorized pursuant to paragraph (b)(2) of this section who export pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section shall maintain detailed records of their exports, imports, and transfers made by that exporter of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section. Exporters shall also maintain detailed records of any reexports and retransfers approved or otherwise authorized by the Directorate of Defense Trade Controls of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section. These records shall be maintained for a minimum of five years from the date of export, import, transfer, reexport, or retransfer and shall be made available upon request to the Directorate of Defense Trade Controls or a person designated by the Directorate of Defense Trade Controls (e.g. the Diplomatic Security Service) or U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection. Records in an electronic format must be maintained using a process or system capable of reproducing all records on paper. Such records when displayed on a viewer, monitor, or reproduced on paper, must exhibit a high degree of legibility and readability. (For the purpose of this section, ''legible'' and ''legibility'' mean the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. ''Readable'' and ''readability'' means the quality of a group of letters or numerals being recognized as complete words or numbers.) These records shall consist of the following:

(i) Port of entry/exit;

(ii) Date of export/import;

(iii) Method of export/import;

(iv) Commodity code and description of the commodity, including technical data;

(v) Value of export;

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[325] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information: "One commenting party requested that registered brokers be included in paragraph § 126.17(k)(1)(ii). United Kingdom intermediate consignees must meet the requirements of § 126.17(k)(1)(ii). If a registered broker meets these requirements, then it may be an intermediate consignee for purposes of this exemption. However, simply being a registered broker does not automatically qualify an entity as a United Kingdom intermediate consignee."

(vi) Reference to this section and justification for export under the Treaty;

(vii) End-user/end-use;

(viii) Identification of all U.S. and foreign parties to the transaction;

(ix) How the export was marked;

(x) Security classification of the export;

(xi) All written correspondence with the U.S. Government on the export;

(xii) All information relating to political contributions, fees, or commissions furnished or obtained, offered, solicited, or agreed upon as outlined in paragraph (m) of this section;

(xiii) Purchase order or contract;

(xiv) Technical data actually exported;

(xv) The Internal Transaction Number for the Electronic Export Information filing in the Automated Export System;

(xvi) All shipping documentation (including, but not limited to the airway bill, bill of lading, packing list, delivery verification, and invoice); and

(xvii) Statement of Registration (Form DS-2032).

(2) *Filing of export information.* All exporters of defense articles under the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section must electronically file Electronic Export Information (EEI) using the Automated Export System citing one of the four below referenced codes in the appropriate field in the EEI for each shipment:

(i) For exports in support of United States and United Kingdom combined military or counter-terrorism operations identify § 126.17(e)(1) (the name or an appropriate description of the operation shall be placed in the appropriate field in the EEI, as well);

(ii) For exports in support of United States and United Kingdom cooperative security and defense research, development, production, and support programs identify § 126.17(e)(2) (the name or an appropriate description of the program shall be placed in the appropriate field in the EEI, as well);

(iii) For exports in support of mutually determined specific security and defense projects where the Government of the United Kingdom is the end-user identify 126.17(e)(3) (the name or an appropriate description of the project shall be placed in the appropriate field in the EEI, as well); or

(iv) For exports that will have a U.S. Government end-use identify 126.17(e)(4) (the U.S. Government contract number or solicitation number (e.g., "U.S. Government contract number XXXXX") shall be placed in the appropriate field in the EEI, as well). Such exports must meet the required export documentation and filing guidelines, including for defense services, of §§ 123.22(a), (b)(1), and (b)(2) of this subchapter.

(m) *Fees and Commissions.* All exporters authorized pursuant to paragraph (b)(2) of this section shall, with respect to each export, transfer, reexport, or retransfer, pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section, submit a statement to the Directorate of Defense Trade Controls containing the information identified in § 130.10 of this subchapter relating to fees, commissions, and political contributions on contracts or other instruments valued in an amount of $500,000 or more.[326]

(n) *Violations and Enforcement*

[326] This section was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012); stating in part in Supplementary Information "Two commenting parties asked DDTC to clarify whether § 126.17(m) required exporters to submit negative reports. DDTC confirms that reporting requirements under § 126.17(m) are contingent on meeting the requirements of ITAR § 130.9."

(1) Exports, transfers, reexports, and retransfers that do not comply with the conditions prescribed in this section will constitute violations of the Arms Export Control Act and this subchapter, and are subject to all relevant criminal, civil, and administrative penalties (see § 127.1 of this subchapter), and may also be subject to penalty under other statutes or regulations.

(2) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers may take appropriate action to ensure compliance with this section as to the export or the attempted export of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft.

(3) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers have the authority to investigate, detain, or seize any export or attempted export of defense articles or technical data that does not comply with this section or that is otherwise unlawful.

(4) The Directorate of Defense Trade Controls or a person designated by the Directorate of Defense Trade Controls (e.g., the Diplomatic Security Service) or U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection may require the production of documents and information relating to any actual or attempted export, transfer, reexport, or retransfer pursuant to this section. Any foreign person refusing to provide such records within a reasonable period of time shall be suspended from the United Kingdom Community and ineligible to receive defense articles or defense services pursuant to the exemption under this section or otherwise.

(o) Procedures for Legislative Notification

(1) Exports pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section by any person identified in paragraph (b)(2) of this section shall not take place until 30 days after the Directorate of Defense Trade Controls has acknowledged receipt of a Form DS-4048 (entitled, “Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act”) from the exporter notifying the Department of State if the export involves one or more of the following:

(i) A contract or other instrument for the export of major defense equipment in the amount of $25,000,000 or more, or for defense articles and defense services in the amount of $100,000,000 or more;

(ii) A contract for the export of firearms controlled under Category I of the U.S. Munitions List of the International Traffic in Arms Regulations in an amount of $1,000,000 or more;

(iii) A contract, regardless of value, for the manufacturing abroad of any item of significant military equipment; or

(iv) An amended contract that meets the requirements of paragraphs (o)(1)(i) through (o)(1)(iii) of this section.

(2) The Form DS-4048 required in paragraph (o)(1) of this section shall be accompanied by the following additional information:

(i) The information identified in § 130.10 and § 130.11 of this subchapter;

(ii) A statement regarding whether any offset agreement is final to be entered into in connection with the export and a description of any such offset agreement;

(iii) A copy of the signed contract; and

(iv) If the notification is for paragraph (o)(1)(ii) of this section, a statement of what will happen to the weapons in their inventory (for example, whether the current inventory will be sold, reassigned to another service branch, destroyed, etc.).

(3) The Department of State will notify the Congress of exports that meet the requirements of paragraph (o)(1) of this section.

§ 126.18 Exemptions Regarding Intra-company, Intra-organization, and Intra-governmental Transfers to Employees Who are Dual Nationals or Third-country Nationals[327]

(a) Subject to the requirements of paragraphs (b) and (c) of this section and notwithstanding any other provisions of this part,[328] and where the exemption provided in § 124.16 cannot be implemented because of applicable domestic laws, no approval is needed from the Directorate of Defense Trade Controls (DDTC) for the transfer of unclassified defense articles,[329] which includes technical data (see § 120.6), to or within a foreign business entity, foreign governmental entity, or international organization that is an authorized end-user or consignee (including approved sub-licensees) for those defense articles, including the transfer to dual nationals or third-country nationals who are bona fide regular employees, directly employed by the foreign consignee or end-user.[330] The transfer of defense articles pursuant to this section must take place completely within the physical territory of the country where the end-user is located,[331] where the governmental entity or international organization conducts official business, or where the consignee operates, and be within the scope of an approved export license, other export authorization, or license exemption.[332]

(b) The provisions of § 127.1(b)[333] are applicable to any transfer under this section. As a condition of transferring to foreign person employees described in paragraph (a) of this section any defense article under

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[327] This portion was amended by 76 FR 28174 (May 16, 2011), and became effective August 15, 2011. *See generally,* DDTC, FREQUENTLY ASKED QUESTIONS ABOUT § 126.18 EXEMPTIONS REGARDING INTRA-COMPANY, INTRA-ORGANIZATION, AND INTRA-GOVERNMENTAL TRANSFERS TO EMPLOYEES WHO ARE DUAL NATIONALS OR THIRD-COUNTRY NATIONALS (July 28, 2011) [hereinafter "DDTC Dual/3rd Nationals FAQs"] *available at* http://www.pmddtc.state.gov/faqs/documents/D-TCN-FAQFinal.pdf (last viewed Sept. 1, 2012), *reprinted infra at* Appx. F.

[328] Refers to the 126.1(a) prohibitions against using exemptions for exports to 126.1(a) proscribed countries or nationals thereof. *See* Comment Analysis section of the final rule, 76 Fed. Reg. 28174, 28175 (May 16, 2011), stating in part in Supplementary Information, "One commenting party recommended adding language to § 126.18(a) to make clear that the exemption applies ''notwithstanding any other provisions of this Part'' to make clear that the limitations of the last sentence of § 126.1(a), which would have conflicted with the intent of the proposed rule, did not apply. DDTC agreed and adopted this change." (Contributor: Thomas M. deButts, Esq., (202) 799-4336, thomas.debutts@dlapiper.com.

[329] Regarding defense services, the Supplementary Information to the addition of 22 CFR 126.18, 76 FR 28174 (May 16, 2011), stated:
Ten commenting parties recommended that the exemption proposed in §126.18 be expanded to include "defense services." The current proposal was limited to "defense articles," which by the definition in §120.6 includes technical data. We note that the rule was intended to address concerns about restrictions on dual national and third-country national employees of licensed end-users and consignees who would have access to defense articles, which, as noted above, includes technical data per §120.6, within the scope of their employment. The intent of the rule was to create a policy for such transfers in a manner that would prevent diversions of such articles to unauthorized end-users. Thus, the proposed rule was limited to use of the defense article within a company and within the scope of the license in question. Defense services, on the other hand, cannot be "transferred" within a company in the manner in which defense articles can. Rather, defense services are rendered to specific end-users identified in the license or other authorization. As such, the defense services are rendered to the named company rather than the individual employees. In any event, if the contemplated defense service involves defense articles already licensed to the company, the proposed exemption would generally cover dual and third-country national employees receiving the defense service. We deem it neither necessary nor prudent to specifically add defense services to this rule and thus do not adopt the recommendation.

[330] Regarding contract employees, the Supplementary Information to the addition of 22 CFR 126.18, 76 FR 28174 (May 16, 2011), stated:
Nine commenting parties recommended the proposed rule apply to contract employees, not just "bona fide, regular employees." The intent of the proposed rule was to recognize vested interests within companies, international organizations, and foreign governmental entities to carefully screen employees for purposes of trustworthiness. Full-time employment meets that criterion as it indicates a higher level of scrutiny and represents a long-term relationship with the entity at issue, as opposed to the transactional, temporary nature of the contractual arrangement. Furthermore, companies, international organizations, and foreign governmental entities bear significantly more legal responsibility for the acts of their regular employees than they do for the acts of contactors. However, DDTC is prepared to narrowly extend this policy to workers who have long term employment relationships with licensed end-users, per a new definition to "regular employee" added in part 120.

[331] Regarding the country where the end-user is located, the Supplementary Information to addition of 22 CFR 126.18, 76 FR 28174 (May 16, 2011), stated:
One commenting party objected to the limitation of the exemption to the country where the end-user is located, pointing out that international organizations operate in more than one country. We note that licenses for international organization end-users will specify the location(s) and country(ies) where the end-item will be utilized. Therefore, DDTC believes that transfers to locations (and end-users) within the scope of the license poses no problems. Any contemplated transfers beyond the authorized and licensed location(s) will require an additional license (or an amendment to an existing license), and is a prudent limitation on the rule. This rule is not intended to authorize unlimited transfers around the world for end-users with nominal connections throughout the globe.

[332] Qualified by the requirement that "such operations are in the conduct of official business by the government or international organization and provided such activities are within the scope of the license." Supplementary Information to addition of 22 CFR 126.18, 76 FR 28174 (May 16, 2011).

[333] Describing exporter's responsibility for the actions of employees and agents, and the obligation of foreign persons in custody of defense article exported from United States to comply with ITAR.

this provision, any[334] foreign business entity, foreign governmental entity, or international organization, as a "foreign person" within the meaning of §120.16, that receives a defense article, must have effective procedures[335] to prevent diversion to destinations, entities, or for purposes other than those authorized by the applicable export license or other authorization (*e.g.*, written approval or exemption) in order to comply with the applicable provisions of the Arms Export Control Act and the ITAR.

(c) The end-user or consignee may satisfy the condition in paragraph (b) of this section, prior to transferring defense articles, by requiring:

(1) A security clearance approved by the host nation government for its employees,[336] or

(2) The end-user or consignee to have in place a process to screen its employees[337] and to have executed a Non-Disclosure Agreement that provides assurances that the employee will not transfer any defense articles to persons or entities unless specifically authorized by the consignee or end-user. The end-user or consignee must screen its employees for substantive contacts with restricted or prohibited countries listed in § 126.1. Substantive contacts[338] include regular travel[339] to such countries, recent or continuing contact with agents, brokers, and nationals of such countries, continued demonstrated allegiance to such countries, maintenance of business relationships with persons from such countries, maintenance of a residence in such countries, receiving salary or other continuing monetary compensation from such countries, or acts otherwise indicating a risk of diversion. Although nationality does not, in and of itself, prohibit access to defense articles, an employee who has substantive contacts with persons from countries listed in § 126.1(a) shall be presumed to raise a risk of diversion, unless DDTC determines otherwise. End-users and consignees must maintain a technology security/clearance plan[340] that includes procedures for screening employees for such substantive

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[334] Regarding whether the exemption applied to academic institutions, the supplementary information in the Supplementary Information to addition of 22 CFR 126.18, 76 FR 28174 (May 16, 2011), stated: "This proposed rule is an incremental change in favor of foreign business entities, foreign governmental entities, and international organizations, recognizing internal incentives for the protection of export controlled articles and data. The Department of State is not prepared to extend the exemption to academic institutions at the present time."

[335] Regarding the procedures for using the 126.18 exemption for transfers to dual/3rd-country nationals, the Summary of 76 FR 28174 (May 16, 2011), stated:

> Prior to making transfers to certain dual national and third-country national employees under this policy, approved end-users must screen employees, make an affirmative decision to allow access, and maintain records of screening procedures to prevent diversion of ITAR-controlled technology for purposes other than those authorized by the applicable export license or other authorization.

[336] *See* DDTC Dual/3rd Nationals FAQs *available at* http://www.pmddtc.state.gov/faqs/documents/D-TCN-FAQFinal.pdf (last viewed Sept. 1, 2012), *reprinted infra at* Appx. F, stating in part:

> "Q: Is any level of security clearance acceptable to meet the requirements of § 126.18(c)(1)? A: Yes. The security clearance requirement is not restricted to Secret or above. Section 126.18(c)(1) requires only that the security clearance be approved by the host nation government and does not specify a particular level of clearance."

[337] Regarding whether citizens and permanent residents of the host country must be screened, the supplementary information in the Supplementary Information to addition of 22 CFR 126.18, 76 FR 28174 (May 16, 2011), stated:

> One commenting party recommended that the requirement for screening not apply to citizens (including dual nationals) and permanent residents of the host country. This approach would exclude from screening a large group of individuals who continue to maintain affiliation by citizenship with a third country (*i.e.*, different than that of the authorized end-user). Though we agree that citizens who relinquish citizenship of the former country would not require screening, the nature of continuing relationships with the third country for those maintaining citizenship remains relevant, especially if the country is subject to restrictions in §126.1. In any event, this rule does not present foreign citizenship alone as a bar to access to ITAR controlled defense articles.

[338] Regarding the meaning of "substantive contacts", the supplementary information in the Supplementary Information addition of 22 CFR 126.18, 76 FR 28174 (May 16, 2011), stated: "It is not DDTC's intent to deny access based solely upon relationships or contacts with family members in a context posing no risk of diversion. We note that contacts with government officials and agents of governments of §126.1(a) countries, be they family or not, would require higher scrutiny." *See also* DDTC Dual/3rd Nationals FAQs *available at* http://www.pmddtc.state.gov/faqs/documents/D-TCN-FAQFinal.pdf (last viewed Sept. 1, 2012), *reprinted infra at* Appx. F, stating in part:

> "Q: May a foreign company seek confirmation from DDTC as to whether an identified activity would be considered a "substantive contact?" A: The foreign company should first seek to work out whether something is a "substantive contact" and of concern in a specific instance as this is a discretionary standard. If a foreign company is still uncertain after exhausting all means of determining whether an identified activity is a "substantive contact," the foreign company may, as a last resort, submit a General Correspondence (GC) request to DDTC. Please refer to DDTC's "Guidelines for Implementing New Dual National/Third-Country National Policy for Agreements" posting for additional guidance in preparing the GC request and additional information specific to ITAR agreements.

[339] "The intent of the proposed rule is not to automatically disqualify a person on the basis of such travel, where the travel does not involve contacts with foreign agents or proxies likely to lead to diversion of controlled data or articles. Instead, full disclosure about travel is required, which would be the basis of an assessment of diversion risk on a case-by-case basis." Supplementary Information addition of 22 CFR 126.18, 76 FR 28174 (May 16, 2011).

[340] This term is not defined or used elsewhere in the ITAR, but see references to "Technology Control Plan" at 124.15(a)(1) and 126.13(c), and to "Technology Transfer Control Plan (TTCP)" at 124.15(a)(1) and 126.5(c)(4). *See also* DDTC Dual/3rd Nationals FAQs *available at*

contacts and maintain records[341] of such screening for five years.[342] The technology security/clearance plan and screening records shall be made available to DDTC or its agents for civil and criminal law enforcement purposes upon request.

SUPPLEMENT N0. 1

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
I-XXI	Classified defense articles and services. *See* Note 1.	X		X
I-XXI	Defense articles listed in the Missile Technology Control Regime (MTCR) Annex.	X		X
I-XXI	U.S. origin defense articles and services used for marketing purposes and not previously licensed for export in accordance with this subchapter.			X
I-XXI	Defense services for or technical data related to defense articles identified in this supplement as excluded from the Canadian exemption.	X		
I-XXI	Any transaction involving the export of defense articles and services for which congressional notification is required in accordance with §123.14 and §124.11 of this subchapter.	X		
I-XXI	U.S. origin defense articles and services specific to developmental systems that have not obtained written Milestone B Approval from the U.S. Department of Defense milestone approval authority, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in paragraphs (e)(1), (2), or (4) of §126.16 or §126.17 of this subchapter and is consistent with other exclusions of this supplement.			X
I-XXI	Nuclear weapons strategic delivery systems and all components, parts, accessories, and attachments specifically designed for such	X		

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http://www.pmddtc.state.gov/faqs/documents/D-TCN-FAQFinal.pdf (last viewed Sept. 1, 2012), *reprinted infra at* Appx. F, stating in part:

> Q. What obligation do U.S. exporters have to verify that foreign companies have technology security/clearance plans in place if a foreign company intends to utilize the provisions of § 126.18? A. Section 126.18 does not impose on the U.S. exporter an obligation to request a written statement or certification from the foreign company that it will be invoking the provisions of § 126.18 and has met all the requirements outlined therein to prevent the diversion of defense articles to unauthorized end-users and end-uses. However, it is always good business practice to be sure that foreign companies that are receiving ITAR-controlled items understand the requirements and restrictions associated with the receipt and handling of such items.
>
> Q. Is there a preferred format for the technology security/clearance plan? A. No. DDTC has posted a notional implementation plan and is a suggested approach, but is by no means the only way of complying with the rule and its core principle of preventing diversion of defense articles to unauthorized end-users and end-uses. Consistent with local national laws and programs for the control/protection of defense articles/technologies and consistent with the need for private entities to protect proprietary data, technology security plans should be designed with a comprehensive and individualized approach to securing sensitive data of all kinds with appropriate measures for physical security and personnel clearances.

[341] Regarding the possible conflict of ITAR record-keeping requirements with local privacy laws, the supplementary information in the Supplementary Information addition of 22 CFR 126.18, 76 FR 28174 (May 16, 2011), stated:

> We note that the records in question are intended for use by DDTC, a governmental entity for governmental use and not for public release. DDTC's function in this capacity is analogous to the exchange of information with cross-border law enforcement agencies that regularly receive and have a similar obligation to protect information subject to privacy laws.

[342] This period may be based upon the general Federal statute of limitations for enforcement of civil fines, penalties, or forfeitures stated in 28 U.S.C. § 2462, Time for Commencing Proceedings.

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
	systems and associated equipment.			
I-XXI	Defense articles and services specific to the existence or method of compliance with anti-tamper measures made at U.S. Government direction.			X
I-XXI	Defense articles and services specific to reduced observables or counter low observables in any part of the spectrum. *See* Note 2.			X
I-XXI	Defense articles and services specific to sensor fusion beyond that required for display or identification correlation. *See* Note 3.			X
I-XXI	Defense articles and services specific to the automatic target acquisition or recognition and cueing of multiple autonomous unmanned systems.			X
I-XXI	Nuclear power generating equipment or propulsion equipment (e.g., nuclear reactors), specifically designed for military use and components therefore, specifically designed for military use. *See* also §124.20 of this subchapter.			X
I-XXI	Libraries (parametric technical databases) specially designed for military use with equipment controlled on the USML. *See* Note 13.			X
I-XXI	Defense services or technical data specific to applied research as defined in §125.4(c)(3) of this subchapter, design methodology as defined in §125.4(c)(4) of this subchapter, engineering analysis as defined in §125.4(c)(5) of this subchapter, or manufacturing know-how as defined in §125.4(c)(6) of this subchapter. *See* Note 12.	X		
I-XXI	Defense services other than those required to prepare a quote or bid proposal in response to a written request from a Department or Agency of the United States Federal Government or from a Canadian Federal, Provincial, or Territorial Government; or defense services other than those required to produce, design, assemble, maintain or service a defense article for use by a registered U.S. company, or a U.S. Federal Government Program, or for end-use in a Canadian Federal, Provincial, or Territorial Government Program. See Note 14.	X		
I	Defense articles and services specific to firearms, close assault weapons, and combat shotguns.	X		
II(k)	Software source code related to Categories II(c), II(d), or II(i). *See* Note 4.			X
II(k)	Manufacturing know-how related to Category II(d). *See* Note 5.	X		X
III	Defense articles and services specific to ammunition for firearms, close assault weapons, and combat shotguns listed in Category I.	X		
III	Defense articles and services specific to ammunition and fuse setting devices for guns and armament controlled in Category II.			X
III(e)	Manufacturing know-how related to Categories III(d)(1) or III(d)(2) and their specially designed components. *See* Note 5.	X		X

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
III(e)	Software source code related to Categories III(d)(1) or III(d)(2). *See* Note 4.			X
IV	Defense articles and services specific to man-portable air defense systems (MANPADS). *See* Note 6.	X		X
IV	Defense articles and services specific to rockets, designed or modified for non-military applications that do not have a range of 300 km (i.e., not controlled on the MTCR Annex).			X
IV	Defense articles and services specific to torpedoes.			X
IV	Defense articles and services specific to anti-personnel landmines.	X		X
IV	Defense articles specific to cluster munitions that are controlled by The Convention on Cluster Munitions of 3 December 2008.	X		X
IV(i)	Software source code related to Categories IV(a), IV(b), IV(c), or IV(g). *See* Note 4.			X
IV(i)	Manufacturing know-how related to Categories IV(a), IV(b), IV(c), or IV(g) and their specially designed components. *See* Note 5.	X		X

V	The following energetic materials and related substances:
	a. TATB (triaminotrinitrobenzene) CCAS 3058-38-6);
	b. Explosives controlled in USML Category V(a)(32) or V(a)(33);
	c. Iron powder (CAS 7439-89-6) with particle size of 3 micrometers or less produced by reduction of iron oxide with hydrogen;
	d. BABBA-8 (bis(2-methylaziridinyl)2-(2-hydroxypropanoxy) propylamino phosphine oxide), and other MAPO derivatives;
	e. N-methyl--p-nitroaniline (CAS 100-15-2); or
	f. Trinitrophenylmethylnitramine (tetryl) (CAS 479-45-8)
				X

V(c)(7)	Pyrotechnics and pyrophorics specifically formulated for military purposed to enhance or control radiated energy in any part of the IR spectrum.			X
V(d)(3)	Bis-2, 2-dinitropropylnitrate (BDNPN).			X
VI	Defense articles specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103K (-170°C).			X
VI	Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
VI	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10.			X
VI(a)	Nuclear powered vessels.	X		X
VI(c)	Defense articles and services specific to submarine combat control systems.			X
VI(d)	Harbor entrance detection devices.			X
VI(e)	Defense articles and services specific to naval nuclear propulsion equipment. See Note 7.	X		X
VI(g)	Technical data and defense services for gas turbine engine hot sections related to Category VI(f). *See* Note 8.	X		X
VI(g)	Software source code related to Categories VI(a) or VI(c). *See* Note 4.			X
VII	Defense articles specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103K (-170°C).			X
VII	Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VII	Armored all wheel drive vehicles, other than vehicles specifically designed or modified for military use, fitted with, or designed or modified to be fitted with, a plough or flail for the purpose of land mine clearance.			X
VII(c)	Amphibious vehicles.			X
VII(f)	Technical data and defense services for gas turbine engine hot sections. *See* Note 8.	X		X
VIII	Defense articles specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103K (-170°C).			X
VIII	Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators			X

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
	that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			
VIII(a)	All Category VIII(a) items.	X		
VIII(b)	Defense articles and services specific to gas turbine engine hot section components and digital engine controls. *See* Note 8.			X
VIII(f)	Developmental aircraft, engines and components identified in Category VIII(f).	X		
VIII(g)	Ground Effect Machines (GEMS).			X
VIII(i)	Technical data and defense services for gas turbine engine hot sections related to Category VIII(b). *See* Note 8.	X		X
VIII(i)	Manufacturing know-how related to Categories VIII(a), VIII(b), or VIII(e) and their specially designed components. *See* Note 5.	X		X
VIII(i)	Software source code related to Categories VIII(a) or VIII(e). *See* Note 4.			X
IX	Training or simulation equipment for MANPADS. *See* Note 6.			X
IX(e)	Software source code related to Categories IX(a) or IX(b). *See* Note 4.			X
IX(e)	Software that is both specifically designed or modified for military use and specifically designed or modified for modeling or simulating military operation scenarios.			X
X(e)	Manufacturing know-how related to Categories X(a)(1) or X(a)(2) and their specially designed components. *See* Note 5.	X		X
XI(a)	Defense articles and services specific to countermeasures and counter-countermeasures. *See* Note 9.			X
XI	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10.			X
XI(b) XI(c) XI(d)	Defense articles and services specific to communications security (e.g., COMSEC and TEMPEST).			X
XI(d)	Software source code related to Categories XI(a). *See* Note 4.			X
XI(d)	Manufacturing know-how related to Categories XI(a)(3) or XI(a)(4) and their specially designed components. *See* Note 5.	X		X
XII	Defense articles and services specific to countermeasures and counter-countermeasures. *See* Note 9.			X
XII(c)	Defense articles and services specific to XII(c) articles, except any 1st- and 2nd-generation image intensification tubes ad 1st- and 2nd-generation image intensification night sighting equipment. End items in	X		

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
	XII(c) and related technical data limited to basic operations, maintenance, and training information as authorized under the exemption in §125.4(b)(5) of this subchapter may be exported directly to a Canadian Government entity (i.e., federal, provincial, territorial, or municipal) consistent with §126.5, other exclusions, and the provisions of this subchapter.			
XII(c)	Technical data or defense services for night vision equipment beyond basic operations, maintenance, and training data. However, the AS and UK Treaty exemptions apply when such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in paragraphs (e)(1), (2), or (4) of §125.16 or §126.17 of this subchapter and is consistent with other exclusions of this supplement.	X		X
XII(f)	Manufacturing know-how related to Categories XII(d) and their specially designed components. *See* Note 5.	X		X
XII(f)	Software source code related to Categories XII(a), XII(b), XII(c), or XII(d). *See* Note 4.			X
XIII(b)	Defense articles and services specific to Military Information Security Assurance Systems.			X
XIII(c)	Defense articles and services specific to armored plate manufactured to comply with a military standard or specification or suitable for military use. *See* Note 11.			X
XIII(d)	Carbon/carbon billets and preforms which are reinforced in three or more dimensional planes, specifically designed, developed, modified, configured or adapted for defense articles.			X
XIII(f)	Structural materials.			X
XIII(g)	Defense articles and services related to concealment and deception equipment and materials.			X
XIII(h)	Energy conversion devices other than fuel cells.			X
XIII(i)	Metal embrittling agents.			X
XIII(j)	Defense articles and services related to hardware associated with the measurement or modification of system signatures for detection of defense articles as described in Note 2.			X
XIII(k)	Defense articles and services related to tooling and equipment specifically designed or modified for the production of defense articles identified in Category XIII(b).			X
XIII(l)	Software source code related to Categories XIII(a). *See* Note 4.			X
XIV	Defense articles and services related to toxicological agents, including chemical agents, biological agents, and associated equipment.			X
XIV(a)	Chemical agents listed in Category XIV(a), (d) and (e), biological	X		

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
XIV(b) XIV(d) XIV(e) XIV(f)	agents and biologically derived substances in Category XIV(b), and equipment listed in Category XIV(f) for dissemination of the chemical agents and biological agents listed in Category XIV(a), (b), (d), and (e).			
XV(a)	Defense articles and services specific to spacecraft/satellites. However, the Canadian exemption may be used for commercial communications satellites that have no other type of payload.	X		X
XV(b)	Defense articles and services specific to ground control stations for spacecraft telemetry, tracking, and control.			X
XV(c)	Defense articles and services specific to GPS/PPS security modules.			X
XV(c)	Defense articles controlled in XV(c) except end items for end use by the Federal Government of Canada exported directly or indirectly through a Canadian-registered person.	X		
XV(d)	Defense articles and services specific to radiation-hardened microelectronic circuits.	X		
XV(e)	Anti-jam systems with the ability to respond to incoming interference by adaptively reducing antenna gain (nulling) in the direction of the interference.	X		
XV(e)	Antennas having any of the following: a. Aperture (overall dimension of the radiating portions of the antenna) greater than 30 feet; b. All sidelobes less than or equal to -35 dB relative to the peak of the main beam; or c. Designed, modified, or configured to provide coverage area on the surface of the early less than 200 nautical miles in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam.)	X		
XV(e)	Optical intersatellite data links (cross links) and optical ground satellite terminals.	X		
XV(e)	Spaceborne regenerative baseband processing (direct up and down conversion to and from baseband) equipment.	X		
XV(e)	Propulsion systems which permit acceleration of the satellite on-orbit (i.e., after mission orbit injection) at rates greater than 0.1 g.	X		
XV(e)	Attitude control and determination systems designed to provide spacecraft pointing determination and control or payload pointing system control better than 0.02 degrees per axis.	X		
XV(e)	All specifically designed or modified systems, components, parts, accessories, attachments, and associated equipment for all Category XV(a) items, except when specifically designed or modified for use in commercial communications satellites.	X		

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
XV(e)	Defense articles and services specific to spacecraft and ground control station systems (only for telemetry, tracking and control as controlled in XV(b)), subsystems, components, parts, accessories, attachments, and associated equipment.			X
XV(f)	Technical data and defense services directly related to the other defense articles excluded from the exemptions for Category XV.	X		X
XVI	Defense articles and services specific to design and testing of nuclear weapons.	X		X
XVI(c)	Nuclear radiation measuring devices manufactured to military specifications.	X		
XVI(e)	Software source code related to Category XVI(c). *See* Note 4.			X
XVII	Classified articles and defense services not elsewhere enumerated. *See* Note 1.	X		X
XVIII	Defense articles and services specific to directed energy weapon systems.			X
XX	Defense articles and services related to submersible vessels, oceanographic, and associated equipment.	X		X
XXI	Miscellaneous defense articles and services.	X		X

Note 1: Classified defense articles and services are not eligible for export under the Canadian exemptions. U.S. origin defense articles and services controlled in Category XVII are not eligible for export under the UK Treaty exemption. U.S. origin classified defense articles and services are not eligible for export under either the UK or AS Treaty exemptions except when being released pursuant to a U.S. Department of Defense written request, directive, or contract that provides for the export of the defense article or service.

Note 2: The phrase "any part of the spectrum includes radio frequency (RF), infrared (IR), electro-optical, visual, ultraviolet (UV), acoustic, and magnetic. Defense articles related to reduced observables or counter reduced observables are defined as:

> Signature reduction (radio frequency (RF), infrared (IR), electro-optical, visual, ultraviolet (UV), acoustic, magnetic, RF emissions) of defense platforms, including systems, subsystems, components, materials, (including dual-purpose materials used fro [sic][343] Electromagnetic Interference (EM reduction) technologies, and signature prediction, test and measurement equipment and software and material transmissivity / reflectivity prediction codes and optimization software.
>
> Electronically scanned array radar, high power radars, radar processing algorithms, periscope-mounted radar systems (PATRIOT), LADAR, multistatic and IR focal plane array-based sensors, to include systems, subsystems, components, materials, and technologies.

Note 3: Defense articles related to sensor fusion beyond that required for display or identification correlation is defined as techniques designed to automatically combine information from two or more sensors/sources for the purpose of target identification, tracking, designation, or passing of data in support of surveillance or weapons

[343] So in original. Should be "for".

engagement. Sensor fusion involves sensors such as acoustic, infrared, electro-optical, frequency, etc. Display or identification correlation refers to the combination of target detections from multiple sources for assignment of common target track designation.

Note 4: Software source code beyond that source code required for basic operation, maintenance, and training for programs, systems, and/or subsystems is not eligible for use of the UK or AS Treaty Exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in paragraphs (e)(1), (2), or (4) of §126.16 or §126.17 of this subchapter and is consistent with other exclusions of this supplement.

Note 5: Manufacturing know-how, as defined in §125.4(c)(5) of this subchapter, is not eligible for use of the UK or AS Treaty Exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in paragraphs (e)(1), (2), or (4) of §126.16 or §126.17 of this subchapter and is consistent with other exclusions of this supplement.

Note 6: Defense articles specific to Man Portable Air Defense systems (MANPADS) includes missiles which can be used without modification in other applications. It also includes production and test equipment and components specifically designed or modified for MANPAD systems, as well as training equipment specifically designed or modified for MANPAD systems.

Note 7: Naval nuclear propulsion plants includes all of USML Category VI(e). Naval nuclear propulsion information is technical data that concerns the design, arrangement, development, manufacture, testing, operation, administration, training, maintenance, and repair of the propulsion plants of naval nuclear-powered ships and prototypes, including the associated shipboard and shore-based nuclear support facilities. Examples of defense articles covered by this exclusion include nuclear propulsion plants and nuclear submarine technologies or systems; nuclear powered vessels (*see* USML Categories VI and XX).

Note 8: Examples of gas turbine engine hot section exempted defense article components and technology are combustion chambers/lines; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; advanced cooled augmenters; and advanced cooled nozzles. Examples of gas turbine engine hot section developmental technologies are Integrated High Performance Turbine Engine Technology (IHPTET), Versatile, Affordable Advanced Turbine Engine (VAATE), Ultra-Efficient Engine Technology (UEET).

Note 9: Examples of countermeasures and counter-countermeasures related to defense articles not exportable under the AS or UK Treaty exemptions are:

- IR countermeasures;
- Classified techniques and capabilities;
- Exports for precision radio frequency location that directly or indirectly supports fire control and is used for situation awareness, target identification, target acquisition, and weapons targeting and Radio Direction Finding (RDF) capabilities. Precision RF location is defined as angle of arrival of less than five degrees (RMS) ad [sic][344] RF emitter location of less than ten percent range error;
- Providing the capability to reprogram; and
- Acoustics (including underwater), active and passive countermeasures, and counter-countermeasures.

Note 10: Examples of defense articles covered by this exclusion include underwater acoustic vector sensors; acoustic reduction; off-board, underwater, active and passive sensing, propeller/propulsor technologies; fixed mobile/floating/powered detection systems which include in-buoy signal processing for target detection and classification; autonomous underwater vehicles capable of long endurance in ocean environments (manned submarines excluded)j; automated control algorithms embedded in on-board autonomous platforms which enable (a) group behaviors for target detection and classification, (b) adaptation to the environment or tactical situation for enhancing target detection and classification; "intelligent autonomy" algorithms which define the

[344] So in original. Should be "and".

status, group (greater than 2) behaviors, and responses to detection stimuli by autonomous, underwater vehicles; and low frequency, broad-band "acoustic color," active acoustic "fingerprint" sensing for the purpose of long range, single pass identification of ocean bottom objects, buried or otherwise. (Controlled under Category XI(a), (1) and (2) and in (b), (c) and (d)).

Note 11: The defense articles include construction of metallic or non-metallic materials or combinations thereof specially designed to provide protection for military systems. The phrase "suitable for military use" applies to any articles or material s which have been tested to level IIIA or above IAW NIJ standard 0108.01 or comparable national standard. This exclusion does not include military helmets, body armor, or other protective garments which may be exported IAW the terms of the AS or UK Treaties.

Note 12: Defense services or technical data specific to applied research (§125.4(c)(3)), design methodology (§125.4(c)(4)), engineering analysis (§125.4(c)(5)), or manufacturing know-how (§125.4(c)(6)) are not eligible for export under the Canadian exemptions. However, this exclusion this does not include defense services or technical data specific to build-to-print as defined in §125.4(c)(1), build/design-to-specification as defined in §125.4(c)(2), or basic research as defined in §125.4(c)(3), or maintenance (i.e., inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items parts or components, but excluding any modification, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item) of non-excluded defense articles which may be exported subject to other exclusions or terms of the Canadian exemptions.

Note 13: The term "libraries" (parametric technical databases) means a collection of technical information of a military nature, reference to which may enhance the performance of military equipment or systems.

Note 14: In order to utilize the authorized defense services under the Canadian exemption, the following must be complied with:

- The Canadian contractor and subcontractor must certify, in writing, to the U.S. exporter that the technical data and defense servies being ecported will be used only for an activity identified in Supplement No. 1 and in accordance with 22 CFR 126.5; and
- A written arrangement between the U.S. exporter and the Canadian recipient must:
- Limit delivery of the defense articles being produced directly to an identified manufacturer in the United States registered in accordance with part 122 of this subchapter; a Department or Agency of the United States Federal Government; a Canadian-registered person authorized in writing to manufacture defense articles by and for the Government of Canada; a Canadian Federal, Provincial, or Territorial Government;
- Prohibit the disclosure of the technical data to any other contractor or subcontractor who is not a Canadian-registered person;
- Provide that any subcontract contain all the limitations of §126.5;
- Require that the Canadian contractor, including subcontractors, destroy or return to the U.S. exporter in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of the contract, unless for use by a Canadian or United States Government entity that requires in writing the technical data be maintained. The U.S. exporter must be provided written certification that the technical data is being retained or destroyed; and
- Include a clause requiring that al [sic][345] documentation created from U.S. origin technical data contain the statement that "This document contains technical data, the use of which is restricted by the U.S. Arms Export Control Act. This data has been provided in accordance with, and is subject to, the limitations specified in §126.5 of the International Traffic in Arms Regulations (ITAR). By accepting this data, the consignee agrees to honor the requirements of the ITAR."

[345] So in original; probably intended to be "all".

- The U.S. exporter must provide the Directorate of Defense Trade Controls a semi-annual report of all their on-going activities authorized under §126.5. The report shall include the article(s) being produced; the end-user(s); the end item into which the product is to be incorporated; the intended end-use of the product; the name and address of all the Canadian contractors and subcontractors.

NOTE: An "X" in the chart indicates that the item is excluded from use under the exemption reference in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.

[76 FR 28174, May 16, 2011; 77 FR 16592, Mar. 21, 2012.]

PART 127: VIOLATIONS AND PENALTIES[346]

Section

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Authority: *Secs. 2, 38, and 42, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780.*
Source: *58 FR 39316, July 22, 1993, unless otherwise noted.*

§ 127.1 Violations[347]

(a) Without first obtaining the required license or other written approval from the Directorate of Defense Trade Controls, it is unlawful:

(1) To export or attempt to export from the United States any defense article or technical data or to furnish or attempt to furnish any defense service for which a license or written approval is required by this subchapter;

(2) To reexport or retransfer or attempt to reexport or retransfer any defense article, technical data, or defense service from one foreign end-user, end-use, or destination to another foreign end-user, end-use, or destination for which a license or written approval is required by this subchapter, including, as specified in § 126.16(h) and § 126.17(h) of this subchapter, any defense article, technical data, or defense service that was exported from the United States without a license pursuant to any exemption under this subchapter;

(3) To import or attempt to import any defense article whenever a license is required by this subchapter; or

(4) To conspire to export, import, reexport, retransfer, furnish or cause to be exported,[348] imported,

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[346] This part was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012).

[347] The equivalent in the Export Administration Regulations to this section is 15 CFR 764.2. *See also* 18 U.S.C.A. § 554(a), stating in part: **"**Whoever fraudulently or knowingly exports or sends from the United States, or attempts to export or send from the United States, any merchandise, article, or object contrary to any law or regulation of the United States, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise, article or object, prior to exportation, knowing the same to be intended for exportation contrary to any law or regulation of the United States, shall be fined under this title, imprisoned not more than 10 years, or both."

[348] Regarding the offense of unlawfully attempting to export, *see* United States v. Chi Tong Kuok, 671 F.3d 931 (Jan. 17, 2012) (citing 22 U.S.C. § 2778(b)(2); 22 C.F.R. § 127.1(a)(1)). *See* Williams Mullen Int'l Business Compliance Update (Mar. 15, 2012) *, available at* <http://www.williamsmullen.com/files/Publication/fad08304-75a2-4f65-bbd5-7c30f56a072a/Presentation/PublicationAttachment/1023c5c4-2844-4712-aadc-862e0e013330/international-business-compliance-update-itar.pdf#page=10> (last viewed Sept. 1, 2012), providing the following commentary on the Kuok as follows:

> On January 17, 2012, the 9th Circuit reversed the conviction of Chi Tong Kuok, a citizen of Macau, on a charge of attempting to export a military encryption device from the United States in violation of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) 22 C.F.R. § 127.1(a)(1). Kuok had contacted various U.S. and other companies in an effort to obtain export-controlled communications equipment; one of those companies alerted U.S. Customs and Immigration Enforcement (ICE) of Kuok's efforts. This led to an investigation in which government agents raided other U.S. companies. Ultimately, undercover ICE agents offered to sell Kuok the equipment and deliver it to him in Panama. Kuok told the ICE agents that he would be travelling through Atlanta to get to Panama. The ICE agents arranged for Kuok's arrest in Atlanta for AECA and ITAR violations. On its face, this scenario appears to involve a straightforward violation of U.S. export control laws. Kuok was attempting to cause sensitive equipment to be shipped illegally from the United States to a foreign location. The ITAR states [at §127.1(a)] that it is unlawful "to export or attempt to export [defense articles] from the United States . . . ." However, in this case, Kuok neither exported nor attempted to export the items; *rather he was attempting to cause others to export the items.*[Emphasis added.] The 9th Circuit held that there was no violation because it is not a crime to attempt to cause another person to violate the AECA and the ITAR. [Citation removed.] The key to the court's analysis was the presence and role of the undercover officer, who, by definition, worked for the

reexported, retransferred or furnished, any defense article, technical data, or defense service for which a license or written approval is required by this subchapter.

(b) It is unlawful:

(1) To violate any of the terms or conditions of a license or approval granted pursuant to this subchapter, any exemption contained in this subchapter, or any rule or regulation contained in this subchapter;

(2) To engage in the business of brokering activities for which registration and a license or written approval is required by this subchapter without first registering or obtaining the required license or written approval from the Directorate of Defense Trade Controls. For the purposes of this subchapter, engaging in the business of brokering activities requires only one occasion of engaging in an activity as reflected in § 129.2(b) of this subchapter.

(3) To engage in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services without complying with the registration requirements. For the purposes of this subchapter, engaging in the business of manufacturing or exporting defense articles or furnishing defense services requires only one occasion of manufacturing or exporting a defense article or furnishing a defense service.

(c) Any person who is granted a license or other approval or who acts pursuant to an exemption under this subchapter is responsible for the acts of employees, agents, and all authorized persons to whom possession of the defense article or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article or technical data abroad. All persons abroad subject to U.S. jurisdiction who obtain temporary or permanent custody of a defense article exported from the United States or produced under an agreement described in part 124 of this subchapter, and irrespective of the number of intermediate transfers, are bound by the regulations of this subchapter in the same manner and to the same extent as the original owner or transferor.

(d) A person with knowledge that another person is then ineligible[349] pursuant to §§ 120.1(c) or 126.7 of this subchapter may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to, and written authorization from, the Directorate of Defense Trade Controls:

(1) Apply for, obtain, or use any export control document as defined in § 127.2(b) of this subchapter for such ineligible person; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any transaction which may involve any defense article or the furnishing of any defense service for which a license or approval is required by this subchapter or an exemption is available under this subchapter for export, where such ineligible person may obtain any benefit therefrom or have any direct or indirect interest therein.

(e) No person may knowingly or willfully cause, or aid, abet,[350] counsel, demand, induce, procure, or permit the

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government and thus lacked criminal intent to export or attempt to export. This circumstance allowed the defendant to claim impossibility [Citation removed.] because his efforts did not cause an actual attempt to export the items unlawfully. A practical implication of this holding is that the government may not be able to prosecute a lone defendant dealing with an undercover agent, in the absence of an actual export, and therefore may need to modify its investigative strategies, for example, to ensure that an actual exportation occurs before arrest. In addition, a solo actor who attempts to bribe or otherwise enlist an employee of a U.S. company in an export scheme, but fails to cause any other person to join the scheme, may not have committed a crime, because attempting to cause another person to violate the law is not actionable.

[349] Practice tip: Knowledge of ineligibility may be assumed if party's name is posted on the General Services Administration Excluded Parties List System (EPLS), an electronic, web-based system accessible at http://www.gsa.gov/portal/content/101991 (last viewed Sept. 1, 2012), that identifies those parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and non-financial assistance and benefits. The EPLS keeps the user community aware of administrative and statutory exclusions across the entire government, suspected terrorists, and individuals barred from entering the United States. Users are able to search, view, and download both current and archived exclusions.

[350] In United States v. Yakou, 393 F.3d 231 (C.A.D.C., 2005), defendant, an alien who had obtained lawful permanent resident status, but was living in Iraq, was charged with engaging in brokering activities in violation of the AECA and the ITAR. The Court of appeals upheld the dismissal of the indictment on the grounds that (1) district court could determine prior to trial, on defendant's motion to dismiss the indictment, whether defendant was a "U.S. Person" for purposes of AECA and ITAR; (2) defendant's LPR status could be lost without

commission of, any act prohibited by, or the omission of any act required by, 22 U.S.C. 2778 and 2779, or any regulation, license, approval, or order issued thereunder.

[58 FR 39316, July 22, 1993, as amended at 71 FR 20548, Apr. 21, 2006]

§ 127.2 Misrepresentation and Omission of Facts

(a) It is unlawful to use or attempt to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting, transferring, reexporting, retransferring, obtaining, or furnishing any defense article, technical data, or defense service. Any false statement, misrepresentation, or omission of material fact in an export or temporary import control document will be considered as made in a matter within the jurisdiction of a department or agency of the United States for the purposes of 18 U.S.C. 1001, 22 U.S.C. 2778, and 22 U.S.C. 2779.

(b) For the purpose of this section, *export or temporary import control documents* include the following:

(1) An application for a permanent export, reexport, retransfer, or a temporary import license and supporting documents.

(2) Electronic Export Information filing.

(3) Invoice.

(4) Declaration of destination.

(5) Delivery verification.

(6) Application for temporary export.

(7) Application for registration.

(8) Purchase order.

(9) Foreign import certificate.

(10) Bill-of-lading.

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formal removal proceedings before the Board of Immigration Appeals (BIA) or filing of abandonment form; (3) defendant's lawful permanent Residence (LPR) status changed when he left the United States, and thus he was not a "U.S. person" under AECA or ITAR; and (4) defendant could not aid and abet his son's alleged violation of AECA and ITAR, stating in part:

> To adopt the United States's position that Yakou can be charged with aiding and abetting alleged brokering activities in Iraq, even if Congress and the implementing regulations did not contemplate such coverage, would greatly expand the scope of the registration and licensing requirements by regulating not just "U.S. person[s], wherever located, and any foreign person located in the United States or otherwise subject to the jurisdiction of the United States," 22 C.F.R. § 129.3(a), but also regulating non-U.S. persons located and acting outside the United States. Congress has not expressed with the requisite clarity that it sought to apply the Brokering Amendment and, by extension the ITAR's brokering provisions, in such an extraterritorial manner, *see ARAMCO,* 499 U.S. at 248, 111 S.Ct. at 1230; *Delgado-Garcia,* 374 F.3d at 1344-45; *Nieman v. Dryclean U.S.A. Franchise Co.,* 178 F.3d 1126, 1129 (11th Cir.1999), as a non-U.S. person outside the United States is not punishable as a principal except where subject to the jurisdiction of the United States, *see* 22 C.F.R. § 129.3(a); House Report at 11. Accordingly, while the Brokering Amendment and the ITAR have extraterritorial effect for "U.S. persons," they do not have such effect for "foreign persons," like Yakou, whose conduct occurs outside the United States. To apply the aiding and abetting statute to Yakou's conduct in Iraq would ***244 **221** confer extraterritorial jurisdiction far beyond that which is available directly under the Brokering Amendment and the ITAR.

The dissenting opinion in the Yakou case, however, stated in part:

> In upholding the district court's dismissal of the aiding and abetting count, the majority declares that "Congress ... did not go to such lengths to exclude non-U.S. persons from direct extraterritorial liability under the Brokering Amendment only to permit these same persons to be charged under an aiding-and-abetting statute for the identical conduct...." Maj. Op. at 244. The district court concluded that " 'facilitating' a brokering act is equivalent to 'aiding and abetting' such an act" and therefore, without jurisdiction over Yakou as a principal, the aiding and abetting count against him could not stand. Dist. Ct. Mem. Op. at 17 (April 9, 2004) [YA 30]. In other statutory contexts, however-and in the absence of the jurisdictional defect that is dispositive here-the inclusion of "facilitating" as an illegal act has not prevented the government from successfully charging a defendant with aiding and abetting a facilitation. For example, paragraph two of 18 U.S.C. § 545 makes it a crime for any person to knowingly "facilitate [ ] the transportation, concealment, or sale" of smuggled goods after importation. *Id.* In *United States v. Dodd,* 43 F.3d 759 (1st Cir.1995), the First Circuit upheld Dodd's aiding and abetting conviction based on his having *facilitated* the transportation of smuggled weapons. *Id.* at 762-3. Thus, the majority's declaration should not, I believe, be read to mean that an aiding and abetting conviction can never be secured under the Brokering Amendment of the Arms Export Control Act (AECA).

(*Id.,* Henderson, J., dissenting).

(11) Airway bill.

(12) Nontransfer and use certificate.

(13) Any other document used in the regulation or control of a defense article, defense service or technical data for which a license or approval is required by this subchapter.

(14) Any other shipping document that has information related to the export of the defense article or defense service.

§ 127.3 Penalties for Violations

Any person who willfully:

(a) Violates any provision of § 38 or § 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or any rule or regulation issued under either § 38 or § 39 of the Act, or any undertaking specifically required by part 124 of this subchapter; or

(b) In a registration, license application, or report required by § 38 or § 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or by any rule or regulation issued under either section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be subject to a fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).[351]

[58 FR 39316, July 22, 1993, as amended at 71 FR 20549, Apr. 21, 2006]

§ 127.4 Authority of U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers

(a) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers[352] may take appropriate action to ensure observance of this subchapter as to the export or the attempted export or the temporary import of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft. This applies whether the export is authorized by license or by written approval issued under this subchapter or by exemption.

(b) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers have the authority to investigate, detain or seize any export or attempted export of defense articles or technical data contrary to this subchapter.

(c) Upon the presentation to a U.S. Customs and Border Protection Officer of a license or written approval, or claim of an exemption, authorizing the export of any defense article, the customs officer may require the production of other relevant documents and information relating to the final export. This includes an invoice, order, packing list, shipping document, correspondence, instructions, and the documents otherwise required by the U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement.

(d) If an exemption under this subchapter is used or claimed to export, transfer, reexport or retransfer, furnish, or obtain a defense article, technical data, or defense service, law enforcement officers may rely upon the authorities noted, additional authority identified in the language of the exemption, and any other lawful means or authorities to investigate such a matter.

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[351] 22 U.S.C. 2778(c) states:
Criminal violations; punishment. Any person who willfully violates any provision of this section or section 2779 of this title, or any rule or regulation issued under either section, or who willfully, in a registration or license application or required report, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined for each violation not more than $1,000,000 or imprisoned not more than ten years, or both.

[352] The word "officer" includes any person authorized by law to perform the duties of the office; words importing the plural include the singular. 1 USC § 1.

[70 FR 50965, Aug. 29, 2005]

§ 127.5 Authority of the Defense Security Service

In the case of exports involving classified technical data or defense articles, the Defense Security Service may take appropriate action to ensure compliance with the Department of Defense National Industrial Security Program Operating Manual[353] (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). Upon a request to the Defense Security Service regarding the export of any classified defense article or technical data, the Defense Security Service official or a designated government transmittal authority may require the production of other relevant documents and information relating to the proposed export.

[71 FR 20549, Apr. 21, 2006]

§ 127.6 Seizure and Forfeiture in Attempts at Illegal Exports

(a) An attempt to export from the United States any defense articles in violation of the provisions of this subchapter constitutes an offense punishable under section 401 of title 22 of the United States Code. Whenever it is known or there is probable cause to believe that any defense article is intended to be or is being or has been exported or removed from the United States in violation of law, such article and any vessel, vehicle or aircraft involved in such attempt is subject to seizure, forfeiture and disposition as provided in section 401 of title 22 of the United States Code.

(b) Similarly, an attempt to violate any of the conditions under which a temporary export or temporary import license was issued pursuant to this subchapter or to violate the requirements of § 123.2 of this subchapter also constitutes an offense punishable under section 401 of title 22 of the United States Code, and such article, together with any vessel, vehicle or aircraft involved in any such attempt is subject to seizure, forfeiture, and disposition as provided in section 401 of title 22 of the United States Code.

§ 127.7 Debarment

(a) *Debarment.* In implementing § 38 of the Arms Export Control Act, the Assistant Secretary of State for Political-Military Affairs may prohibit any person from participating directly or indirectly in the export of defense articles, including technical data, or in the furnishing of defense services for which a license or approval is required by this subchapter for any of the reasons listed below. Any such prohibition is referred to as a debarment for purposes of this subchapter. The Assistant Secretary of State for Political-Military Affairs shall determine the appropriate period of time for debarment, which shall generally be for a period of three years. However, reinstatement is not automatic and in all cases the debarred person must submit a request for reinstatement and be approved for reinstatement before engaging in any export or brokering activities subject to the Arms Export Control Act or this subchapter.

(b) *Grounds*

(1) The basis for a statutory debarment, as described in paragraph (c) of this section, is any conviction for violating the Arms Export Control Act (see § 127.3 of this subchapter) or any conspiracy to violate the Arms Export Control Act.

(2) The basis for administrative debarment, described in part 128 of this subchapter, is any violation of 22 U.S.C. 2778 or any rule or regulation issued thereunder when such a violation is of such a character as to provide a reasonable basis for the Directorate of Defense Trade Controls to believe that the violator cannot be relied upon to comply with the statute or these rules or regulations in the future, and when such violation is established in accordance with part 128 of this subchapter.

(c) *Statutory Debarment.* Section 38(g)(4) of the Arms Export Control Act prohibits the issuance of licenses to

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[353] DoD Manual 5220.22-M, National Industrial Security Program Operating Manual ("NISPOM") (Feb 28, 2006), *available at* http://www.dtic.mil/whs/directives/corres/pdf/522022m.pdf (last viewed Sept. 1, 2011).

persons who have been convicted of violating the U.S. criminal statutes enumerated in § 120.27 of this subchapter. Discretionary authority to issue licenses is provided, but only if certain statutory requirements are met. It is the policy of the Department of State not to consider applications for licenses or requests for approvals involving any person who has been convicted of violating the Arms Export Control Act or convicted of conspiracy to violate that Act for a three year period following conviction. Such individuals shall be notified in writing that they are debarred pursuant to this policy. A list of persons who have been convicted of such offenses and debarred for this reason shall be published periodically in the FEDERAL REGISTER. Debarment in such cases is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. The procedures of part 128 of this subchapter are not applicable in such cases.

(d) *Appeals.* Any person who is ineligible pursuant to paragraph (c) of this section may appeal to the Under Secretary of State for Arms Control and International Security for reconsideration of the ineligibility determination. The procedures specified in § 128.13 of this subchapter will be used in submitting a reconsideration appeal.

[58 FR 39316, July 22, 1993, as amended at 71 FR 20549, Apr. 21, 2006].

§ 127.8 Interim Suspension

(a) The Managing Director of the Directorate of Defense Trade Controls or the Director of the Office of Defense Trade Controls Compliance is authorized to order the interim suspension of any person when the Managing Director or Director of Compliance believes that grounds for debarment (as defined in § 127.7 of this part) exist and where and to the extent the Managing Director or Director of Compliance, as applicable, finds that interim suspension is reasonably necessary to protect world peace or the security or foreign policy of the United States. The interim suspension orders prohibit that person from participating directly or indirectly in the export of any defense article or defense service for which a license or approval is required by this subchapter. The suspended person shall be notified in writing as provided in § 127.7(c) of this part (statutory debarment) or § 128.3 of this subchapter (administrative debarment), whichever is appropriate. In both cases, a copy of the interim suspension order will be served upon that person in the same manner as provided in § 128.3 of this subchapter. The interim suspension order may be made immediately effective, without prior notice. The order will state the relevant facts, the grounds for issuance of the order, and describe the nature and duration of the interim suspension. No person may be suspended for a period exceeding 60 days, absent extraordinary circumstances, (*e.g.,* unless proceedings under § 127.7(c) of this part or under part 128 of this subchapter, or criminal proceedings, are initiated).

(b) A motion or petition to vacate or modify an interim suspension order may be filed at any time with the Under Secretary of State for Arms Control and International Security. After a final decision is reached, the Managing Director of the Directorate of Defense Trade Controls will issue an appropriate order disposing of the motion or petition and will promptly inform the respondent accordingly.

[71 FR 20549, Apr. 21, 2006]

§ 127.9 Applicability of Orders

For the purpose of preventing evasion, orders of the Assistant Secretary of State for Political-Military Affairs debarring a person under § 127.7, and orders of the Managing Director, Directorate of Defense Trade Controls or Director of the Office of Defense Trade Controls Compliance suspending a person under § 127.8, may be made applicable to any other person who may then or thereafter (during the term of the order) be related to the debarred person by affiliation, ownership, control, position of responsibility, or other commercial connection. Appropriate notice and opportunity to respond to the basis for the suspension will be given.

[71 FR 20550, Apr. 21, 2006]

§ 127.10 Civil Penalty

(a) The Assistant Secretary of State for Political-Military Affairs is authorized to impose a civil penalty in an

amount not to exceed that authorized by 22 U.S.C. 2778, 2779a, and 2780 for each violation of 22 U.S.C. 2778, 2779a and 2780, or any regulation, order, license, or written approval issued thereunder. This civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.

(b) The Directorate of Defense Trade Controls may make:

(1) The payment of a civil penalty under this section or

(2) The completion of any administrative action pursuant to this part 127 or 128 of this subchapter a prior condition for the issuance, restoration, or continuing validity of any export license or other approval.

[58 FR 39316, July 22, 1993, as amended at 62 FR 67276, Dec. 24, 1997; 71 FR 20550, Apr. 21, 2006]

§ 127.11 Past Violations

(a) *Presumption of Denial*. Pursuant to section 38 of the Arms Export Control Act, licenses or other approvals may not be granted to persons who have been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter or who are ineligible to receive any export licenses from any agency of the U.S. Government, subject to a narrowly defined statutory exception. This provision establishes a presumption of denial for licenses or other approvals involving such persons. This presumption is applied by the Directorate of Defense Trade Controls to all persons convicted or deemed ineligible in this manner since the effective date of the Arms Export Control Act (Public Law 94-329; 90 Stat. 729) (June 30, 1976).

(b) *Policy*. An exception to the policy of the Department of State to deny applications for licenses or other approvals that involve persons described in paragraph (a) of this section shall not be considered unless there are extraordinary circumstances surrounding the conviction or ineligibility to export, and only if the applicant demonstrates, to the satisfaction of the Assistant Secretary of State for Political-Military Affairs, that the applicant has taken appropriate steps to mitigate any law enforcement and other legitimate concerns, and to deal with the causes that resulted in the conviction, ineligibility, or debarment. Any person described in paragraph (a) of this section who wishes to request consideration of any application must explain, in a letter to the Managing Director, Directorate of Defense Trade Controls, the reasons why the application should be considered. If the Assistant Secretary of State for Political-Military Affairs concludes that the application and written explanation have sufficient merit, the Assistant Secretary shall consult with the Office of the Legal Adviser and the Department of the Treasury regarding law enforcement concerns, and may also request the views of other departments, including the Department of Justice. If the Directorate of Defense Trade Controls does grant the license or other approval, subsequent applications from the same person need not repeat the information previously provided but should instead refer to the favorable decision.

(c) *Debarred persons.* Persons debarred pursuant to § 127.7(c) (statutory debarment) may not utilize the procedures provided by this section while the debarment is in force. Such persons may utilize only the procedures provided by § 127.7(d) of this part.

[71 FR 20550, Apr. 21, 2006]

§ 127.12 Voluntary Disclosures

(a) General policy. The Department strongly encourages the disclosure of information to the Directorate of Defense Trade Controls by persons (see Sec. 120.14 of this subchapter) that believe they may have violated any export control provision of the Arms Export Control Act, or any regulation,[354] order, license, or other authorization issued under the authority of the Arms Export Control Act. The Department may consider a voluntary disclosure as a mitigating factor in determining the administrative penalties, if any, that should be imposed. Failure to report a violation may result in circumstances detrimental to U.S. national security and

[354] Regarding disclosures of violations of licensing of temporary imports of hardware that would have been eligible for a DSP-61 or use of a § 123.4(a) exemption, DDTC has posted guidance for obtaining permission to return "surprise" temporary imports sent to U.S. repair facilities without the required use of a DSP-61 or § 123.4(a) exemption. State Dept., DDTC, TEMPORARY IMPORT VIOLATIONS (Undated; posted Nov. 25, 2009), *available at:* http://www.pmddtc.state.gov/licensing/documents/WebNotice_TemporaryImportViolations.pdf (last viewed Sept. 1, 2012). See notice printed at footnote for § 123.4(a), *supra.*

foreign policy interests, and will be an adverse factor in determining the appropriate disposition of such violations.

(b) Limitations.

(1) The provisions of this section apply only when information is provided to the Directorate of Defense Trade Controls for its review in determining whether to take administrative action under part 128 of this subchapter concerning a violation of the export control provisions of the Arms Export Control Act and these regulations.

(2) The provisions of this section apply only when information is received by the Directorate of Defense Trade Controls for review prior to such time that either the Department of State or any other agency, bureau, or department of the United States Government obtains knowledge of either the same or substantially similar information from another source and commences an investigation or inquiry that involves that information, and that is intended to determine whether the Arms Export Control Act or these regulations, or any other license, order, or other authorization issued under the Arms Export Control Act has been violated.

(3) The violation(s) in question, despite the voluntary nature of the disclosure, may merit penalties, administrative actions, sanctions, or referrals to the Department of Justice to consider criminal prosecution. In the latter case, the Directorate of Defense Trade Controls will notify the Department of Justice of the voluntary nature of the disclosure, although the Department of Justice is not required to give that fact any weight. The Directorate of Defense Trade Controls has the sole discretion to consider whether ``voluntary disclosure," in context with other relevant information in a particular case, should be a mitigating factor in determining what, if any, administrative action will be imposed. Some of the mitigating factors the Directorate of Defense Trade Controls may consider are:

(i) Whether the transaction would have been authorized, and under what conditions, had a proper license request been made;

(ii) Why the violation occurred;

(iii) The degree of cooperation with the ensuing investigation;

(iv) Whether the person has instituted or improved an internal compliance program to reduce the likelihood of future violation;

(v) Whether the person making the disclosure did so with the full knowledge and authorization of the person's senior management. (If not, then the Directorate will not deem the disclosure voluntary as covered in this section.)

(4) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person in any civil, criminal, administrative, or other matter.

(5) Nothing in this section shall be interpreted to negate or lessen the affirmative duty pursuant to §§ 126.1(e), 126.16(h)(5), and 126.17(h)(5) of this subchapter upon persons to inform the Directorate of Defense Trade Controls of the actual or final sale, export, transfer, reexport, or retransfer of a defense article, technical data, or defense service to any country referred to in § 126.1 of this subchapter, any citizen of such country, or any person acting on its behalf.

(c) *Notification*

(1) Any person wanting to disclose information that constitutes a voluntary disclosure should, in the manner outlined below, initially notify the Directorate of Defense Trade Controls immediately after a violation is discovered and then conduct a thorough review of all defense trade transactions where a violation is suspected.

(i) If the notification does not contain all the information required by 127.12(c)(2) of this section, a full disclosure must be submitted within 60 calendar days of the notification, or the Directorate of Defense Trade Controls will not deem the notification to qualify as a voluntary disclosure.

(ii) If the person is unable to provide a full disclosure within the 60 calendar day deadline, an empowered official (see Sec. 120.25 of this subchapter) or a senior officer may request an extension of time in writing. A request for an extension must specify what information required by Sec. 127.12(c)(2) of this section could not be immediately provided and the reasons why.

(iii) Before approving an extension of time to provide the full disclosure, the Directorate of Defense Trade Controls may require the requester to certify in writing that they will provide the full disclosure within a specific time period.

(iv) Failure to provide a full disclosure within a reasonable time may result in a decision by the Directorate of Defense Trade Controls not to consider the notification as a mitigating factor in determining the appropriate disposition of the violation. In addition, the Directorate of Defense Trade Controls may direct the requester to furnish all relevant information surrounding the violation.

(2) Notification of a violation must be in writing and should include the following information:

(i) A precise description of the nature and extent of the violation (*e.g.*, an unauthorized shipment, doing business with a party denied U.S. export privileges, etc.);

(ii) The exact circumstances surrounding the violation (a thorough explanation of why, when, where, and how the violation occurred);

(iii) The complete identities and addresses of all persons known or suspected to be involved in the activities giving rise to the violation (including mailing, shipping, and e-mail addresses; telephone and fax/facsimile numbers; and any other known identifying information);

(iv) Department of State license numbers, exemption citation, or description of any other authorization, if applicable;

(v) U.S. Munitions List category and subcategory, product description, quantity, and characteristics or technological capability of the hardware, technical data or defense service involved;

(vi) A description of corrective actions already undertaken that clearly identifies the new compliance initiatives implemented to address the causes of the violations set forth in the voluntary disclosure and any internal disciplinary action taken; and how these corrective actions are designed to deter those particular violations from occurring again;

(vii) The name and address of the person making the disclosure and a point of contact, if different, should further information be needed.

(3) Factors to be addressed in the voluntary disclosure include, for example, whether the violation was intentional or inadvertent; the degree to which the person responsible for the violation was familiar with the laws and regulations, and whether the person was the subject of prior administrative or criminal action under the AECA; whether the violations are systemic; and the details of compliance measures, processes and programs, including training, that were in place to prevent such violations, if any. In addition to immediately providing written notification, persons are strongly urged to conduct a thorough review of all export-related transactions where a possible violation is suspected.

(d) *Documentation.* The written disclosure should be accompanied by copies of substantiating documents. Where appropriate, the documentation should include, but not be limited to:

(1) Licensing documents (*e.g.*, license applications, export licenses, and end-user statements), exemption citation, or other authorization description, if any;

(2) Shipping documents (*e.g.*, Electronic Export Information filing, including the Internal Transaction Number, air waybills, and bills of laden, invoices, and any other associated documents); and

(3) Any other relevant documents must be retained by the person making the disclosure until the Directorate of Defense Trade Controls requests them or until a final decision on the disclosed information has been made.

(e) Certification. A certification must be submitted stating that all of the representations made in connection with the voluntary disclosure are true and correct to the best of that person's knowledge and belief. Certifications should be executed by an empowered official (See Sec. 120.25 of this subchapter), or by a senior officer (*e.g.*, chief executive officer, president, vice-president, comptroller, treasurer, general counsel, or member of the board of directors). If the violation is a major violation, reveals a systemic pattern of violations, or reflects the absence of an effective compliance program, the Directorate of Defense Trade Controls may require that such certification be made by a senior officer of the company.

(f) Oral presentations. Oral presentation is generally not necessary to augment the written presentation. However, if the person making the disclosure believes a meeting is desirable, a request should be included with the written presentation.

(g) Send voluntary disclosures to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls. Consult the Directorate of Defense Trade Controls Web site at http://www.pmddtc.state.gov for the appropriate street address.[355]

[58 FR 39316, July 22, 1993, as amended at 70 FR 34655, June 15, 2005; 71 FR 20550, Apr. 21, 2006; 72 FR 70778, Dec. 13, 2007]

[355] DDTC addresses are at http://www.pmddtc.state.gov/about/contact_information.html (Sep. 28, 2011) (Last viewed Sept. 1, 2012).

PART 128: ADMINISTRATIVE PROCEDURES

Section

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Authority: *Secs. 2, 38, 40, 42, and 71, Arms Export Control Act. 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 22 U.S.C. 2651a; E.O. 12291, 46 FR 1981.*
Source: *58 FR 39320, July 22, 1993, unless otherwise noted.*

§ 128.1 Exclusion of Functions from the Administrative Procedure Act

The Arms Export Control Act authorizes the President to control the import and export of defense articles and services in furtherance of world peace and the security and foreign policy of the United States. It authorizes the Secretary of State to make decisions on whether license applications or other written requests for approval shall be granted, or whether exemptions may be used. It also authorizes the Secretary of State to revoke, suspend or amend licenses or other written approvals whenever the Secretary deems such action to be advisable. The administration of the Arms Export Control Act is a foreign affairs function encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act and is thereby expressly exempt from various provisions of that Act. Because the exercising of the foreign affairs function, including the decisions required to implement the Arms Export Control Act, is highly discretionary, it is excluded from review under the Administrative Procedure Act.

[61 FR 48831, Sept. 17, 1996]

§ 128.2 Administrative Law Judge

The Administrative Law Judge referred to in this part is an Administrative Law Judge appointed by the Department of State. The Administrative Law Judge is authorized to exercise the powers and perform the duties provided for in §§ 127.7, 127.8, and 128.3 through 128.16 of this subchapter.

[71 FR 20551, Apr. 21, 2006]

§ 128.3 Institution of Administrative Proceedings

(a) *Charging letters.* The Managing Director, Directorate of Defense Trade Controls, with the concurrence of the Office of the Legal Adviser, Department of State, may initiate proceedings to impose debarment or civil penalties in accordance with § 127.7 or § 127.10 of this subchapter, respectively. Administrative proceedings shall be initiated by means of a charging letter. The charging letter will state the essential facts constituting the alleged violation and refer to the regulatory or other provisions involved. It will give notice to the respondent to answer the charges within 30 days, as provided in § 128.5(a), and indicate that a failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he or she is entitled to an oral hearing if a written demand for one is filed with the answer or within seven (7) days after service of the answer.

The respondent will also be informed that he or she may, if so desired, be represented by counsel of his or her choosing. Charging letters may be amended from time to time, upon reasonable notice.

(b) *Service.* A charging letter is served upon a respondent:

(1) If the respondent is a resident of the United States, when it is mailed postage prepaid in a wrapper addressed to the respondent at that person's last known address; or when left with the respondent or the agent or employee of the respondent; or when left at the respondent's dwelling with some person of suitable age and discretion then residing herein; or

(2) If the respondent is a non-resident of the United States, when served upon the respondent by any of the foregoing means. If such methods of service are not practicable or appropriate, the charging letter may be tendered for service on the respondent to an official of the government of the country wherein the respondent resides, provided that there is an agreement or understanding between the United States Government and the government of the country wherein the respondent resident permitting this action.

[61 FR 48831, Sept. 17, 1996, as amended at 71 FR 20551, Apr. 21, 2006]

§ 128.4 Default

(a) *Failure to Answer.* If the respondent fails to answer the charging letter, the respondent may be held in default. The case shall then be referred to the Administrative Law Judge for consideration in a manner as the Administrative Law Judge may consider appropriate. Any order issued shall have the same effect as an order issued following the disposition of contested charges.

(b) *Petition to Set Aside Defaults.* Upon showing good cause, any respondent against whom a default order has been issued may apply to set aside the default and vacate the order entered thereon. The petition shall be submitted to [sic][356] duplicate to the Assistant Secretary for Political-Military Affairs, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. The Director will refer the petition to the Administrative Law Judge for consideration and a recommendation. The Administrative Law Judge will consider the application and may order a hearing and require the respondent to submit further evidence in support of his or her petition. The filing of a petition to set aside a default does not in any manner affect an order entered upon default and such order continues in full force and effect unless a further order is made modifying or terminating it.

[61 FR 48832, Sept. 17, 1996]

§ 128.5 Answer and Demand for Oral Hearing

(a) *When to Answer.* The respondent is required to answer the charging letter within 30 days after service.

(b) *Contents of Answer.* An answer must be responsive to the charging letter. It must fully set forth the nature of the respondent's defense or defenses. In the answer, the respondent must admit or deny specifically each separate allegation of the charging letter, unless the respondent is without knowledge, in which case the respondent's answer shall so state and the statement shall operate as denial. Failure to deny or controvert any particular allegation will be deemed an admission thereof. The answer may set forth such additional or new matter as the respondent believes support a defense or claim of mitigation. Any defense or partial defense not specifically set forth in an answer shall be deemed waived. Evidence offered thereon by the respondent at a hearing may be refused except upon good cause being shown. If the respondent does not demand an oral hearing, he or she shall transmit, within seven (7) days after the service of his or her answer, original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue. If any such materials are in language[357] other than English, translations into English shall be submitted at the same time.

(c) *Submission of Answer.* The answer, written demand for oral hearing (if any) and supporting evidence required by § 128.5(b) shall be in duplicate and mailed or delivered to the designated Administrative Law

[356] So in original. Should be "in," not "to."
[357] So in original. Probably should be "in a language."

Judge. A copy shall be simultaneously mailed to the Managing Director, Directorate of Defense Trade Controls, SA-1, Room 1200, Department of State, Washington, DC 20522-0112, or delivered to 2401 Street, NW., Washington, DC addressed to Managing Director, Directorate of Defense Trade Controls, SA-1, Room 1200, Department of State, Washington, DC 20037.

[58 FR 39320, July 22, 1993, as amended at 61 FR 48832, Sept. 17, 1996; 71 FR 20551, Apr. 21, 2006]

§ 128.6 Discovery

(a) *Discovery by the Respondent*. The respondent, through the Administrative Law Judge, may request from the Directorate of Defense Trade Controls any relevant information, not privileged or otherwise not authorized for release, that may be necessary or helpful in preparing a defense. The Directorate of Defense Trade Controls may provide any relevant information, not privileged or otherwise not authorized for release, that may be necessary or helpful in preparing a defense. The Directorate of Defense Trade Controls may supply summaries in place of original documents and may withhold information from discovery if the interests of national security or foreign policy so require, or if necessary to comply with any statute, executive order or regulation requiring that the information not be disclosed. The respondent may request the Administrative Law Judge to request any relevant information, books, records, or other evidence, from any other person or government agency so long as the request is reasonable in scope and not unduly burdensome.

(b) *Discovery by the Directorate of Defense Trade Controls.* The Directorate of Defense Trade Controls or the Administrative Law Judge may make reasonable requests from the respondent of admissions of facts, answers to interrogatories, the production of books, records, or other relevant evidence, so long as the request is relevant and material.

(c) *Subpoenas*. At the request of any party, the Administrative Law Judge may issue subpoenas, returnable before him, requiring the attendance of witnesses and the production of books, records, and other documentary or physical evidence determined by he [sic][358] Administrative Law Judge to be relevant and material to the proceedings, reasonable in scope, and not unduly burdensome.

(d) *Enforcement of Discovery Rights.* If the Directorate of Defense Trade Controls fails to provide the respondent with information in its possession which is not otherwise available and which is necessary to the respondent's defense, the Administrative Law Judge may dismiss the charges on her or his own motion or on a motion of the respondent. If the respondent fails to respond with reasonable diligence to the requests for discovery by the Directorate of Defense Trade Controls or the Administrative Law Judge, on her or his own motion or motion of the Directorate of Defense Trade Controls, and upon such notice to the respondent as the Administrative Law Judge may direct, may strike respondent's answer and declare the respondent in default, or make any other ruling which the Administrative Law Judge deems necessary and just under the circumstances. If a third party fails to respond to the request for information, the Administrative Law Judge shall consider whether the evidence sought is necessary to a fair hearing, and if it is so necessary that a fair hearing may not be held without it, the Administrative Law Judge shall determine whether substitute information is adequate to protect the rights of the respondent. If the Administrative Law Judge decides that a fair hearing may be held with the substitute information, then the proceedings may continue. If not, then the Administrative Law Judge may dismiss the charges.

[61 FR 48832, Sept. 17, 1996, as amended at 71 FR 20551, Apr. 21, 2006]

§ 128.7 Pre-hearing Conference

(a)(1) The Administrative Law Judge may, upon his own motion or upon motion of any party, request the parties or their counsel to a pre-hearing conference to consider:

(i) Simplification of issues;

(ii) The necessity or desirability of amendments to pleadings;

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[358] So in original. Should be “the”.

(iii) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or

(iv) Such other matter as may expedite the disposition of the proceeding.

(2) The Administrative Law Judge will prepare a summary of the action agreed upon or taken at the conference, and will incorporate therein any written stipulations or agreements made by the parties.

(3) The conference proceedings may be recorded magnetically or taken by a reporter and transcribed, and filed with the Administrative Law Judge.

(b) If a conference is impracticable, the Administrative Law Judge may request the parties to correspond with the person to achieve the purposes of a conference. The Administrative Law Judge shall prepare a summary of action taken as in the case of a conference.

[61 FR 48832, Sept. 17, 1996, as amended at 71 FR 20551, Apr. 21, 2006]

§ 128.8 Hearings

(a) A respondent who had not filed a timely written answer is not entitled to a hearing, and the case may be considered by the Administrative Law Judge as provided in § 128.4(a). If any answer is filed, but no oral hearing demanded, the Administrative Law Judge may proceed to consider the case upon the written pleadings and evidence available. The Administrative Law Judge may provide for the making of the record in such manner as the Administrative Law Judge deems appropriate. If respondent answers and demands an oral hearing, the Administrative Law Judge, upon due notice, shall set the case for hearing, unless a respondent has raised in his answer no issues of material fact to be determined. If respondent fails to appear at a scheduled hearing, the hearing nevertheless may proceed in respondent's absence. The respondent's failure to appear will not affect the validity of the hearing or any proceedings or action thereafter.

(b) The Administrative Law Judge may administer oaths and affirmations. Respondent may be represented by counsel. Unless otherwise agreed by the parties and the Administrative Law Judge the proceeding will be taken by a reporter or by magnetic recording, transcribed, and filed with the Administrative Law Judge. Respondent may examine the transcript and may obtain a copy upon payment of proper costs.

[61 FR 48833, Sept. 17, 1996]

§ 128.9 Proceedings Before and Report of Administrative Law Judge

(a) The Administrative Law Judge may conform any part of the proceedings before him or her to the Federal Rules of Civil Procedure. The record may be made available in any other administrative or other proceeding involving the same respondent.

(b) The Administrative Law Judge, after considering the record, will prepare a written report. The report will include findings of fact, findings of law, a finding whether a law or regulation has been violated, and the Administrative Law Judge's recommendations. It shall be transmitted to the Assistant Secretary for Political-Military Affairs, Department of State.

[61 FR 48833, Sept. 17, 1996]

§ 128.10 Disposition of Proceedings

Where the evidence is not sufficient to support the charges, the Managing Director, Directorate of Defense Trade Controls or the Administrative Law Judge will dismiss the charges. Where the Administrative Law Judge finds that a violation has been committed, the Administrative Law Judge's recommendation shall be advisory only. The Assistant Secretary of State for Political-Military Affairs will review the record, consider the report of the Administrative Law Judge, and make an appropriate disposition of the case. The Managing Director may issue an order debarring the respondent from participating in the export of defense articles or technical data or the furnishing of defense services as provided in § 127.7 of this subchapter, impose a civil penalty as provided in § 127.10 of this subchapter, or take such action as the Administrative Law Judge may recommend. Any debarment order will be effective for the period of time specified therein and may contain such additional terms

and conditions as are deemed appropriate. A copy of the order together with a copy of the Administrative Law Judge's report will be served upon the respondent.

[71 FR 20552, Apr. 21, 2006]

§ 128.11 Consent Agreements

(a) The Directorate of Defense Trade Controls and the respondent may, by agreement, submit to the Administrative Law Judge a proposal for the issuance of a consent order. The Administrative Law Judge will review the facts of the case and the proposal and may conduct conferences with the parties and may require the presentation of evidence in the case. If the Administrative Law Judge does not approve the proposal, the Administrative Law Judge will notify the parties and the case will proceed as though no consent proposal had been made. If the proposal is approved, the Administrative Law Judge will report the facts of the case along with recommendations to the Assistant Secretary of State for Political-Military Affairs. If the Assistant Secretary of State for Political-Military Affairs does not approve the proposal, the case will proceed as though no consent proposal had been made. If the Assistant Secretary of State for Political-Military Affairs approves the proposal, an appropriate order may be issued.

(b) Cases may also be settled prior to service of a charging letter. In such an event, a proposed charging letter shall be prepared, and a consent agreement and order shall be submitted for the approval and signature of the Assistant Secretary for Political-Military Affairs, and no action by the Administrative Law Judge shall be required. Cases which are settled may not be reopened or appealed.

[61 FR 48833, Sept. 17, 1996, as amended at 71 FR 20552, Apr. 21, 2006]

§ 128.12 Rehearings

The Administrative Law Judge may grant a rehearing or reopen a proceeding at any time for the purpose of hearing any relevant and material evidence which was not known or obtainable at the time of the original hearing. A report for rehearing or reopening must contain a summary of such evidence, and must explain the reasons why it could not have been presented at the original hearing. The Administrative Law Judge will inform the parties of any further hearing, and will conduct such hearing and submit a report and recommendations in the same manner as provided for the original proceeding (Described in § 128.10).

[61 FR 48833, Sept. 17, 1996]

§ 128.13 Appeals

(a) *Filing of Appeals.* An appeal must be in writing, and be addressed to and filed with the Under Secretary of State for Arms Control and International Security, Department of State, Washington, DC 20520. An appeal from a final order denying export privileges or imposing civil penalties must be filed within 30 days after receipt of a copy of the order. If the Under Secretary cannot for any reason act on the appeal, he or she may designate another Department of State official to receive and act on the appeal.

(b) *Grounds and Conditions for Appeal*. The respondent may appeal from the debarment or from the imposition of a civil penalty (except the imposition of civil penalties pursuant to a consent order pursuant to § 128.11) upon the ground: (1) that the findings of a violation are not supported by any substantial evidence; (2) that a prejudicial error of law was committed: or (3) that the provisions of the order are arbitrary, capricious, or an abuse of discretion. The appeal must specify upon which of these grounds the appeal is based and must indicate from which provisions of the order the appeal is taken. An appeal from an order issued upon default will not be entertained if the respondent has failed to seek relief as provided in § 128.4(b).

(c) *Matters Considered on Appeal.* An appeal will be considered upon the basis of the assembled record. This record consists of (but is not limited to) the charging letter, the respondent's answer, the transcript or magnetic recording of the hearing before the Administrative Law Judge, the report of the Administrative Law Judge, the order of the Assistant Secretary of State for Political-Military Affairs, and any other relevant documents involved in the proceedings before the Administrative Law Judge. The Under Secretary of State for Arms Control and International Security may direct a rehearing and reopening of the proceedings before the

Administrative Law Judge if he or she finds that the record is insufficient or that new evidence is relevant and material to the issues and was not known and was not reasonably available to the respondent at the time of the original hearings.

(d) *Effect of Appeals.* The taking of an appeal will not stay the operation of any order.

(e) *Preparation of Appeals*

(1) *General Requirements.* An appeal shall be in letter form. The appeal and accompanying material should be filed in duplicate, unless otherwise indicated, and a copy simultaneously mailed to the Managing Director, Directorate of Defense Trade Controls, SA-1, Room 1200, Department of State, Washington, DC 20522-0112 or delivered to 2401 E Street, NW., Washington, DC addressed to Managing Director, Directorate of Defense Trade Controls, SA-1, Room 1200, Department of State, Washington, DC 20037.

(2) *Oral presentation.* The Under Secretary of State for Arms Control and International Security may grant the appellant an opportunity for oral argument and will set the time and place for oral argument and will notify the parties, ordinarily at least 10 days before the date set.

(f) *Decisions.* All appeals will be considered and decided within a reasonable time after they are filed. An appeal may be granted or denied in whole or in part, or dismissed at the request of the appellant. The decision of the Under Secretary of State for Arms Control and International Security will be final.

[58 FR 39320, July 22, 1993, as amended at 61 FR 48833, Sept. 17, 1996; 71 FR 20552, Apr. 21, 2006]

§ 128.14 Confidentiality of Proceedings

Proceedings under this part are confidential. The documents referred to in § 128.17 are not, however, deemed to be confidential. Reports of the Administrative Law Judge and copies of transcripts or recordings of hearings will be available to parties and, to the extent of their own testimony, to witnesses. All records are available to any U.S. Government agency showing a proper interest therein.

[61 FR 48834, Sept. 17, 1996]

§ 128.15 Orders Containing Probationary Periods

(a) *Revocation of Probationary Periods.* A debarment or interim suspension order may set a probationary period during which the order may be held in abeyance for all or part of the debarment or suspension period, subject to the conditions stated therein. The Managing Director, Directorate of Defense Trade Controls, may apply, without notice to any person to be affected thereby, to the Administrative Law Judge for a recommendation on the appropriateness of revoking probation when it appears that the conditions of the probation have been breached. The facts in support of the application will be presented to the Administrative Law Judge, who will report thereon and make a recommendation to the Assistant Secretary of State for Political-Military Affairs. The latter will make a determination whether to revoke probation and will issue an appropriate order. The party affected by this action may request the Assistant Secretary of State for Political-Military Affairs to reconsider the decision by submitting a request within 10 days of the date of the order.

(b) *Hearings*

(1) *Objections upon Notice.* Any person affected by an application upon notice to revoke probation, within the time specified in the notice, may file objections with the Administrative Law Judge.

(2) *Objections to Order Without Notice.* Any person adversely affected by an order revoking probation, without notice may request that the order be set aside by filing his objections thereto with the Administrative Law Judge. The request will not stay the effective date of the order or revocation.

(3) *Requirements for Filing Objections.* Objections filed with the Administrative Law Judge must be submitted in writing and in duplicate. A copy must be simultaneously submitted to the Directorate of Defense Trade Controls. Denials and admissions, as well as any mitigating circumstances, which the person affected intends to present must be set forth in or accompany the letter of objection and must be supported by evidence. A request for an oral hearing may be made at the time of filing objections.

(4) *Determination*. The application and objections thereto will be referred to the Administrative Law Judge. An oral hearing if requested, will be conducted at an early convenient date, unless the objections filed raise no issues of material fact to be determined. The Administrative Law Judge will report the facts and make a recommendation to the Assistant Secretary for Political-Military Affairs, who will determine whether the application should be granted or denied and will issue an appropriate order. A copy of the order and of the Administrative Law Judge's report will be furnished to any person affected thereby.

(5) *Effect of Revocation on Other Actions*. The revocation of a probationary period will not preclude any other action concerning a further violation, even where revocation is based on the further violation.

[61 FR 48834, Sept. 17, 1996, as amended at 71 FR 20552, Apr. 21, 2006]

§ 128.16 Extension of Time

The Administrative Law Judge, for good cause shown, may extend the time within which to prepare and submit an answer to a charging letter or to perform any other act required by this part.

[61 FR 48834, Sept. 17, 1996]

§ 128.17 Availability of Orders

All charging letters, debarment orders, orders imposing civil penalties, probationary periods, and interim suspension orders are available for public inspection in the Public Reading Room of the Department of State.

PART 129: REGISTRATION AND LICENSING OF BROKERS[359]

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Authority: *Sec. 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778).*
Source: *62 FR 67276, Dec. 24, 1997, unless otherwise noted.*

§ 129.1 Purpose

Section 38(b)(1)(A)(ii) of the Arms Export Control Act (22 U.S.C. 2778) provides that persons engaged in the business of brokering activities shall register and pay a registration fee as prescribed in regulations, and that no person may engage in the business of brokering activities without a license issued in accordance with the Act.

§ 129.2 Definitions

(a) *Broker* means any person who acts as an agent for others in negotiating or arranging contracts, purchases, sales or transfers of defense articles or defense services in return for a fee, commission, or other consideration.

(b) *Brokering activities* means acting as a broker as defined in § 129.2(a), and includes the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import or [sic][360] a defense article or defense service, irrespective of its origin. For example, this includes, but is not limited to, activities by U.S. persons who are located inside or outside of the United States or foreign persons subject to U.S. jurisdiction involving defense articles or defense services of U.S. or foreign origin which are located inside or outside of the United States. But, this does not include activities by U.S. persons that are limited exclusively to U.S. domestic sales or transfers (*e.g.*, not for export or re-transfer in the United States or to a foreign person). For the purposes of this subchapter, engaging in the business of brokering activities requires only one action as described above.

(c) The term *"foreign defense article or defense service"* includes any non-United States defense article or defense service of a nature described on the United States Munitions List regardless of whether such article or service is of United States origin or whether such article or service contains United States origin components.

[62 FR 67276, Dec. 24, 1997, as amended at 71 FR 20553, Apr. 21, 2006]

§ 129.3 Requirement to Register

(a) Any U.S. person, wherever located,[361] and any foreign person located in the United States or otherwise

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[359] This part (sections 129.6(b)(2), 129.7(a)(1)(vii), and 129.7(a)(2)) was amended by 77 FR 16592-16643 (Mar. 21, 2012; effective Apr. 13, 2012). On December 19, 2011, DDTC published a proposed extensive amendments to the ITAR brokering regulations at 76 FR 78578 (Dec. 19, 2011), *available at* http://www.pmddtc.state.gov/FR/2011/76FR78578.pdf, inviting comments until February 17, 2012. DDTC has not taken further official action on the proposed regulations.

[360] So in original. Should be "of".

[361] In United States v. Yakou, 393 F.3d 231 (C.A.D.C., 2005), defendant, an alien who had obtained lawful permanent resident status, but was living in Iraq, was charged with engaging in brokering activities in violation of the AECA and the ITAR. The Court of appeals upheld the dismissal of the indictment on the grounds that (1) district court could determine prior to trial, on defendant's motion to dismiss the indictment, whether defendant was a "U.S. Person" for purposes of AECA and ITAR; (2) defendant's LPR status could be lost without formal removal proceedings before the Board of Immigration Appeals (BIA) or filing of abandonment form; (3) defendant's lawful permanent

subject to the jurisdiction of the United States (notwithstanding § 120.1(c)[362]), who engages in the business of brokering activities (as defined in this part) with respect to the manufacture, export, import, or transfer of any defense article or defense service subject to the controls of this subchapter (see part 121) or any "foreign defense article or defense service" (as defined in § 129.2) is required to register with the Directorate of Defense Trade Controls.

(b) *Exemptions.* Registration under this section is not required for:

(1) Employees of the United States Government acting in official capacity.

(2) Employees of foreign governments or international organizations acting in official capacity.

(3) Persons exclusively in the business of financing, transporting, or freight forwarding, whose business activities do not also include brokering defense articles or defense services. For example, air carriers and freight forwarders who merely transport or arrange transportation for licensed United States Munitions List items are not required to register, nor are banks or credit companies who merely provide commercially available lines or letters of credit to persons registered in accordance with part 122 of this subchapter required to register. However, banks, firms, or other persons providing financing for defense articles or defense services would be required to register under certain circumstances, such as where the bank or its employees are directly involved in arranging arms deals as defined in § 129.2(a) or hold title to defense articles, even when no physical custody of defense articles is involved.

[62 FR 67276, Dec. 24, 1997, as amended at 69 FR 70889, Dec. 8, 2004; 71 FR 20553, Apr. 21, 2006; 73 FR 55441, Sept. 25, 2008]

§ 129.4 Registration Statement and Fees[363]

(a) *General.* An intended registrant must submit a Department of State Form DS-2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by registered or overnight mail delivery, and must submit an electronic payment via Automated Clearing House (ACH), Federal Reserve Wire Network (FedWire), or Society for Worldwide Interbank Financial Telecommunications (SWIFT), payable to the Department of State of the fees prescribed in § 122.3(a) of this subchapter. Automated Clearing House and FedWire are electronic networks used to process financial transactions originating from within the United States and SWIFT is the messaging service used by financial institutions worldwide to issue international transfers for foreign accounts. Payment methods (i.e., ACH, FedWire, and SWIFT) are dependent on the source of the funds (U.S. or foreign bank) drawn from the applicant's account. The originating account must be the registrant's account and not a third party's account. Intended registrants should access the Directorate of Defense Trade Control's website at www.pmddtc.state.gov for detailed guidelines on submitting ACH, FedWire, and SWIFT electronic payments. Payments, including from foreign brokers, must be in U.S. currency, payable through a U.S. financial institution. Cash, checks, foreign currency, or money orders will not be accepted. The Statement of Registration must be signed by a senior officer (e.g., Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant, whether a U.S. or foreign person, shall submit documentation that demonstrates it is incorporated or otherwise authorized to do business in its respective country. Foreign persons who are required to register shall provide information that is substantially similar in content to that which a U.S. person would provide under this provision (e.g., foreign business license or similar authorization to do business). The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

(b) A person registering as a broker who is already registered as a manufacturer or exporter in accordance with

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Residence (LPR) status changed when he left the United States, and thus he was not a "U.S. person" under AECA or ITAR; and (4) defendant could not aid and abet his son's alleged violation of AECA and ITAR. See further discussion *supra* at footnote to 127.1(d).

[362] Section 120.1(c) restricts eligibility for DDTC licenses to U.S. persons.

[363] Amended by 76 FR 76035-76037 (Dec. 6, 2011)

part 122 of this subchapter must cite their existing manufacturer or exporter registration, and must pay an additional fee according to the schedule prescribed in §122.3(a) of this subchapter for registration as a broker.

[62 FR 67276, Dec. 24, 1997, as amended at 69 FR 70889, Dec. 8, 2004; 71 FR 20553, Apr. 21, 2006; 73 FR 55441, Sept. 25, 2008; 76 FR 45198, July 28, 2011; 76 FR 76036, Dec. 6, 2011]

§ 129.5 Policy on Embargoes and Other Proscriptions

(a) The policy and procedures set forth in this subparagraph apply to brokering activities defined in § 129.2 of this subchapter, regardless of whether the persons involved in such activities have registered or are required to register under § 129.3 of this subchapter.

(b) No brokering activities or brokering proposals involving any country referred to in § 126.1 of this subchapter may be carried out by any person without first obtaining the written approval of the Directorate of Defense Trade Controls.

(c) No brokering activities or proposal to engage in brokering activities may be carried out or pursued by any person without the prior written approval of the Directorate of Defense Trade Controls in the case of other countries or persons identified from time to time by the Department of State through notice in the Federal Register,[364] with respect to which certain limitations on defense articles or defense services are imposed for reasons of U.S. national security or foreign policy or law enforcement interests (*e.g.*, an individual subject to debarment pursuant to § 127.7 of this subchapter).

(d) No brokering activities or brokering proposal may be carried out with respect to countries which are subject to United Nations Security Council arms embargo (see also § 121.1(c) [sic][365]).

(e) In cases involving countries or persons subject to paragraph (b), (c), or (d), above, it is the policy of the Department of State to deny requests for approval, and exceptions may be granted only rarely, if ever. Any person who knows or has reason to know of brokering activities involving such countries or persons must immediately inform the Directorate of Defense Trade Controls.

[62 FR 67276, Dec. 24, 1997, as amended at 71 FR 20553, Apr. 21, 2006]

§ 129.6 Requirement for License/Approval

(a) No person may engage in the business of brokering activities without the prior written approval (license) of, or prior notification to, the Directorate of Defense Trade Controls, except as follows:

(b) A license will not be required for:

(1) Brokering activities undertaken by or for an agency of the United States Government—

(i) for use by an agency of the United States Government; or

(ii) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(2) Brokering activities that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, any member country of that Organization, Australia, Japan, New Zealand, or the Republic of Korea, except in the case of the defense articles or defense services specified in § 129.7(a) of this subchapter, for which prior approval is always required.

[62 FR 67276, Dec. 24, 1997, as amended at 71 FR 20553, Apr. 21, 2006; 73 FR 38344, Aug. 3, 2009]

§ 129.7 Prior Approval (License)

(a) The following brokering activities require the prior written approval of the Directorate of Defense Trade Controls:

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[364] See footnotes at § 126.1(a) and (c).
[365] So in original. Should be § 126.1(c).

(1) Brokering activities pertaining to certain defense articles (or associated defense services) covered by or of a nature described by part 121, to or from any country, as follows:

(i) Fully automatic firearms and components and parts therefor;

(ii) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(iii) Nuclear weapons design and test equipment of a nature described by Category XVI of part 121;

(iv) Naval nuclear propulsion equipment of a nature described by Category VI(e);

(v) Missile Technology Control Regime Category I items (§ 121.16);

(vi) Classified defense articles, services and technical data;

(vii) Foreign defense articles or defense services (other than those that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, Australia, Israel, Japan, New Zealand, or the Republic of Korea (see §§ 129.6(b)(2) and 129.7(a)).

(2) Brokering activities involving defense articles or defense services covered by, or of a nature described by part 121, [sic][366] of this subchapter, in addition to those specified in § 129.7(a), that are designated as significant military equipment under this subchapter, for or from any country not a member of the North Atlantic Treaty Organization, Australia, Israel, Japan, New Zealand, or the Republic of Korea whenever any of the following factors are present:

(i) The value of the significant military equipment is $1,000,000 or more;

(ii) The identical significant military equipment has not been previously licensed for export to the armed forces of the country concerned under this subchapter or approved for sale under the Foreign Military Sales Program of the Department of Defense;

(iii) Significant military equipment would be manufactured abroad as a result of the articles or services being brokered; or

(iv) The recipient or end user is not a foreign government or international organization.

(b) The requirements of this section for prior written approval are met by any of the following:

(1) A license or other written approval issued under parts 123, 124, or 125 of this subchapter for the permanent or temporary export or temporary import of the particular defense article, defense service or technical data subject to prior approval under this section, provided the names of all brokers have been identified in an attachment accompanying submission of the initial application; or

(2) A written statement from the Directorate of Defense Trade Controls approving the proposed activity or the making of a proposal or presentation.

(c) Requests for approval of brokering activities shall be submitted in writing to the Directorate of Defense Trade Controls by an empowered official of the registered broker; the letter shall also meet the requirements of § 126.13 of this subchapter.

(d) The request shall identify all parties involved in the proposed transaction and their roles, as well as outline in detail the defense article and related technical data (including manufacturer, military designation and model number), quantity and value, the security classification, if any, of the articles and related technical data, the country or countries involved, and the specific end use and end user(s).

[62 FR 67276, Dec. 24, 1997, as amended at 71 FR 20553, Apr. 21, 2006; 73 FR 38344, Aug. 3, 2009, and 75 FR 52625, Aug. 27, 2010.]

[366] So in original. The comma after 121 is unnecessary.

§ 129.8 Prior Notification

(a) Prior notification to the Directorate of Defense Trade Controls is required for brokering activities with respect to significant military equipment valued at less than $1,000,000, except for sharing of basic marketing information (*e.g.*, information that does not include performance characteristics, price and probable availability for delivery) by U.S. persons registered as exporters under Part 122.

(b) The requirement of this section for prior notification is met by informing the Directorate of Defense Trade Controls by letter at least 30 days before making a brokering proposal or presentation. The Directorate of Defense Trade Controls will provide written acknowledgment of such prior notification to confirm compliance with this requirement and the commencement of the 30-day notification period.

[62 FR 67276, Dec. 24, 1997, as amended at 71 FR 20553, Apr. 21, 2006, and 75 FR 52625, Aug. 27, 2010.]

§ 129.9 Reports

Any person required to register under this part shall provide annually a report to the Directorate of Defense Trade Controls enumerating and describing its brokering activities by quantity, type, U.S. dollar value, and purchaser(s) and recipient(s), license(s) numbers for approved activities and any exemptions utilized for other covered activities.[367]

[71 FR 20554, Apr. 21, 2006]

§ 129.10 Guidance

Any person desiring guidance on issues related to this part, such as whether an activity is a brokering activity within the scope of this Part, or whether a prior approval or notification requirement applies, may seek guidance in writing from the Directorate of Defense Trade Controls. The procedures and conditions stated in § 126.9 apply equally to requests under this section.

[71 FR 20554, Apr. 21, 2006]

[367] Practice Tip: This section requires "brokers" registered under ITAR part 129 to file an annual report with DDTC enumerating and describing, among other things, brokering activities and the fees, commissions, or other consideration they have been paid or that was offered to them. ITAR part 130 requires applicants for ITAR licenses and agreements valued in an amount of U.S. $500,000 or more to declare any fees or commissions made or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, for the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization. Take care that your ITAR part 130 certifications and your § 129.9 broker reports are accurate and consistent. (Contributor: Gary Stanley, Esq., 202-686-4854, gstanley@glstrade.com)

PART 130: POLITICAL CONTRIBUTIONS, FEES, AND COMMISSIONS

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Authority: *Sec. 39, Arms Export Control Act, 90 Stat. 767 (22 U.S.C. 2779); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a.*
Source: *58 FR 39323, July 22, 1993, unless otherwise noted.*

§ 130.1 Purpose

Section 39(a) of the Arms Export Control Act (22 U.S.C. 2779) provides that the Secretary of State shall prescribe regulations with respect to reporting on certain payments relating to sales of defense articles and defense services. The provisions of this part implement that requirement. Definitions which apply to this part are contained in §§ 130.2 through 130.8.

§ 130.2 Applicant

Applicant means any person who applies to the Directorate of Defense Trade Controls for any license or approval required under this subchapter for the export of defense articles or defense services valued in an amount of $500,000 or more which are being sold commercially to or for the use of the armed forces of a foreign country or international organization. This term also includes a person to whom the required license or approval has been given.

[71 FR 20554, Apr. 21, 2006]

§ 130.3 Armed Forces

Armed forces means the army, navy, marine, air force, or coast guard, as well as the national guard and national police, of a foreign country. This term also includes any military unit or military personnel organized under or assigned to an international organization.

§ 130.4 Defense Articles and Defense Services

Defense articles and defense services have the meaning given those terms in paragraphs (3), (4) and (7) of section 47 of the Arms Export Control Act (22 U.S.C. 2794 (3), (4), and (7)). When used with reference to commercial sales, the definitions in §§ 120.6 and 120.9 of this subchapter apply.

§ 130.5 Fee or Commission.

(a) *Fee or commission* means, except as provided in paragraph (b) of this section, any loan, gift, donation or other payment of $1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash

or in kind, and whether or not pursuant to a written contract, which is:

(1) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with an applicant, a supplier or a vendor; and

(2) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization.

(b) The term *fee or commission* does not include:

(1) A political contribution or a payment excluded by § 130.6 from the definition of political contribution;

(2) A normal salary (excluding contingent compensation) established at an annual rate and paid to a regular employee of an applicant, supplier or vendor;

(3) General advertising or promotional expenses not directed to any particular sale or purchaser; or

(4) Payments made, or offered or agreed to be made, solely for the purchase by an applicant, supplier or vendor of specific goods or technical, operational or advisory services, which payments are not disproportionate in amount with the value of the specific goods or services actually furnished.

[59 FR 39323, July 22, 1993, as amended at 71 FR 20534, Apr. 21, 2006]

§ 130.6 Political Contribution

Political contribution means any loan, gift, donation or other payment of $1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:

(a) To or for the benefit of, or at the direction of, any foreign candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; and

(b) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.

§ 130.7 Supplier

Supplier means any person who enters into a contract with the Department of Defense for the sale of defense articles or defense services valued in an amount of $500,000 or more under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

§ 130.8 Vendor

(a) *Vendor* means any distributor or manufacturer who, directly or indirectly, furnishes to an applicant or supplier defense articles valued in an amount of $500,000 or more which are end-items or major components as defined in § 121.8 of this subchapter. It also means any person who, directly or indirectly, furnishes to an applicant or supplier defense articles or services valued in an amount of $500,000 or more when such articles or services are to be delivered (or incorporated in defense articles or defense services to be delivered) to or for the use of the armed forces of a foreign country or international organization under:

(1) A sale requiring a license or approval from the Directorate of Defense Trade Controls under this subchapter; or

(2) A sale pursuant to a contract with the Department of Defense under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

(b) [Reserved]

[58 FR 39323, July 22, 1993, as amended at 71 FR 20554, Apr. 21, 2006]

§ 130.9 Obligation to Furnish Information to the Directorate of Defense Trade Controls

(a) (1) Each applicant must inform the Directorate of Defense Trade Controls as to whether the applicant or its vendors have paid, or offered or agreed to pay, in respect of any sale for which a license or approval is requested:

(i) Political contributions in an aggregate amount of $5,000 or more, or

(ii) Fees or commissions in an aggregate amount of $100,000 or more. If so, applicant must furnish to the Directorate of Defense Trade Controls the information specified in § 130.10. The furnishing of such information or an explanation satisfactory to the Managing Director of the Directorate of Defense Trade Controls as to why all the information cannot be furnished at that time is a condition precedent to the granting of the relevant license or approval.

(2) The requirements of this paragraph do not apply in the case of an application with respect to a sale for which all the information specified in § 130.10 which is required by this section to be reported shall already have been furnished.

(b) Each supplier must inform the Directorate of Defense Trade Controls as to whether the supplier or its vendors have paid, or offered or agreed to pay, in respect of any sale:

(1) Political contributions in an aggregate amount of $5,000 or more, or

(2) Fees or commissions in an aggregate amount of $100,000 or more. If so, the supplier must furnish to the Directorate of Defense Trade Controls the information specified in § 130.10. The information required to be furnished pursuant to this paragraph must be so furnished no later than 30 days after the contract award to such supplier, or such earlier date as may be specified by the Department of Defense. For purposes of this paragraph, a contract award includes a purchase order, exercise of an option, or other procurement action requiring a supplier to furnish defense articles or defense services to the Department of Defense for the purposes of § 22 of the Arms Export Control Act (22 U.S.C. 2762).

(c) In determining whether an applicant or its vendors, or a supplier or its vendors, as the case may be, have paid, or offered or agreed to pay, political contributions in an aggregate amount of $5,000 or more in respect of any sale so as to require a report under this section, there must be included in the computation of such aggregate amount any political contributions in respect of the sale which are paid by or on behalf of, or at the direction of, any person to whom the applicant, supplier or vendor has paid, or offered or agreed to pay, a fee or commission in respect of the sale. Any such political contributions are deemed for purposes of this part to be political contributions by the applicant, supplier or vendor who paid or offered or agreed to pay the fee or commission.

(d) Any applicant or supplier which has informed the Directorate of Defense Trade Controls under this section that neither it nor its vendors have paid, or offered or agreed to pay, political contributions or fees or commissions in an aggregate amount requiring the information specified in § 130.10 to be furnished, must subsequently furnish such information within 30 days after learning that it or its vendors had paid, or offered or agreed to pay, political contributions or fees or commissions in respect of a sale in an aggregate amount which, if known to applicant or supplier at the time of its previous communication with the Directorate of Defense Trade Controls, would have required the furnishing of information under § 130.10 at that time. Any report furnished under this paragraph must, in addition to the information specified in § 130.10, include a detailed statement of the reasons why applicant or supplier did not furnish the information at the time specified in paragraph (a) or paragraph (b) of this section, as applicable.

[58 FR 39323, July 22, 1993, as amended at 71 FR 20554, Apr. 21, 2006]

§ 130.10 Information to be Furnished by Applicant or Supplier to the Directorate of Defense Trade Controls

(a) Every person required under § 130.9 to furnish information specified in this section in respect to any sale

must furnish to the Directorate of Defense Trade Controls:

(1) The total contract price of the sale to the foreign purchaser;

(2) The name, nationality, address and principal place of business of the applicant or supplier, as the case may be, and, if applicable, the employer and title;

(3) The name, nationality, address and principal place of business, and if applicable, employer and title of each foreign purchaser, including the ultimate end user involved in the sale;

(4) Except as provided in paragraph (c) of this section, a statement setting forth with respect to such sale:

(i) The amount of each political contribution paid, or offered or agreed to be paid, or the amount of each fee or commission paid, or offered or agreed to be paid;

(ii) The date or dates on which each reported amount was paid, or offered or agreed to be paid;

(iii) The recipient of each such amount paid, or intended recipient if not yet paid;

(iv) The person who paid, or offered or agreed to pay such amount; and

(v) The aggregate amounts of political contributions and of fees or commission, respectively, which shall have been reported.

(b) In responding to paragraph (a)(4) of this section, the statement must:

(1) With respect to each payment reported, state whether such payment was in cash or in kind. If in kind, it must include a description and valuation thereof. Where precise amounts are not available because a payment has not yet been made, an estimate of the amount offered or agreed to be paid must be provided;

(2) With respect to each recipient, state:

(i) Its name;

(ii) Its nationality;

(iii) Its address and principal place of business;

(iv) Its employer and title; and

(v) Its relationship, if any, to applicant, supplier, or vendor, and to any foreign purchaser or end user.

(c) In submitting a report required by § 130.9, the detailed information specified in paragraph (a)(4) and (b) of this section need not be included if the payments do not exceed:

(1) $2,500 in the case of political contributions; and

(2) $50,000 in the case of fees or commissions. In lieu of reporting detailed information with respect to such payments, the aggregate amount thereof must be reported, identified as miscellaneous political contributions or miscellaneous fees or commissions, as the case may be.

(d) Every person required to furnish the information specified in paragraphs (a) and (b) of this section must respond fully to each subdivision of those paragraphs and, where the correct response is “none” or “not applicable,” must so state.

[58 FR 39323, July 22, 1993, as amended at 71 FR 20554, Apr. 21, 2006]

§ 130.11 Supplementary Reports

(a) Every applicant or supplier who is required under § 130.9 to furnish the information specified in § 130.10 must submit a supplementary report in connection with each sale in respect of which applicant or supplier has previously been required to furnish information if:

(1) Any political contributions aggregating $2,500 or more or fees or commissions aggregating $50,000 or more not previously reported or paid, or offered or agreed to be paid by applicant or supplier or any vendor;

(2) Subsequent developments cause the information initially reported to be no longer accurate or complete (as in the case where a payment actually made is substantially different in amount from a previously reported estimate of an amount offered or agreed to be paid); or

(3) Additional details are requested by the Directorate of Defense Trade Controls with respect to any miscellaneous payments reported under § 130.10(c).

(b) Supplementary reports must be sent to the Directorate of Defense Trade Controls within 30 days after the payment, offer or agreement reported therein or, when requested by the Directorate of Defense Trade Controls, within 30 days after such request, and must include:

(1) Any information specified in § 130.10 required or requested to be reported and which was not previously reported; and

(2) The Directorate of Defense Trade Controls license number, if any, and the Department of Defense contract number, if any, related to the sale.

[58 FR 39323, July 22, 1993, as amended at 71 FR 20554, Apr. 21, 2006]

§ 130.12 Information to be Furnished by Vendor to Applicant or Supplier

(a) In order to determine whether it is obliged under § 130.9 to furnish the information specified in § 130.10 with respect to a sale, every applicant or supplier must obtain from each vendor, from or through whom the applicant acquired defense articles or defense services forming the whole or a part of the sale, a full disclosure by the vendor of all political contributions or fees or commission paid, by vendor with respect to such sale. Such disclosure must include responses to all the information pertaining to vendor required to enable applicant or supplier, as the case may be, to comply fully with §§ 130.9 and 130.10. If so required, they must include the information furnished by each vendor in providing the information specified.

(b) Any vendor which has been requested by an applicant or supplier to furnish an initial statement under paragraph (a) of this section must, except as provided in paragraph (c) of this section, furnish such statement in a timely manner and not later than 20 days after receipt of such request.

(c) If the vendor believes that furnishing information to an applicant or supplier in a requested statement would unreasonably risk injury to the vendor's commercial interests, the vendor may furnish in lieu of the statement an abbreviated statement disclosing only the aggregate amount of all political contributions and the aggregate amount of all fees or commissions which have been paid, or offered or agreed to be paid, or offered or agreed to be paid, [sic][368] by the vendor with respect to the sale. Any abbreviated statement furnished to an applicant or supplier under this paragraph must be accompanied by a certification that the requested information has been reported by the vendor directly to the Directorate of Defense Trade Controls. The vendor must simultaneously report fully to the Directorate of Defense Trade Controls all information which the vendor would otherwise have been required to report to the applicant or supplier under this section. Each such report must clearly identify the sale with respect to which the reported information pertains.

(d)(1) If upon the 25th day after the date of its request to vendor, an applicant or supplier has not received from the vendor the initial statement required by paragraph (a) of this section, the applicant or supplier must submit to the Directorate of Defense Trade Controls a signed statement attesting to:

(i) The manner and extent of applicant’s or supplier’s attempt to obtain from the vendor the initial statement required under paragraph (a) of this section;

(ii) Vendor’s failure to comply with this section; and

(iii) The amount of time which has elapsed between the date of applicant’s or supplier’s request and the date of the signed statement;

(2) The failure of a vendor to comply with this section does not relieve any applicant or supplier otherwise

[368] So in original; unnecessarily repeating the words, “or offered or agreed to be paid,”.

required by § 130.9 to submit a report to the Directorate of Defense Trade Controls from submitting such a report.

[58 FR 39323, July 22, 1993, as amended at 71 FR 20555, Apr. 21, 2006.]

§ 130.13 Information to be Furnished to Applicant, Supplier, or Vendor by a Recipient of a Fee or Commission

(a) Every applicant or supplier, and each vendor thereof;

(1) In order to determine whether it is obliged under § 130.9 or § 130.12 to furnish information specified in § 130.10 with respect to a sale; and

(2) Prior to furnishing such information, must obtain from each person, if any, to whom it has paid, or offered or agreed to pay, a fee or commission in respect of such sale, a timely statement containing a full disclosure by such a person of all political contributions paid, or offered or agreed to be paid, by it or on its behalf, or at its direction, in respect of such sale. Such disclosure must include responses to all the information required to enable the applicant, supplier or vendor, as the case may be, to comply fully with §§ 130.9, 130.10, and 130.12.

(b) In obtaining information under paragraph (a) of this section, the applicant, supplier or vendor, as the case may be, must also require each person to whom a fee or commission is paid, or offered or agreed to be paid, to furnish from time to time such reports of its political contributions as may be necessary to enable the applicant, supplier or vendor, as the case may be, to comply fully with §§ 130.9, 130.10, 130.11, and 130.12.

(c) The applicant supplier or vendor, as the case may be, must include any political contributions paid, or offered or agreed to be paid, by or on behalf of, or at the direction of, any person to whom it has paid, or offered or agreed to pay a fee or commission in determining whether applicant, supplier or vendor is required by §§ 130.9, 130.11, and 130.12 to furnish information specified in § 130.10.

§ 130.14 Recordkeeping

Each applicant, supplier and vendor must maintain a record of any information it was required to furnish or obtain under this part and all records upon which its reports are based for a period of not less than five years[369] following the date of the report to which they pertain.

§ 130.15 Confidential Business Information

(a) Any person who is required to furnish information under this part may identify any information furnished hereunder which the person considers to be confidential business information. No person, including any applicant or supplier, shall publish, divulge, disclose, or make known in any manner, any information so identified by a vendor or other person unless authorized by law or regulation.

(b) For purposes of this section, *confidential business information* means commercial or financial information which by law is entitled to protection from disclosure. (See, *e.g.*, 5 U.S.C. 552(b) (3) and (4); 18 U.S.C. 1905; 22 U.S.C. 2778(e); Rule 26(c)(7), Federal Rules of Civil Procedure.)

§ 130.16 Other Reporting Requirements

The submission of reports under this part does not relieve any person of any requirements to furnish information to any federal, state, or municipal agency, department or other instrumentality as required by law, regulation or contract.

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[369] This period may be based upon the general Federal statute of limitations for enforcement of civil fines, penalties, or forfeitures stated in 28 U.S.C. § 2462, Time for Commencing Proceedings.

§ 130.17 Utilization of and Access to Reports and Records

(a) All information reported and records maintained under this part will be made available, upon request for utilization by standing committees of the Congress and subcommittees thereof, and by United States Government agencies, in accordance with § 39(d) of the Arms Export Control Act (22 U.S.C. 2779(d)), and reports based upon such information will be submitted to Congress in accordance with sections 36(a)(7) and 36(b)(1) of that Act (22 U.S.C. 2776(a)(7) and (b)(1)) or any other applicable law.

(b) All confidential business information provided pursuant to this part shall be protected against disclosure to the extent provided by law.

(c) Nothing in this section shall preclude the furnishing of information to foreign governments for law enforcement or regulatory purposes under international arrangements between the United States and any foreign government.

[58 FR 39323, July 22, 1993, as amended at 71 FR 20555, Apr. 21, 2006]

APPENDIX A — ARMS EXPORT CONTROL ACT (22 U.S.C. § 2778)

United States Code Title 22. Foreign Relations and Intercourse

Chapter 39. Arms Export Control

Subchapter III. Military Export Controls

§ 2778. Control of arms exports and imports

(a) Presidential control of exports and imports of defense articles and services, guidance of policy, etc.; designation of United States Munitions List; issuance of export licenses; negotiations information

(1) In furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List.

(2) Decisions on issuing export licenses under this section shall take into account whether the export of an article would contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangements.

(3) In exercising the authorities conferred by this section, the President may require that any defense article or defense service be sold under this chapter as a condition of its eligibility for export, and may require that persons engaged in the negotiation for the export of defense articles and services keep the President fully and currently informed of the progress and future prospects of such negotiations.

(b) Registration and licensing requirements for manufacturers, exporters, or importers of designated defense articles and defense services

(1)

(A)

(i) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in an official capacity) who engages in the business of manufacturing, exporting, or importing any defense articles or defense services designated by the President under subsection (a)(1) of this section shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies or for any State or local law enforcement agency) of any military firearms or ammunition of United States manufacture furnished to foreign governments by the United States under this chapter or any other foreign assistance or sales program of the United States, whether or not enhanced in value or improved in condition in a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(ii)

(I) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in official capacity) who engages in the business of brokering activities with respect to the manufacture, export, import, or transfer of any defense article or defense service designated by the President under subsection (a)(1) of this section, or in the business of brokering activities with respect to the manufacture, export, import, or transfer of any foreign defense article or defense service (as defined in subclause (IV)), shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations.

(II) Such brokering activities shall include the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service.

(III) No person may engage in the business of brokering activities described in subclause (I) without a license, issued in accordance with this chapter, except that no license shall be required for such activities undertaken by or for an agency of the United States Government—

(aa) for use by an agency of the United States Government; or

(bb) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(IV) For purposes of this clause, the term "foreign defense article or defense service" includes any non-United States defense article or defense service of a nature described on the United States Munitions List regardless of whether such article or service is of United States origin or whether such article or service contains United States origin components.

(B) The prohibition under such regulations required by the second sentence of subparagraph (A) shall not extend to any military firearms (or ammunition, components, parts, accessories, and attachments for such firearms) of United States manufacture furnished to any foreign government by the United States under this chapter or any other foreign assistance or sales program of the United States if—

(i) such firearms are among those firearms that the Secretary of the Treasury is, or was at any time, required to authorize the importation of by reason of the provisions of section 925(e) of Title 18 (including the requirement for the listing of such firearms as curios or relics under section 921(a)(13) of that title); and

(ii) such foreign government certifies to the United States Government that such firearms are owned by such foreign government.

(B)[sic][370] A copy of each registration made under this paragraph shall be transmitted to the Secretary of the Treasury for review regarding law enforcement concerns. The Secretary shall report to the President regarding such concerns as necessary.

(2) Except as otherwise specifically provided in regulations issued under subsection (a)(1) of this section, no defense articles or defense services designated by the President under subsection (a)(1) of this section may be exported or imported without a license for such export or import, issued in accordance with this chapter and regulations issued under this chapter, except that no license shall be required for exports or imports made by or for an agency of the United States Government (A) for official use by a department or agency of the United States Government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(3)

(A) For each of the fiscal years 1988 and 1989, $250,000 of registration fees collected pursuant to paragraph (1) shall be credited to a Department of State account, to be available without fiscal year limitation. Fees credited to that account shall be available only for the payment of expenses incurred for—

(i) contract personnel to assist in the evaluation of munitions control license applications, reduce processing time for license applications, and improve monitoring of compliance with the terms of licenses; and

(ii) the automation of munitions control functions and the processing of munitions control license applications, including the development, procurement, and utilization of computer equipment and related software.

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[370] So in original. Probably should have been "(C)". There are two subparagraphs designated "(B)".

(B) The authority of this paragraph may be exercised only to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Criminal violations; punishment

Any person who willfully violates any provision of this section or section 2779 of this title, or any rule or regulation issued under either section, or who willfully, in a registration or license application or required report, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined for each violation not more than $1,000,000 or imprisoned not more than 20 years, or both.

(d) Repealed. Pub. L. 96-70, Title III, § 3303(a)(4), Sept. 27, 1979, 93 Stat. 499

(e) Enforcement powers of President

In carrying out functions under this section with respect to the export of defense articles and defense services, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and (g) of section 11 of the Export Administration Act of 1979 [50 App. U.S.C.A. § 2410(c), (d), (e), and (g)], and by subsections (a) and (c) of section 12 of such Act [50 App. U.S.C.A. § 2411(a) and (c)], subject to the same terms and conditions as are applicable to such powers under such Act [50 App. U.S.C.A. § 2401 et seq.], except that section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this chapter and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that the names of the countries and the types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless the President determines that the release of such information would be contrary to the national interest. Nothing in this subsection shall be construed as authorizing the withholding of information from the Congress. Notwithstanding section 11(c) of the Export Administration Act of 1979, the civil penalty for each violation involving controls imposed on the export of defense articles and defense services under this section may not exceed $500,000.

(f) Periodic review of items on Munitions List; exemptions

(1) The President shall periodically review the items on the United States Munitions List to determine what items, if any, no longer warrant export controls under this section. The results of such reviews shall be reported to the Speaker of the House of Representatives and to the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate. The President may not remove any item from the Munitions List until 30 days after the date on which the President has provided notice of the proposed removal to the Committee on International Relations of the House of Representatives and to the Committee on Foreign Relations of the Senate in accordance with the procedures applicable to reprogramming notifications under section 2394-1(a) of this title. Such notice shall describe the nature of any controls to be imposed on that item under any other provision of law.

(2) The President may not authorize an exemption for a foreign country from the licensing requirements of this chapter for the export of defense items under subsection (j) of this section or any other provision of this chapter until 30 days after the date on which the President has transmitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a notification that includes—

(A) a description of the scope of the exemption, including a detailed summary of the defense articles, defense services, and related technical data covered by the exemption; and

(B) a determination by the Attorney General that the bilateral agreement concluded under subsection (j) of this section requires the compilation and maintenance of sufficient documentation relating to the export of United States defense articles, defense services, and related technical data to facilitate law enforcement efforts to detect, prevent, and prosecute criminal violations of any provision of this chapter, including the efforts on the part of countries and factions engaged in international terrorism to illicitly acquire sophisticated United States defense items.

(3) Paragraph (2) shall not apply with respect to an exemption for Canada from the licensing requirements of this chapter for the export of defense items.

(g) Identification of persons convicted or subject to indictment for violations of certain provisions

(1) The President shall develop appropriate mechanisms to identify, in connection with the export licensing process under this section—

(A) persons who are the subject of an indictment for, or have been convicted of, a violation under—

(i) this section,

(ii) section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410),

(iii) section 793, 794, or 798 of Title 18 (relating to espionage involving defense or classified information) or section 2339A of such title (relating to providing material support to terrorists),

(iv) section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16),

(v) section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. App. 1705) [50 U.S.C.A. § 1705],

(vi) section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd-2),

(vii) chapter 105 of Title 18 (relating to sabotage),

(viii) section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(b)),

(ix) section 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276),

(x) section 601 of the National Security Act of 1947 (relating to intelligence identities protection; 50 U.S.C. 421),

(xi) section 603(b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5113(b) and (c)); or

(xii) section 3, 4, 5, and 6 of the Prevention of Terrorist Access to Destructive Weapons Act of 2004, relating to missile systems designed to destroy aircraft (18 U.S.C. 2332g), prohibitions governing atomic weapons (42 U.S.C. 2122), radiological dispersal devices (18 U.S.C. 2332h), and variola virus (18 U.S.C. 175b);

(B) persons who are the subject of an indictment or have been convicted under section 371 of Title 18 for conspiracy to violate any of the statutes cited in subparagraph (A); and

(C) persons who are ineligible—

(i) to contract with,

(ii) to receive a license or other form of authorization to export from, or

(iii) to receive a license or other form of authorization to import defense articles or defense services from, any agency of the United States Government.

(2) The President shall require that each applicant for a license to export an item on the United States Munitions List identify in the application all consignees and freight forwarders involved in the proposed export.

(3) If the President determines—

(A) that an applicant for a license to export under this section is the subject of an indictment for a violation of any of the statutes cited in paragraph (1),

(B) that there is reasonable cause to believe that an applicant for a license to export under this section has violated any of the statutes cited in paragraph (1), or

(C) that an applicant for a license to export under this section is ineligible to contract with, or to receive a license or other form of authorization to import defense articles or defense services from, any agency of the United States Government, the President may disapprove the application. The President shall consider requests by the Secretary of the Treasury to disapprove any export license application based on these criteria.

(4) A license to export an item on the United States Munitions List may not be issued to a person—

(A) if that person, or any party to the export, has been convicted of violating a statute cited in paragraph (1), or

(B) if that person, or any party to the export, is at the time of the license review ineligible to receive export licenses (or other forms of authorization to export) from any agency of the United States Government, except as may be determined on a case-by-case basis by the President, after consultation with the Secretary of the Treasury, after a thorough review of the circumstances surrounding the conviction or ineligibility to export and a finding by the President that appropriate steps have been taken to mitigate any law enforcement concerns.

(5) A license to export an item on the United States Munitions List may not be issued to a foreign person (other than a foreign government).

(6) The President may require a license (or other form of authorization) before any item on the United States Munitions List is sold or otherwise transferred to the control or possession of a foreign person or a person acting on behalf of a foreign person.

(7) The President shall, in coordination with law enforcement and national security agencies, develop standards for identifying high-risk exports for regular end-use verification. These standards shall be published in the Federal Register and the initial standards shall be published not later than October 1, 1988.

(8) Upon request of the Secretary of State, the Secretary of Defense and the Secretary of the Treasury shall detail to the office primarily responsible for export licensing functions under this section, on a nonreimbursable basis, personnel with appropriate expertise to assist in the initial screening of applications for export licenses under this section in order to determine the need for further review of those applications for foreign policy, national security, and law enforcement concerns.

(9) For purposes of this subsection—

(A) the term “foreign corporation” means a corporation that is not incorporated in the United States;

(B) the term “foreign government” includes any agency or subdivision of a foreign government, including an official mission of a foreign government;

(C) the term “foreign person” means any person who is not a citizen or national of the United States or lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.], and includes foreign corporations, international organizations, and foreign governments;

(D) the term “party to the export” means—

(i) the president, the chief executive officer, and other senior officers of the license applicant;

(ii) the freight forwarders or designated exporting agent of the license application; and

(iii) any consignee or end user of any item to be exported; and

(E) the term “person” means a natural person as well as a corporation, business association, partnership,

society, trust, or any other entity, organization, or group, including governmental entities.

(h)[371] Judicial review of designation of items as defense articles or services

The designation by the President (or by an official to whom the President's functions under subsection (a) of this section have been duly delegated), in regulations issued under this section, of items as defense articles or defense services for purposes of this section shall not be subject to judicial review.

(i) Report to Department of State

As prescribed in regulations issued under this section, a United States person to whom a license has been granted to export an item on the United States Munitions List shall, not later than 15 days after the item is exported, submit to the Department of State a report containing all shipment information, including a description of the item and the quantity, value, port of exit, and end-user and country of destination of the item.

(j) Requirements relating to country exemptions for licensing of defense items for export to foreign countries

(1) Requirement for bilateral agreement

(A) In general. The President may utilize the regulatory or other authority pursuant to this chapter to exempt a foreign country from the licensing requirements of this chapter with respect to exports of defense items only if the United States Government has concluded a binding bilateral agreement with the foreign country. Such agreement shall—

(i) meet the requirements set forth in paragraph (2); and

(ii) be implemented by the United States and the foreign country in a manner that is legally-binding under their domestic laws.

(B) Exception. The requirement to conclude a bilateral agreement in accordance with subparagraph (A) shall not apply with respect to an exemption for Canada from the licensing requirements of this chapter for the export of defense items.

(2) Requirements of bilateral agreement. A bilateral agreement referred to paragraph

(1)—

(A) shall, at a minimum, require the foreign country, as necessary, to revise its policies and practices, and promulgate or enact necessary modifications to its laws and regulations to establish an export control regime that is at least comparable to United States law, regulation, and policy requiring—

(i) conditions on the handling of all United States-origin defense items exported to the foreign country, including prior written United States Government approval for any reexports to third countries;

(ii) end-use and retransfer control commitments, including securing binding end-use and retransfer control commitments from all end-users, including such documentation as is needed in order to ensure compliance and enforcement, with respect to such United States-origin defense items;

(iii) establishment of a procedure comparable to a "watchlist" (if such a watchlist does not exist) and full cooperation with United States Government law enforcement agencies to allow for sharing of export and import documentation and background information on foreign businesses and individuals employed by or otherwise connected to those businesses; and

(iv) establishment of a list of controlled defense items to ensure coverage of those items to be exported under the exemption; and

(B) should, at a minimum, require the foreign country, as necessary, to revise its policies and practices, and promulgate or enact necessary modifications to its laws and regulations to establish an export control

[371] Enactment of subsec. (h) by Pub.L. 101-222, § 6, was executed to this section notwithstanding directory language directing such addition to "22 U.S.C. 2778", as the probable intent of Congress.

regime that is at least comparable to United States law, regulation, and policy regarding—

(i) controls on the export of tangible or intangible technology, including via fax, phone, and electronic media;

(ii) appropriate controls on unclassified information relating to defense items exported to foreign nationals;

(iii) controls on international arms trafficking and brokering;

(iv) cooperation with United States Government agencies, including intelligence agencies, to combat efforts by third countries to acquire defense items, the export of which to such countries would not be authorized pursuant to the export control regimes of the foreign country and the United States; and

(v) violations of export control laws, and penalties for such violations.

(3) Advance certification. Not less than 30 days before authorizing an exemption for a foreign country from the licensing requirements of this chapter for the export of defense items, the President shall transmit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a certification that—

(A) the United States has entered into a bilateral agreement with that foreign country satisfying all requirements set forth in paragraph (2);

(B) the foreign country has promulgated or enacted all necessary modifications to its laws and regulations to comply with its obligations under the bilateral agreement with the United States; and

(C) the appropriate congressional committees will continue to receive notifications pursuant to the authorities, procedures, and practices of section 2776 of this title for defense exports to a foreign country to which that section would apply and without regard to any form of defense export licensing exemption otherwise available for that country.

(4) Definitions

In this section:

(A) Defense items. The term "defense items" means defense articles, defense services, and related technical data.

(B) Appropriate congressional committees. The term "appropriate congressional committees" means—

(i) the Committee on International Relations and the Committee on Appropriations of the House of Representatives; and

(ii) the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

APPENDIX B — COUNTRY POLICIES & EMBARGOES

This following chart is posted on the DDTC website[372], but does not include all policies toward foreign countries for the export of defense articles and defense services that have been posted in the Federal Register.

Country	Date	Federal Regulation	Comments
Afghanistan	June 27, 1996	61 FR 33313 (PDF, 12KB)	Amendment to ITAR §126.1
	May 8, 2001	66 FR 23310 (PDF, 34KB)	Denial Policy to territory of Afghanistan under Taliban control and all of Afghanistan
	July 2, 2002	67 FR 44352 (PDF, 32KB)	Denial Policy to Afghanistan except for Government of Afghanistan and ISAF
	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126. Denial policy except for Government of Afghanistan and coalition forces.
Belarus	July 22, 1993	58 FR 39280 (PDF, 7.1MB)	Amendment to ITAR §126.1
Burma	June 16, 1993	58 FR 33293 (PDF, 99KB)	Department of State Suspension Notice
	July 22, 1993	58 FR 39280 (PDF, 7.1MB)	Amendment to ITAR §126.1
China (PR)	June 7, 1989	54 FR 24539 (PDF, 64KB)	Department of State Suspension Notice
	July 22, 1993	58 FR 39280 (PDF, 7.1MB)	Amendment to ITAR §126.1
Côte d'Ivoire	December 14, 2004	69 FR 74560 (PDF, 59KB)	Department of State Suspension Notice
	December 18, 2007	72 FR 71575 (PDF, 53KB)	Amendment to ITAR §126.1
	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126.1. Denial policy, with certain exceptions.
Cuba	December 6, 1984	49 FR 47682 (PDF, 5MB)	Amendment to ITAR §126.1
Cyprus	December 18, 1992	57 FR 60265 (PDF, 46KB)	Department of State Denial Notice; does not affect export for the UN forces in Cyprus (UNFICYP) or for civilian end-users
	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126.1. Denial policy, except for exports for UNFICYP and civilian end-users.
Democratic	April 29,	58 FR	Department of State Suspension Notice

[372] DDTC, http://www.pmddtc.state.gov/embargoed_countries/index.html (July 13, 2012) (last viewed Sept. 1, 2012).

Republic of the Congo	1993	26024 (PDF, 109KB)	
	July 22, 1993	58 FR 39280 (PDF, 7.1MB)	Amendment to ITAR §126.1
	February 17, 2004	69 FR 7349 (PDF, 38KB)	Modified Denial policy to DROC
	August 30, 2005	70 FR 50966 (PDF, 50KB)	Further modification of Denial Policy to the DROC.
	December 18, 2007	72 FR 71575 (PDF, 53KB)	Amendment to ITAR §126.1
	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126.1. Denial policy, with certain exceptions.
Eritrea	March 6, 2006	71 FR 11281 (PDF, 46KB)	Department of State Suspension Notice
	October 6, 2008	73 FR 58041 (PDF, 47KB)	Amendment to ITAR §126.1
	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126.1. Added to list of countries subject to a UN Security Council arms embargo.
Fiji	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126.1. Denial policy, with one exception (peacekeeping activities).
Guinea, Republic of	October 26, 2009	N/A	Notice to Exporters
Haiti	October 9, 1991	56 FR 50968 (PDF, 73KB)	Department of State Suspension Notice
	April 4, 1994	59 FR 15624 (PDF, 265KB)	Amendment to ITAR §126.1
	October 4, 2006	71 FR 58496 (PDF, 58KB)	Partial Lifting of Arms Embargo
	February 29, 2012	77 FR 12201 (PDF, 143KB)	Amendment to ITAR §126.1
Iran	January 23, 1984	49 FR 2836 (PDF, 122KB)	Department of State Notice designating Iran as a terrorist country
	October 29,1991	56 FR 55630 (PDF, 178KB)	Amendment to ITAR §126.1
	December 18, 2007	72 FR 71575 (PDF, 53KB)	Amendment to ITAR §126.1
Iraq	August 3, 1990	55 FR 31808 (PDF, 75KB)	Department of State Revocation Notice

	September 13, 1990	55 FR 37793 (PDF, 26KB)	Department of State Notice designating Iraq as a terrorist country
	October 29, 1991	56 FR 55630 (PDF, 178KB)	Amendment to ITAR §126.1
	November 21, 2003	68 FR 65633 (PDF, 35KB)	Denial policy to Iraq except for Iraqi military or police force required by Coalition Provisional Authority.
	April 9, 2004	69 FR 18810 (PDF, 57KB)	Denial policy to Iraq except for nonlethal military equipment, lethal military equipment for use by reconstituted (or interim) Iraqi military or police force, and small arms for use for private security purposes.
	December 18, 2007	72 FR 71575 (PDF, KB)	Amendment to ITAR §126.1
	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126.1. Denial policy except for non-lethal military equipment, and lethal military equipment for the Government of Iraq and coalition forces.
Kyrgyzstan	April 9, 2010	N/A	Notice to Exporters[373]
Lebanon	December 15, 2006	71 FR 75609 (PDF, KB)	Department of State Suspension Notice
	December 18, 2007	72 FR 71575 (PDF, 53KB)	Amendment to ITAR §126.1
	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126.1. Denial policy except for exports for UNIFIL and as authorized by the Government of Lebanon.
Liberia	December 18, 1992	57 FR 60265 (PDF, 46KB)	Department of State Suspension Notice
	July 22, 1993	58 FR 39280 (PDF, 7.1MB)	Amendment to ITAR §126.1
	September 5, 2001	66 FR 46491 (PDF, 35KB)	Continued denial policy
	December 18, 2007	72 FR 71575 (PDF, 53KB)	Amendment to ITAR §126.1
	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126.1. Denial policy, with certain exceptions.
Libya	October 29, 1991	56 FR 55630 (PDF, 178KB)	Amendment to ITAR §126.1

[373] DDTC Notice on Exports to the Kyrgyz Republic (Apr. 9, 2010), *available at* http://www.pmddtc.state.gov/FR/2010/Kyrgyzstan.pdf (last viewed Sept. 1, 2012), stating in part:

> April 9, 2010 Web In response to recent events in the Kyrgyz Republic (Kyrgyzstan), DDTC wishes to inform exporters that although there is no current U.S. or UN arms embargo on Kyrgyzstan, the final decision of license applications for the export of U.S. Munitions List (USML) items to Kyrgyzstan received from this date or currently in the review process may be delayed. License applications will continue to be reviewed on a case-by-case basis, but approval should not be assumed. We encourage exporters to take the current situation into account and if applying for a new license to export or re-export USML items to Kyrgyzstan, that the license application provide detailed information on the end-use and end-user of the USML items. If you have any questions about this matter, please contact the DDTC Response Team at DDTCResponseTeam@state.gov.

	February 7, 2007	72 FR 5614 (PDF, 59KB)	Amendment to ITAR §126.1
	May 24, 2011	76 FR 30001 (PDF, 181KB)	Amendment to ITAR §126.1. Amendment to ITAR §126.1. Denial policy, with certain exceptions.
	September 23, 2011	N/A	Notice to Exporters
	November 4, 2011	76 FR 68313 (PDF, 142KB)	Amendment to ITAR §126.1.
North Korea	December 6, 1984	49 FR 47682 (PDF, 5MB)	Amendment to ITAR §126.1
	December 18, 2007	72 FR 71575 (PDF, 53KB)	Amendment to ITAR §126.1
	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126.1. Removed from "Terrorism" section; denial policy continues.
Pakistan	Oct. 1, 2011	N/A	Notice to Exporters[374]
Sierra Leone	December 18, 2007	72 FR 71575 (PDF, 53KB)	Amendment to ITAR §126.1
	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126.1. No longer a proscribed destination. Licenses are reviewed on a case-by-case basis, as per normal procedure.
Somalia	December 16, 1992	57 FR 59851 (PDF, 101KB)	Department of State Suspension Notice
	July 22, 1993	58 FR 39280 (PDF, 7.1MB)	Amendment to ITAR §126.1
	May 22, 2007	72 FR 28602 (PDF, 50KB)	Amendment to ITAR §126.1
	December 18, 2007	72 FR 71575 (PDF, 53KB)	Amendment to ITAR §126.1
	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126.1. Denial policy, with certain exceptions.
Sri Lanka	March 24, 2008	73 FR 15409 (PDF, 53KB)	Amendment to ITAR §126.1
	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126.1. Denial policy, with one exception (humanitarian demining).

[374] DDTC Notice to Exporters – Pakistan Policy Update, (Oct. 1, 2011), *available at* http://www.pmddtc.state.gov/FR/2011/Pakistan_WebNoticeExporters.pdf (last viewed Sept. 1, 2012), stating in part:

> Section 203 of the Enhanced Partnership with Pakistan Act of 2009 (Public Law 111-73) prohibits for fiscal years 2012-2014 the issuance of export licenses for major defense equipment (defined in 22 U.S.C. 2794(6)) to be exported to Pakistan absent an appropriate certification or waiver under Section 203 in the fiscal year. Since no certification or waiver has been issued for fiscal year 2012, exporters are advised not to submit such license requests to DDTC. A new notice will be issued in the event of a waiver or certification in fiscal year 2012.

	March 22, 2012	77 FR 16670 (PDF, 219KB)	Amendment to ITAR §126.1.
Sudan	November 3, 1993	58 FR 49741 (PDF, 108KB)	Department of State Suspension Notice
	October 8, 1993	58 FR 52523 (PDF, 9KB)	Department of State Notice designating Sudan as a country supporting terrorism
	April 4, 1994	59 FR 15624 (PDF, 265KB)	Amendment to ITAR §126.1
	January 18, 2007	72 FR 02326 (PDF, 51KB)	Determination to provide non-lethal assistance to the Gov. of Southern Sudan
	May 9, 2007	72 FR 26281 (PDF, 33KB)	Presidential Determination
	December 18, 2007	72 FR 71575 (PDF, 53KB)	Amendment to ITAR §126.1
	May 16, 2008	73 FR 28545 (PDF, 51KB)	Determination to provide non-lethal assistance under ITAR jurisdiction to the Gov. of Southern Sudan
	November 9, 2011	76 FR 69612 (PDF, 143KB)	Amendment to ITAR §126.1 to include the Republic of the Sudan as a proscribed destination, and to clarify that this policy does not apply to the Republic of South Sudan.
Syria	October 29, 1991	56 FR 55630 (PDF, 178KB)	Amendment to ITAR §126.1
Venezuela	August 17, 2006	71 FR 47554 (PDF, 45KB)	Department of State Notice on Revocation and Denial of Defense Export Licenses
	February 7, 2007	72 FR 5614 (PDF, 59KB)	Amendment to ITAR §126.1
Vietnam	December 6, 1984	49 FR 47682 (PDF, 59KB)	Amendment to ITAR §126.1
	April 3, 2007	72 FR 15830 (PDF, 52KB)	Amendment to ITAR §126.1
Yemen	December 16, 1992	57 FR 59852 (PDF, 99KB)	Department of State Notice; presumption of denial for lethal articles or items supporting such articles or services
	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126.1. Denial policy, with certain exceptions.
	July 3, 2012	77 FR 39392 (PDF, 201KB)	Amendment to the International Traffic in Arms Regulations.
Zimbabwe	April 17, 2002	67 FR 18978 (PDF, 34KB)	Department of State Suspension Notice
	July 23, 2002	67 FR 48242	Use of Exemption at §123.7

		(PDF, 39KB)	
	August 8, 2011	76 FR 47990 (PDF, 188KB)	Amendment to ITAR §126.1. Denial policy, with one exception (temporary export of firearms for individual use).

APPENDIX C — ITAR AMENDMENTS SINCE 2007

July 6, 2012; 77 FR 40140-40141: State/DDTC Posts 3-Year ITAR Statutory Debarment of Pratt & Whitney Canada Corporation

[Editor's note: Although this is not an ITAR amendment, the debarment is a significant event affecting ITAR compliance, and is included here
for reader convenience.]
(Source: http://www.gpo.gov/fdsys/pkg/FR-2012-07-06/html/2012-16578.htm)

77 FR 40140-40141: Statutory Debarment of Pratt & Whitney Canada Corporation Under the Arms Export Control Act and the International Traffic in Arms Regulations
* Agency: Department of State; Bureau of Political-Military Affairs
* ACTION: Notice.
* SUMMARY: Notice is hereby given that the Department of State, acting pursuant to section 127.7(c) of the International Traffic in Arms Regulations (``ITAR") (22 CFR Parts 120-130), imposed a statutory debarment on Pratt & Whitney Canada Corporation (``P&W Canada") as a result of its conviction for violating section 38 of the Arms Export Control Act, as amended, (``AECA") (22 U.S.C. 2778).
* DATES: Effective Date: June 28, 2012.
* FOR FURTHER INFORMATION CONTACT: Lisa Aguirre, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 632-2798.
* SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778(g)(4), prohibits the Department of State from issuing licenses or other approvals for the export of defense articles or defense services where the applicant, or any party to the export, has been convicted of violating certain statutes, including the AECA. The statute permits limited exceptions to be made on a case-by-case basis. In implementing this provision, Section 127.7 of the ITAR provides for ``statutory debarment" of any person who has been convicted of violating or conspiring to violate the AECA. Persons subject to statutory debarment are prohibited from participating directly or indirectly in the export of defense articles, including technical data, or in the furnishing of defense services for which a license or other approval is required.

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment procedures outlined in Part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. Export privileges may be reinstated only at the request of the debarred person followed by the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by Section 38(g)(4) of the AECA. Unless export privileges are reinstated, however, the person remains debarred.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the debarment. Any decision to grant reinstatement can be made only after the statutory requirements of Section 38(g)(4) of the AECA have been satisfied.

Exceptions, also known as transaction exceptions, may be made to this debarment determination on a case-by-case basis at the discretion of the Assistant Secretary of State for Political-Military Affairs, after consulting with the appropriate U.S. agencies. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors:
Whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to Section 38(g)(4) of the AECA and Section 127.7(c) of the ITAR, the following person is statutorily debarred: Pratt & Whitney Canada Corporation, 1000 boul. Marie-Victorin Longueuil, Quebec,

Canada J4G 1A1 (and all other Pratt & Whitney Canada Corporation locations); U.S. District Court, District of Connecticut; Case No. 3:12CR146(WWE).

As noted above, at the end of the three-year period following the date of this notice, the above named entity remains debarred unless export privileges are reinstated. Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see e.g., sections 120.1(c) and (d), and 127.11(a)). Also, under Section 127.1(c) of the ITAR, any person who has knowledge that another person is subject to debarment or is otherwise ineligible may not, without disclosure to and written approval from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any export in which such ineligible person may benefit therefrom or have a direct or indirect interest therein.

Notwithstanding the information above, based on overriding national security and foreign policy concerns and after a thorough review of the circumstances surrounding the conviction and a finding that the appropriate steps have been taken to mitigate law enforcement concerns, the Assistant Secretary for Political-Military Affairs has determined to approve specific carve-outs from the statutory debarment of P&W Canada for the following categories of authorization requests:

1) Support of U.S. Government programs;

2) Support of coalition Operation Enduring Freedom; and

3) Support of government programs for NATO and Major Non-NATO Ally countries.

All requests for authorizations, or use of exemptions, involving P&W Canada that fall within the scope of the specific carve-outs will be reviewed and action taken by the Directorate of Defense Trade Controls in the ordinary course of business. All requests for authorizations involving P&W Canada that do not fall within the scope of the carve-outs must be accompanied by a specific transaction exception request. Any use of an exemption involving P&W Canada that does not fall within the scope of the carve-outs must be preceded by the approval of a transaction exception request by the Department prior to the use of the exemption. The decision to grant a transaction exception will be made on a case-by-case basis after a full review of all circumstances.

This notice is provided for purposes of making the public aware that the person identified above is prohibited from participating directly or indirectly in activities regulated by the ITAR, including any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR that do not fall within the carve-outs to the debarment. Specific criminal case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

Dated: June 26, 2012.

Andrew J. Shapiro, Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

July 3, 2012; 77 FR 39392-39393: 22 CFR Part 126; Amendment to the International Traffic in Arms Regulations: Yemen

(Source: http://www.gpo.gov/fdsys/pkg/FR-2012-07-03/html/2012-16283.htm; http://www.gpo.gov/fdsys/pkg/FR-2012-07-03/pdf/2012-16283.pdf)

* AGENCY: Department of State.

* ACTION: Final rule.

* SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update the policy toward Yemen. Licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Yemen will be reviewed, and may be issued, on a case-by-case basis.

* DATES: Effective Date: This rule is effective July 3, 2012.

* FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663-2792, or email DDTCResponseTeam@state.gov. ATTN: Regulatory Change, Part 126, Yemen.

* SUPPLEMENTARY INFORMATION: The Department of State published a notice in the Federal Register on December 16, 1992, providing that the defense export policy for Yemen included a ``presumption of denial"

for proposed exports of lethal defense articles or items supporting such articles. On August 8, 2011, the Department amended the ITAR to include Yemen in Sec. 126.1, which describes prohibited exports, imports, and sales to or from certain countries. That policy allowed for the export of non-lethal defense articles and defense services and non-lethal, safety-of-use defense articles for lethal end-items. License applications for the export of lethal defense articles and defense services were denied.

This rule removes the ITAR Sec. 126.1 limitations on defense trade with Yemen. Less restrictive defense trade will further the national security and foreign policy interests of the United States. The Republic of Yemen has taken important steps to stabilize the country, including holding successful presidential elections in February 2012. Furthermore, the Republic of Yemen is a critical partner in the United States' continuing efforts against terrorism. Defense assistance to the Yemeni government will be critical to increasing stability and security throughout the country and countering this threat.

Therefore, Sec. 126.1(u) is removed, and the Department will review on a case-by-case basis all requests for licenses or other approvals for exports or temporary imports of defense articles and defense services destined for or originating in Yemen.

* Regulatory Analysis and Notices [deleted]

* List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is amended as follows:

PART 126--GENERAL POLICIES AND PROVISIONS

(1) The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117; Pub. L. 111-266; Section 7045, Pub. L. 112-74; Section 7046, Pub. L. 112-74.

(2) Section 126.1 is amended by removing and reserving paragraph (u), as follows:

Sec. 126.1 Prohibited exports, imports, and sales to or from certain countries.

* * *

(u) [Reserved]

* * *

Dated: June 26, 2012.

Rose E. Gottemoeller, Acting Under Secretary, Arms Control and International Security, Department of State

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May 2, 2012; 77 FR 25865: 22 CFR Parts 123 and 126: Exemption for Temporary Export of Chemical Agent Protective Gear

(Source: http://www.gpo.gov/fdsys/pkg/FR-2012-05-02/html/2012-10599.htm)

* AGENCY: Department of State.

* ACTION: Final rule.

* SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to add an exemption for the temporary export of chemical agent protective gear for personal use. The exemption for body armor is amended to also cover helmets when they are included with the body armor. An exemption for firearms and ammunition is clarified by removing certain extraneous language that does not change the meaning of the exemption, and by standardizing the language among the exemptions in this section of the regulations. The registration requirement as it relates to certain exemptions is clarified. And an error in the authorities for part 126 of the ITAR is corrected.

* DATES: Effective Date: This rule is effective June 1, 2012.

* FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Acting Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2792; email DDTCResponseTeam@state.gov. ATTN: Regulatory Change, ITAR Section 123.17.

* SUPPLEMENTARY INFORMATION: In August 2009, the Department of State amended the ITAR to provide an exemption for the temporary export of body armor covered by 22 CFR 121.1, Category X(a)(1). Now, the Department is amending the ITAR to add an exemption for the temporary export of chemical agent protective gear covered by 22 CFR 121.1, Category XIV(f)(4). The exemption is available for U.S. persons for temporary exports to countries not subject to restrictions under ITAR Sec. 126.1, and to countries subject to restrictions under ITAR Sec. 126.1 under specified conditions. In order to use the exemption, the chemical agent protective gear must be for the U.S. person's exclusive use and must be returned to the United States. The U.S. person may not reexport the protective gear to a foreign person or otherwise transfer ownership. The protective gear may not be exported to any country where the importation would be in violation of that country's laws.

New § 123.17(j) specifies that if the chemical agent protective gear is not returned to the United States with the individual that temporarily exported the gear, a detailed report of the incident must be submitted to the Office of Defense Trade Controls Compliance in accordance with the requirements of ITAR § 127.12(c)(2). If the chemical agent protective gear is lost or stolen, the report should describe all attempts to locate the gear and explain the circumstances leading to its loss or theft. In the event the chemical agent protective gear is used and disposed of according to HAZMAT guidelines, the report should provide a disposal date and location details for the approved HAZMAT facility used, along with a receipt for disposal services. If a HAZMAT facility is not available, the report should describe the date, location, and method used to dispose of the protective gear. In the proposed rule, this disclosure provision was covered in paragraph (f) and applied only to the body armor and chemical agent protective gear provisions. In this final rule, we specify that, in addition to applying to the body armor and chemical agent protective gear exemptions, it also applies to the firearms exemption covered in paragraph (c). The change removes the requirement that assistance to the government of Iraq be “humanitarian” to more accurately match the language of United Nations Security Council restrictions, which do not limit assistance to humanitarian assistance.

New § 123.17(k) clarifies that individuals who are U.S. persons seeking to use the exemptions of § 123.17 are not required to be registered with the Department of State (the registration requirement is described in ITAR part 122).

Section (c)(3) is revised to remove what is in practice extraneous language. Subject to the requirements of (c)(1)-(3), the exemption applies to all eligible individuals (with the noted exceptions). Thus, while the text is revised, the meaning of (c)(3) is not changed.

The authority citation for ITAR part 126 is corrected to include sections 7045 and 7046 of Public Law 112-74.

This rule was first published as a proposed rule on March 23, 2011, soliciting public comment. The comment period ended May 23, 2011. Seven parties filed comments recommending changes. The Department's evaluation of the written comments and recommendations follows:

Three commenting parties requested the elimination of the requirement for a U.S. Customs and Border Protection (CBP) inspection before export, citing logistical difficulties in certain instances (for example, departing on a U.S. military airplane from a U.S. military base). According to law and regulations, persons who claim this exemption must submit the articles for CBP inspection at departure, regardless of the type of aircraft used for departure from the United States. Therefore, the Department did not accept this recommendation.

Three commenting parties requested clarification of the phrase, “affiliated with the U.S. Government,” or

recommended it be replaced with “travelling in support of a U.S. Government contract.”Because the first phrase includes those employed by the U.S. Government, and is meant to include those who are described by the second phrase, the Department has kept the first phrase and amended the regulation to include the second phrase.

Two commenting parties recommended the option of separate shipment or mailing of armor or gear exported using this exemption, stating that carrying the armor or gear is burdensome. We acknowledge that carrying the armor or gear may present certain logistical difficulties, but because this exemption is intentionally of limited scope, we are not prepared to authorize separate shipment or mailing ***25866** as a mean of export at this time. Therefore, the Department did not accept this recommendation.

Two commenting parties inquired into what type of documentation may be used to satisfy the exemption requirements for Iraq. As the rule is written, various forms of documentation may be presented to fulfill the exemption requirements, including the examples proffered by the commenting parties (contract with or letter from the U.S. Government).

One commenting party recommended including specific mention of the C2 canister as covered by the chemical agent protective gear exemption. Upon reflection, the Department determined that the exemption would be more useful if it provided for coverage of a spare filter canister (of which the C2 canister is one variant). Therefore, the Department in effect accepted this recommendation, although it opted for use of the more generic term of “filter canister” rather than “C2 canister.”

One commenting party recommended the removal of the requirement to submit a report to the Office of Defense Trade Controls Compliance in accordance with the requirements of § 127.12(c)(2) should the person temporarily exporting under this exemption not be able to return the exported items. The commenting party said it would be “wrong” to treat as a violation an instance where the impediment to return was the actual intended use and destruction of the body armor or chemical agent protective gear. The Department notes when an item authorized only for temporary export is not returned to the United States, by definition it is a violation. Section 127.12(c)(2) is the means by which such a violation is reported to the Department. The Department did not accept this recommendation.

One commenting party recommended broadening this exemption for use by U.S. persons, as defined at ITAR § 120.14. The Department clarifies that the exemption is for use by U.S. persons, as defined at ITAR § 120.14.

One commenting party recommended the removal of the requirement to file the export declaration through the Automated Export System (AES), with the explanation that AES is not available for individual use. The Department verified that AES is available for individual use. Therefore, the Department did not accept this recommendation.

One commenting party recommended expanding the exemption to allow a U.S. person to export and distribute to employees the items covered by the exemption. While a company within the definition of “U.S. person” may claim the exemption for his employees, the individual employees must export the items and these items must be with the individual's baggage or effects, whether accompanied or unaccompanied (but not mailed).

One commenting party recommended allowing the use of this exemption for temporary export to proscribed destinations listed in ITAR § 126.1, when the person using the exemption is travelling on official business in support of a U.S. government contract. The Department agreed with the rationale that this modification to the proposed rule would “allow for the timely support of U.S. Government contracts in hazardous areas of foreign countries where such protective gear is required for personal safety.”Therefore, the Department accepted this recommendation.

One commenting party recommended eliminating the requirement in paragraph (f)(3) for the individual to declare to CBP his intention of returning the articles upon each return to the United States, stating that it is common practice for persons to safely store their gear overseas when returning home for short visits. The Department accepted this recommendation, and has revised paragraph (f)(3) to require the person to declare that it is his intention to return the articles “at the end of tour, contract, or assignment for which the articles were temporarily exported.”

One commenting party recommended providing the option of depositing the body armor or chemical agent protective gear with a U.S. Government depot and receiving a receipt in lieu of physical return of the articles to the United States, and another commenting party inquired whether this was permissible under the exemption. In order to avoid the requirement of obtaining a license from the Department for the export, the articles temporarily exported under this exemption must be physically returned to the United States. Therefore, the Department did not accept this recommendation.

One commenting party recommended including helmets in the body armor exemption, noting that helmets are frequently added to a suit of armor, and that it "makes good sense" to include in the same exemption that covers items that protect a person's body an item that protects a person's head. The Department agreed with this recommendation, and has added helmets covered by 22 CFR 121.1, Category X(a)(6) to the exemption for the temporary export of body armor, when the helmet is included with the body armor. The exemption is not available for the helmet alone.

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 changes noted and other edits, and promulgates it as a final rule.

Regulatory Analysis and Notices [Deleted by Editor.]

List of Subjects in 22 CFR Parts 123 and 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 123 and 126 are amended as follows:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES1. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p.79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105-261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107-228.

22 CFR § 123.17

2. Section 123.17 is amended by revising the section heading, and paragraphs (c), (f), and (g), and adding paragraphs (h) through (k), to read as follows:

22 CFR § 123.17

§ 123.17 Exports of firearms, ammunition, and personal protective gear.

* * * * *

(c) Port Directors of U.S. Customs and Border Protection (CBP) shall permit U.S. persons to export temporarily from the United States without a license not more than three nonautomatic firearms in Category I(a) of § 121.1 of this subchapter and not more than 1,000 cartridges therefor, provided that:

(1) The person declares the articles to a CBP officer upon each departure from the United States, presents the Internal Transaction Number from submission of the Electronic Export Information in the Automated Export System per § 123.22 of this subchapter, and the articles are presented to the CBP officer for inspection;

(2) The firearms and accompanying ammunition to be exported is with the individual's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(3) The firearms and accompanying ammunition must be for that person's exclusive use and not for reexport or other transfer of ownership. The person must declare that it is his intention to return the article(s) on each return to the United States. The foregoing exemption is not applicable to the personnel referred to in § 123.18 of this subchapter.

* * * * *

(f) Port Directors of U.S. Customs and Border Protection (CBP) shall permit U.S. persons to export temporarily from the United States without a license one set of body armor covered by U.S. Munitions List Category X(a)(1), which may include one helmet covered by U.S. Munitions List Category X(a)(6), or one set of chemical agent protective gear covered by U.S. Munitions List Category XIV(f)(4), which may include one additional filter canister, provided:

(1) The person declares the articles to a CBP officer upon each departure from the United States, presents the Internal Transaction Number from submission of the Electronic Export Information in the Automated Export System (AES) per § 123.22 of this subchapter, and the articles are presented to the CBP officer for inspection;

(2) The body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, to be exported is with the individual's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(3) The body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, to be exported is for that person's exclusive use and not for reexport or other transfer of ownership. The person must declare it is his intention to return the article(s) to the United States at the end of tour, contract, or assignment for which the articles were temporarily exported.

(g) The license exemption set forth in paragraph (f) of this section is available for the temporary export of body armor or chemical agent protective gear for personal use to countries listed in § 126.1 of this subchapter provided:

(1) The conditions in paragraph (f) of this section are met; and

(2) The person is affiliated with the U.S. Government traveling on official business or is traveling in support of a U.S. Government contract. The person shall present documentation to this effect, along with the Internal Transaction Number for the AES submission, to the CBP officer.

(h) The license exemption set forth in paragraph (f) of this section is available for the temporary export of body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, for personal use to Iraq, provided the conditions in paragraph (f) are met, and the person is either affiliated with the U.S. Government traveling on official business or is traveling in support of a U.S. Government contract, or is traveling to Iraq under a direct authorization by the Government of Iraq and engaging in activities for, on behalf of, or at the request of, the Government of Iraq. The person shall present documentation to this effect, along with the Internal Transaction Number for the AES submission, to the CBP officer. Documentation regarding direct authorization from the Government of Iraq shall include an English translation.

(i) The license exemption set forth in paragraph (f) of this section is available for the temporary export of body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, for personal use to Afghanistan, provided the conditions in paragraph (f) are met.

(j) If the articles temporarily exported pursuant to paragraphs (c) and (f) through (i) of this section are not returned to the United States, a detailed report must be submitted to the Office of Defense Trade Controls Compliance in accordance with the requirements of § 127.12(c)(2) of this subchapter.

(k) To use the exemptions in this section, individuals are not required to be registered with the Department of State (the registration requirement is described in part 122 of this subchapter). All other entities must be registered and eligible, as provided in §§ 120.1(c) and (d) and part 122 of this subchapter.

PART 126—GENERAL POLICIES AND PROVISIONS3. The authority citation for part 126 is revised to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59

FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117; Pub. L. 111-266; Section 7045, Pub. L. 112-74; Section 7046, Pub. L. 112-74.

Dated: April 25, 2012.

Rose E. Gottemoeller, Acting Under Secretary, Arms Control and International Security, Department of State.

Apr. 17, 2012: 77 FR 22668; 22 C.F.R. Parts 120 and 123, International Import Certificate BIS-645P/ATF-4522/DSP-53 and Administrative Changes

(Source: http://www.gpo.gov/fdsys/pkg/FR-2012-04-17/html/2012-9081.htm)

* AGENCY: Department of State.
* ACTION: Final rule.
* SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to remove reference to the International Import Certificate (Form BIS-645P/ATF-4522/DSP-53). This amendment ceases the Department's practice of accepting DSP-53 submissions. Instead, the DSP-61 is to be used by importers when necessary. The Department also is making administrative changes to other sections.
* DATES: Effective Date: **This rule is effective May 17, 2012**.
* FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Acting Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2792, email DDTCResponseTeam@state.gov. ATTN: International Import Certificate, ITAR Section 123.4.
* SUPPLEMENTARY INFORMATION: The Arms Export Control Act authorizes the President to control the import and export of defense articles. Executive Order 11958, as amended, delegated the authority to regulate permanent and temporary exports and temporary imports of defense articles to the Secretary of State, and delegated the authority to regulate permanent imports of defense articles to the Attorney General. The International Import Certificate Form BIS-645P/ATF-4522/DSP-53 is identified as a form issued by the Department of Commerce's Bureau of Industry & Security (BIS); the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE); and the Department of State's Directorate of Defense Trade Controls (DDTC). It is meant to standardize procedures used to facilitate international trade.
DDTC receives a few hundred DSP-53 submissions a year, and typically they are submitted by persons claiming the temporary import licensing exemption available at Sec. 123.4, but who need documentation of U.S. Government approval of the temporary import. The Department of State's DSP-61 (Application/License for Temporary Import of Unclassified Defense Articles) is the primary means by which the Department exercises its authority to control the temporary import of defense articles. Therefore, DDTC revises Sec. 123.4 to implement its decision to no longer accept submissions of the International Import Certificate (DSP-53).

For temporary imports of defense articles meeting the conditions of the exemption at Sec. 123.4, but for which the foreign exporter requires documentation, the U.S. importer will be required to obtain a DSP-61. BATFE and BIS will continue to adjudicate International Import Certificate submissions for items under their jurisdiction. DDTC also revises Sec. 123.3 to specify that a DSP-61 is accepted to support the use of a temporary import exemption, but not in satisfaction of requirements for a permanent import. And Sec. 120.28(b)(1) is amended to remove reference to the DSP-53.

Section 120.31 is amended to update the list of NATO countries by adding Albania and Croatia. Section 123.1(c)(4) is amended to replace reference to an obsolete form (``Department of Defense Form 1513'') with reference to the proper documentation (``Letter of Offer and Acceptance''). Section 123.4(c)(1) is amended to provide a correct reference (Sec. 120.1(c) rather than Sec. 120.1(b)). Section 123.4(c)(2) is amended to provide updated terminology (``Electronic Export Information'' replaces ``Shipper's Export Declaration''). Section 123.4(c)(3) is amended to provide updated terminology (proscribed ``area'' and ``person,'' in addition to ``proscribed country''). And Sec. 123.25(b) is amended by removing the word ``that'' in the statement before the colon.

The Department of State's intention to discontinue accepting submissions of the DSP-53 was first published as a proposed rule on July 14, 2011, soliciting public comment (76 FR 41438). The comment period ended

August 29, 2011. Three parties filed comments. The Department's evaluation of the written comments and recommendations follows.

Three commenting parties noted that many foreign governments view the International Import Certificate as a means of providing not only certification by the U.S. Government of proposed imports, but also of providing end-use assurances in a manner similar to the Department's form DSP-83 (Nontransfer and Use Certificate). Similarly, one commenting party suggested the Department should provide U.S. exporters with an explanatory notice that can be presented to foreign officials that request an International Import Certificate subsequent to this rulemaking. The intent of the International Import Certificate is not to provide end-use assurances; it is intended to provide U.S. government acknowledgment of a proposed import. For items under their import jurisdiction, BIS and BATFE will continue to adjudicate International Import Certificate submissions, and therefore will continue to provide applicants documentation regarding U.S. government acknowledgment of proposed imports. For items under Department of State import jurisdiction, an approved DSP-61 serves as U.S. government acknowledgement and approval of a proposed temporary import. Three commenting parties expressed concern that the Department's proposal to cease issuing International Import Certificates could inadvertently disrupt international trade. Two of the commenting parties recommended the Department coordinate with the international community to ensure alternative means of assurances are acceptable. The Department accepts this recommendation and notes that it has previously expressed the intent to discontinue the DSP-53 with the international community at various international conferences and at the Wassenaar Arrangement. In these forums, no concerns were expressed to the Department.

One commenting party stated that the requirement to obtain a DSP-61, if documentation is required by a foreign exporter, will lead to cumbersome and unnecessary licensing reviews. The Department acknowledges that in a relatively small number of cases, license review will occur when with use of the DSP-53 it would have been avoided. The Department notes that the DSP-61 is the appropriate means by which a person may obtain documentation of U.S. Government approval for the temporary import of defense articles otherwise eligible for the license exemption at ITAR Sec. 123.4.

One commenting party requested guidance on the means by which it can fulfill a foreign exporter's requirement for documentation of U.S. Government authorization for the permanent import of defense articles not listed on the U.S. Munitions Import List (``USMIL,'' a subset of the USML). BATFE has jurisdiction over the permanent import of defense articles, even when those defense articles are not listed on the USMIL. Therefore, an International Import Certificate may be submitted to BATFE in such instances.

One commenting party recommended the removal of reference in the final rule to the form DSP-85 (Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data), noting Sec. 123.4 applies only to unclassified articles and that the ITAR is already clear that temporary imports of classified defense articles require use of the DSP-85. The Department accepted this recommendation.

Regulatory Analysis and Notices [This portion deleted by Editor.]

List of Subjects in 22 CFR Parts 120 and 123

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120 and 123 are amended as follows:

PART 120--PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105-261, 112 Stat. 1920.

2. Section 120.28 is amended by revising paragraph (b)(1), redesignating paragraph (b)(3) as paragraph (c), and revising newly redesignated paragraph (c) as follows:

Sec. 120.28 Listing of forms referred to in this subchapter.

* * * * *

(b) Department of Commerce, Bureau of Industry and Security:

(1) International Import Certificate (Form BIS-645P/ATF-4522).

* * * * *

(c) Department of Defense, Defense Security Cooperation Agency: Letter of Offer and Acceptance.

3. Section 120.31 is amended by revising it to read as follows:

Sec. 120.31 North Atlantic Treaty Organization.

North Atlantic Treaty Organization (NATO) is comprised of the following member countries: Albania, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, The Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, United Kingdom, and the United States.

PART 123--LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

4. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105-261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107-228.

5. Section 123.1 is amended by revising paragraph (c)(4) to read as follows:

Sec. 123.1 Requirement for export or temporary import licenses.

* * * * *

(c) * * *

(4) An application for a license under this part for the permanent export of defense articles sold commercially must be accompanied by a copy of a purchase order, letter of intent, or other appropriate documentation. In cases involving the U.S. Foreign Military Sales program, three copies of the relevant Letter of Offer and Acceptance are required, unless the procedures of Sec. 126.4(c) or Sec. 126.6 of this subchapter are followed.

* * * * *

6. Section 123.3 is amended by adding paragraph (c), to read as follows:

Sec. 123.3 Temporary import licenses.

* * * * *

(c) A DSP-61 license may be obtained by a U.S. importer in satisfaction of Sec. 123.4(c)(4) of this subchapter. If a foreign exporter requires documentation for a permanent import, the U.S. importer must contact the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives for the appropriate documentation. A DSP-61 will not be approved to support permanent import requirements.

7. Section 123.4 is amended by revising paragraphs (c)(1) through (c)(3), and adding paragraph (c)(4), to read as follows:

Sec. 123.4 Temporary import license exemptions.

* * * * *

(c) * * *

(1) The importer must meet the eligibility requirements set forth in Sec. 120.1(c) of this subchapter;

(2) At the time of export, the ultimate consignee named on the Electronic Export Information (EEI) must be the same as the foreign consignee or end-user of record named at the time of import;

(3) A stated in Sec. 126.1 of this subchapter, the temporary import must not be from or on behalf of a proscribed country, area, or person listed in that section unless an exception has been granted in accordance with Sec. 126.3 of this subchapter; and

(4) The foreign exporter must not require documentation of U.S. Government approval of the temporary import. If the foreign exporter requires documentation for a temporary import that qualifies for an

exemption under this subchapter, the U.S. importer will not be able to claim the exemption and is required to obtain a DSP-61 Application/License for Temporary Import of Unclassified Defense Articles.

* * * * *

8. Section 123.25 is amended by revising paragraph (b) to read as follows:

Sec. 123.25 Amendments to licenses.

* * * * *

(b) The following types of amendments to a license will be considered: Addition of U.S. freight forwarder or U.S. consignor; change due to an obvious typographical error; change in source of commodity; and change of foreign intermediate consignee if that party is only transporting the equipment and will not process (e.g., integrate, modify) the equipment. For changes in U.S. dollar value see Sec. 123.23.

* * * * *

Dated: April 6, 2012.
Rose E. Gottemoeller, Acting Under Secretary, Arms Control and International Security, Department of State.

Mar. 22, 2012: 77 FR 16670; 22 C.F.R. § 126.1(n), Sri Lanka

(Source: http://www.gpo.gov/fdsys/pkg/FR-2012-03-22/html/2012-6822.htm)

* AGENCY: Department of State.
* ACTION: Final rule.
* SUMMARY: The Department of State is amending the International Traffic in Arms Regulations to add another exception to the license denial policy toward Sri Lanka. This change allows for exports to Sri Lanka for assistance for aerial and maritime surveillance.
* DATES: Effective date: This rule is effective March 22, 2012.
* FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Acting Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663-2792, or email DDTCResponseTeam@state.gov. ATTN: Regulatory Change, Part 126, Sri Lanka.
* SUPPLEMENTARY INFORMATION: Section 126.1(n) is amended to implement section 7046(d) of Public Law 112-74, which provides that the policy of denial for defense export licenses for Sri Lanka will not apply to assistance for aerial and maritime surveillance.

. . . .

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is amended as follows:

PART 126--GENERAL POLICIES AND PROVISIONS

(1) The authority citation for part 126 is revised to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117; Sections 7045 and 7046, Pub. L. 112-74.

(2) Section 126.1 is amended by revising paragraph (n) to read as follows:

§ 126.1 Prohibited Exports, Imports, and Sales to or From Certain Countries

* * * * *

(n) *Sri Lanka*. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Sri Lanka, except that a license or other

approval may be issued, on a case-by-case basis, for humanitarian demining and aerial or maritime surveillance.
* * * * *

Dated: March 13, 2012.
Rose E. Gottemoeller, Acting Under Secretary, Arms Control and International Security, Department of State.

Mar. 21, 2012: 77 FR 16592; 22 CFR Parts 120, 123, 124, et al., Implementation of the Defense Trade Cooperation Treaty Between the US and UK; Final Rule

(Source: http://www.gpo.gov/fdsys/pkg/FR-2012-03-21/html/2012-6825.htm)

* AGENCY: Department of State.
* ACTION: Final rule.
* SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to implement the Defense Trade Cooperation Treaty between the United States and the United Kingdom, and identify via a supplement the defense articles and defense services that may not be exported pursuant to the Treaty. This final rule implements only the Defense Trade Cooperation Treaty between the United States and the United Kingdom. The final rule implementing the Defense Trade Cooperation Treaty between the United States and Australia will be published later in the year once that treaty enters into force. [See below effective date notice of April 19, 2012.] Additionally, the Department of State amends the section pertaining to the Canadian exemption to reference the new supplement, and, with regard to Congressional certification, the Department of State adds Israel to the list of countries and entities that have a shorter certification time period and a higher dollar value reporting threshold.
* DATES: This rule is effective upon the entry into force of the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (Treaty Doc. 110-7). We will publish a rule document in the Federal Register announcing the effective date of this rule.
[Editor's Note: In FR 23538-23539 (Apr. 19, 2012), the Secretary of State announced: "On April 13, 2012, the United States and the United Kingdom exchanged diplomatic notes bringing the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (Treaty Doc. 110-7) into force. This Notice announces the entry into force of the Treaty. This Notice also announces April 13, 2012 as the effective date of the rule published on March 21, 2012 (77 FR 16592) implementing the Treaty and making other updates to the International Traffic in Arms Regulations (ITAR)."]
* FOR FURTHER INFORMATION CONTACT: Sarah Heidema, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663-2809 or E-mail DDTCResponseTeam@state.gov. ATTN: Regulatory Change – Treaties.
* SUPPLEMENTARY INFORMATON:

The Department of State is amending the International Traffic in Arms Regulations (ITAR) to implement the Defense Trade Cooperation Treaty between the United States and the United Kingdom, and identify via a supplement the defense articles and defense services that may not be exported pursuant to the Treaty. This final rule implements only the Defense Trade Cooperation Treaty between the United States and the United Kingdom. These final amendments affect parts 120, 123, 124, 126, 127, and 129, with a new section in part 126 describing the licensing exemptions pursuant to the Treaty.

On November 22, 2011 (76 FR 72246), the Department's Directorate of Defense Trade Controls (DDTC) published for public comment a proposed rule to amend the ITAR to implement the Defense Trade Cooperation Treaty between the United States and the United Kingdom, and the Defense Trade Cooperation Treaty between the United States and Australia, and to identify, via a supplement, the defense articles and defense services that may not be exported pursuant to the Treaties. However, this rule implements only the Treaty between the United States and the United Kingdom.

The final rule implementing the Treaty between the United States and Australia will be published later in the year once that treaty enters into force. The proposed rule also sought to amend the section pertaining to the Canadian exemption to reference the new supplement, and, with regard to Congressional certification, add Israel to the list of countries and entities that have a shorter certification time period and a higher dollar value reporting threshold.

The proposed rule's comment period ended December 22, 2011. Fifteen parties filed comments. 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 changes noted and minor edits, and promulgates it as a final rule.

The Department's evaluation of the written comments and recommendations follows:

The majority of commenting parties expressed support for the intent of the Treaty, to ease export licensing burdens with one of the U.S.'s closest allies. However, the commenting parties expressed concern that the exemption is overly complicated and its requirements too burdensome to be truly workable for industry. DDTC appreciates these comments and believes the clarifying edits made in this final rule make application of the exemption clear.

One commenting party requested § 123.9(a) clarify whether the United Kingdom government could deploy items received pursuant to the Treaty. DDTC has reviewed this request and has not made changes to this paragraph. Section 126.17(h) identifies the process by which items exported pursuant to the Treaty may be deployed by the United Kingdom government.

One commenting party requested edits to the note to § 123.9(a) to use the word "knowledge." DDTC rejected this request because the language in the note is sufficient, but has added clarifying language to the note.

Three commenting parties suggested that DDTC delete the reference to defense services in § 123.9(b) and (c). DDTC accepts this request and has deleted the reference.

One commenting party requested clarification of the addition and use of the word "destination" in § 123.9 (c). The term "destination" is added because while the end-user may remain the same, the destination may change, therefore requiring authorization from DDTC.

One commenting party sought clarification of whether § 123.9(c)(4) set up a different process for a retransfer request if such were submitted for articles received under the new § 126.17. Section 123.9(c)(4)does not set up a new process; it identifies who may submit a retransfer request and is language reflective of Section 9(3) of the Implementing Arrangement.

Three commenting parties noted that the proposed revised text of § 123.26 appeared to conflict with provisions of § 123.22. DDTC has considered these comments and has revised § 123.26 to clarify that its requirements are consistent with those of § 123.22.

One commenting party requested that DDTC delete the requirement in § 123.26 to record the time of the transaction. DDTC accepts this suggestion and has removed the text accordingly.

One commenting party requested § 126.5(b) be revised to reference screening programs developed pursuant to § 126.18. Guidance for using § 126.18 is available on DDTC's website and is not appropriate to add to this section. Therefore, no edits were made to this section.

Two commenting parties noted that the proposed rule changed the word "or" to "for" in § 126.5(b). DDTC has corrected this typographical error, and that text in the first sentence again reads, "or for return to the United States."

One commenting party noted that by reserving § 126.5(c) and removing the items previously controlled there to Supplement No. 1, the requirement to obtain written certifications, as well as recordkeeping requirements, were removed. Clarification was requested as to whether this was intentional. DDTC has reviewed this section and confirms that the removal of these requirements was inadvertent. Therefore, Supplement No. 1 has been revised to clarify that all previous requirements of the Canadian exemption, including those provided in paragraph (c), remain. There is no intention to change the requirements for using the Canadian exemption.

Several commenting parties requested additional guidance with various aspects of the new § 126.17. As part of Treaty implementation, DDTC will be posting Frequently Asked Questions (FAQs) on its website.

These FAQs will address these requests for guidance.

Two commenting parties suggested that DDTC add a definition for defense articles to § 126.17(a)(1) to clarify that the definition also includes technical data for purposes of the exemption. DDTC does not believe this change is necessary as the definition in § 120.6 clearly identifies technical data as within the scope of the "defense article" definition. Unless specifically indicated otherwise, the use of the term "defense article" includes technical data.

One commenting party requested clarification of the term "access" as used in § 126.17(a)(1)(iv), indicating that it is common for U.S. Customs and Border Protection (CBP) to authorize a physical manipulation of a container, which would result in an intermediate consignee having access to an item in the shipment. DDTC believes the meaning of "access" is plain and does not see a need to revise this paragraph. A directive from a CBP official to open a container is not the type of access that would require a license from DDTC. Another party requested DDTC place a reference to paragraph (k), which discusses intermediate consignees, in this section. DDTC accepted this suggestion and has made corresponding changes.

One commenting party expressed concerns that the process by which the U.S. Government would obtain maintained records, as provided in § 126.17(a)(3)(vi) and other sections of the exemption, is unclear. These sections are not intended to identify the process by which record requests will be made. The process will be the same as for any request currently made under the ITAR. Therefore, DDTC has not revised these paragraphs.

One commenting party noted the language in § 126.17(a)(4) seemed to limit transfers just to exports to the United States. DDTC has revised this section to clarify that it applies to transfers within the Approved Community.

Two commenting parties requested DDTC change the word "required" to "pursuant to" in § 126.17(a)(4)(iii). This change has been rejected as the word "required" is a requirement of the Treaty.

Two commenting parties asked DDTC to clarify the requirements in § 126.17(a)(5) related to items delivered via the Foreign Military Sales program. DDTC has revised § 126.17(a)(5) to provide clarifying language.

Three commenting parties suggested DDTC include additional information in § 126.17(d) to explain the vetting process for the UK Community. DDTC does not accept this suggestion. The vetting requirements are identified in the Treaty and Implementing Arrangement, which are available on DDTC's website. One commenting party noted that there was no reference to Her Majesty's Government (HMG) entities and facilities in § 126.17(d). DDTC has revised this paragraph to also reference HMG.

Three commenting parties requested DDTC provide additional guidance with respect to identification of operations, programs and projects that cannot be publicly identified (i.e., are classified). DDTC has not added additional language to § 126.17(f)(2), but will provide additional guidance on its website for requesting confirmation of Treaty eligibility for classified programs.

One commenting party inquired whether DDTC will post on its website a complete list of U.S. Government contracts that are Treaty eligible. DDTC will not do so. The U.S. Department of Defense has updated the Defense Federal Acquisition Regulation Supplement (DFARS) and certain contract clauses, which will identify treaty eligibility when incorporated into a contract.

Three commenting parties requested clarifying language be added to § 126.17(g)(1) to indicate whether this paragraph applied to marketing to members of the Approved Community. These parties also requested clarification of the term "identical type." Finally, parties requested that this paragraph be removed in its entirety. DDTC cannot remove this requirement as it is part of the Treaty's Exempted Technology List. DDTC, however, has revised the paragraph to indicate that marketing may be to members of the United Kingdom Community so long as it is for an approved Treaty end-use and it meets the other requirements of § 126.17(g)(1).

One commenting party recommended removal of § 126.17(g)(4) or, in the alternative, adding a parenthetical "(or foreign equivalent)" after "Milestone B." DDTC cannot remove this paragraph as it is part of the Treaty's Exempted Technology List. DDTC considered adding a parenthetical to include foreign equivalents, but has decided to reject this suggestion as there is no equivalent in the UK to "Milestone B." One commenting party requested changes to § 126.17(g)(5) to allow for the export of embedded exempted technologies in certain circumstances. DDTC is not, at this time, prepared to broaden this paragraph to include

embedded exempted technologies.

Four commenting parties expressed concerns with § 126.17(g)(8) and the reference to the European Union Dual Use List. DDTC has revised this paragraph to clarify that any such items have been included in Supplement No. 1 to Part 126.

Two commenting parties raised concerns with the complexity of using § 126.17(h) with a diverse supply chain and requested clarification on the applicability of § 123.9(e) to this exemption. DDTC appreciates the diverse nature of global supply chains, but believes the mechanisms provided in § 126.17(h) are no more onerous than current retransfer or reexport requirements. Further, as indicated in § 126.17(h)(5), any retransfer, reexport, or change in end-use under § 126.17(h) shall be made in accordance with § 123.9, which includes § 123.9(e).

One commenting party requested definition of "United Kingdom Armed Forces transmission channels" in § 126.17(h)(7). This language is used in the Implementing Arrangement and DDTC believes § 126.17(h)(7) and the Implementing Arrangement are clear. Therefore, DDTC has not provided an additional definition. Two commenting parties requested DDTC delete the words "any citizen of such countries" from § 126.17(h)(8). DDTC accepts this suggestion and has revised this paragraph accordingly.

Three commenting parties requested clarification as to the form a written request under § 126.17(i)(2)(i) should take. Parties should submit such requests in the form of a General Correspondence (GC), the required elements of which are identified in § 126.17(i)(2)(i).

One commenting party requested clarification as to the form a written request under § 126.17(i)(3) should take. Parties should also submit such requests in the form of a GC to DDTC.

Ten commenting parties expressed concerns with the marking requirements contained in § 126.17(j). Of most concern was a perception that the requirements of this section made using the exemption overly burdensome and costly. Various suggestions were provided ranging from removal of the paragraph, to rewording of certain sections. The majority of commenting parties requested DDTC remove the requirement in § 126.17(j)(2) for exporters to remove Treaty markings. DDTC appreciates the concerns expressed. However, the requirements contained in 126.17(j) are reflective of the requirements in the Treaty and its Implementing Arrangement. DDTC has made some minor edits to provide clarity in this paragraph, but the requirement to remove certain markings will not be removed from the regulations at this time.

One commenting party requested DDTC edit the text of the statement required by § 126.17(j)(5) to indicate the items being exported were USML items and authorized only for export to the UK under the Treaty. DDTC accepts this suggestion and has revised the text accordingly.

One commenting party requested that registered brokers be included in paragraph § 126.17(k)(1)(ii). United Kingdom intermediate consignees must meet the requirements of § 126.17(k)(1)(ii). If a registered broker meets these requirements, then it may be an intermediate consignee for purposes of this exemption. However, simply being a registered broker does not automatically qualify an entity as a United Kingdom intermediate consignee.

Five commenting parties suggested DDTC clarify the language related to recordkeeping in § 126.17(l) and ensure that it is consistent with other recordkeeping provisions in the ITAR. DDTC concurs with the need to keep ITAR sections consistent and has updated § 123.26 to reference the recordkeeping requirements of § 126.17(l). DDTC has also made clarifying edits to § 126.17(l).

One commenting party suggested changing the word "all" in § 126.17(l)(1) to "their" to acknowledge that the U.S. exporter may not be aware or have record of a reexport/retransfer request submitted by a UK Community member. DDTC agrees with this request and has revised the paragraph accordingly.

One commenting party requested clarification of § 126.17(l)(1)(x) as to whether this referred to the USML category or security classification. This is intended to refer to security classification. DDTC has revised the paragraph accordingly.

One commenting party requested DDTC delete the reference to "defense services" in § 126.17(l)(2). DDTC accepted this request and has revised the paragraph accordingly.

Two commenting parties asked DDTC to clarify whether § 126.17(m) required exporters to submit negative reports. DDTC confirms that reporting requirements under § 126.17(m) are contingent on meeting the requirements of ITAR § 130.9.

Two commenting parties requested clarification on whether the congressional notification requirement

under the Treaty is identical to that required under normal license authorization processes. DDTC confirms that the process will be the same.

Ten commenting parties expressed various concerns regarding the scope and wording of Supplement No. 1 to Part 126. In particular, comments indicated concern that the Supplement was too broad and possibly excluded too much to make the exemption useful. DDTC appreciates these comments, and has made clarifying edits to Supplement No. 1 to the extent possible within the confines of the Treaty, the Implementing Arrangements, and the Exempted Technology List.

ITAR PART	FINAL CHANGES
120	Section 120.19 revised to clarify meaning of reexport or retransfer; § 120.33 added and reserved for the Treaty between the United States and Australia; § 120.34 added to provide definitions f the Defense Trade Cooperation Treaty between the United States and the UK; § 120.35 added and reserved for the Treaty between the United States and Australia; § 120.36 added to define the implementing arrangements pursuant to the Treaty between the United States and the UK.
123	Clarifying edits made throughout section and references to § 126.17 added; Israel added to § 123.9(e).
124	§ 124.11 revised to add Israel to the list of countries and entities subject to the 15-day time period regarding Congressional certification.
126	Clarifying edits made throughout section; § 126.5(b) revised to reference the new supplement to part 126, consequently, §§ 126.5(b)(1)-(21 are removed; § 126.5(c) changed to "Reserved" and procedures and exclusions for technical data and defense services moved to Supplement 1 and its notes; § 126.16 added and reserved for the Treaty between the United States and Australia; § 126.17 added to describe the exemption pursuant to the Defense Trade Cooperation treaty between the United States and the UK; Supplement No. 1 to part 126 added.
127	Clarifying edits made through out [sic] section; revised to make reference to § 126.17.
129	Sections 129.6(b)(2), 129.7(a)(1)(vii), and 129.7(a)(2) revised to include Israel in the listing of countries and entities.

Regulatory Analysis and Notices [at 77 FR 16596 Deleted.]

Arms and Munitions, Exports.

22 CFR Part 127
Arms and Munitions, Crime, Exports, Penalties, Seizures and Forfeitures.

22 CFR Part 129
Arms and Munitions, Exports, Brokering.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 123, 124, 126, 127, and 129 are amended as follows:

PART 120 – PURPOSE AND DEFINITIONS

1. The authority citation for Part 120 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111-266.

2. Section 120.1 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 120.1 General Authorities and Eligibility.

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778), as amended, authorizes the President to control the export and import of defense articles and defense services. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 11958, as amended. This subchapter implements that authority. Portions of this subchapter also implement the Defense Trade Cooperation Treaty between the United States and the United Kingdom. (Note, however, that the Treaty is not the source of authority for the prohibitions in part 127, but instead is the source of one limitation on the scope of such prohibitions.) By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Deputy Assistant Secretary of State for Defense Trade and Regional Security and the Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs.
* * * *

(c) Receipt of Licenses and Eligibility

(1) A U.S. person may receive a license or other approval pursuant to this subchapter. A foreign person may not receive such a license or other approval, except as follows:

(i) A foreign governmental entity in the United States may receive an export license or other export approval;

(ii) A foreign person may receive a reexport or retransfer approval; and

(iii) A foreign person may receive a prior approval for brokering activities. Requests for a license or other approval, other than by a person referred to in paragraphs (c)(1)(i) and (c)(1)(ii) of this section, will be considered only if the applicant has registered with the Directorate of Defense Trade Controls pursuant to part 122 or 129 of this subchapter, as appropriate.

(2) Persons who have been convicted of violating the criminal statutes enumerated in § 120.27 of this subchapter, who have been debarred pursuant to part 127 or 128 of this subchapter, who are subject to indictment or are otherwise charged (e.g., by information) for violating the criminal statutes enumerated in § 120.27 of this subchapter, who are ineligible to contract with, or to receive a license or other form of authorization to import defense articles or defense services from any agency of the U.S. Government, who are ineligible to receive an export license or other approval from any other agency of the U.S. Government, or who are subject to a Department of State policy of denial, suspension or revocation under § 126.7(a) of this subchapter, or to interim suspension under § 127.8 of this subchapter, are generally ineligible to be involved in activities regulated under this subchapter.

(d) The exemptions provided in this subchapter do not apply to transactions in which the exporter, any party to the export (as defined in § 126.7(e) of this subchapter), any source or manufacturer, broker or other participant in the brokering activities, is generally ineligible in paragraph (c) of this section, unless prior written authorization has been granted by the Directorate of Defense Trade Controls. * * * *

3. Section 120.19 is revised to read as follows:

§ 120.19 Reexport or Retransfer

Reexport or retransfer means the transfer of defense articles or defense services to an end-use, end-user, or destination not previously authorized by license, written approval, or exemption pursuant to this subchapter.

4. Section 120.28 is amended by revising paragraph (b)(2) to read as follows:

§ 120.28 Listing of Forms Referred To In This Subchapter
* * * *

(b) * * *
(2) Electronic Export Information filed via the Automated Export System.
* * * *

5. Section 120.34 is added to read as follows:

§ 120.34 Defense Trade Cooperation Treaty Between the United States and the United Kingdom

Defense Trade Cooperation Treaty between the United States and the United Kingdom means the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington D.C. and London, June 21 and 26, 2007. For additional information on making exports pursuant to this Treaty, see § 126.17 of this subchapter.

6. Section 120.36 is added to read as follows:

§ 120.36 United Kingdom Implementing Arrangement

United Kingdom Implementing Arrangement means the Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington D.C., February 14, 2008, as it may be amended.

PART 123 – LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

7. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec 1205(a), Pub. L. 107–228.

8. Section 123.4 is amended by revising paragraph (d) introductory text to read as follows:

§ 123.4 Temporary Import License Exemptions

* * * *
(d) *Procedures*. To the satisfaction of the Port Directors of U.S. Customs and Border Protection, the importer and exporter must comply with the following procedures:
* * * *

9. Section 123.9 is amended by revising paragraphs (a), (b), (c), (e) introductory text, (e)(1), (e)(3), and (e)(4), adding a note after paragraph (a), and removing and reserving paragraph (d), to read as follows:

§ 123.9 Country of Ultimate Destination and Approval of Reexports or Retransfers

(a) The country designated as the country of ultimate destination on an application for an export license, or in an Electronic Export Information filing where an exemption is claimed under this subchapter, must be the country of ultimate end-use. The written approval of the Directorate of Defense Trade Controls must be obtained before reselling, transferring, reexporting, retransferring, transshipping, or disposing of a defense article to any end-user, end-use, or destination other than as stated on the export license, or in the Electronic Export Information filing in cases where an exemption is claimed under this subchapter, except in accordance with the provisions of an exemption under this subchapter that explicitly authorizes the resell, transfer, reexport, retransfer, transshipment, or disposition of a defense article without such approval. Exporters must determine the specific end-user, end-use, and destination prior to submitting an application to the Directorate of Defense Trade Controls or claiming an exemption under this subchapter.

Note to paragraph (a): In making the aforementioned determination, a person is expected to review all readily available information, including information readily available to the public generally as well as information readily available from other parties to the transaction.

(b) The exporter shall incorporate the following statement as an integral part of the bill of lading, airway bill, or other shipping documents, and the invoice whenever defense articles are to be exported or transferred pursuant to a license, other written approval, or an exemption under this subchapter, other than the exemptions contained in § 126.16 and § 126.17 of this subchapter (Note: for exports made pursuant to § 126.16 or § 126.17 of this subchapter, see § 126.16(j)(5) or § 126.17(j)(5)): "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, to any other country or end-user, 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."

(c) Any U.S. person or foreign person requesting written approval from the Directorate of Defense Trade Controls for the reexport, retransfer, other disposition, or change in end-use, end-user, or destination of a defense article initially exported or transferred pursuant to a license or other written approval, or an exemption under this subchapter, must submit all the documentation required for a permanent export license (see § 123.1 of this subchapter) and shall also submit the following:

(1) The license number, written authorization, or exemption under which the defense article or defense service was previously authorized for export from the United States (Note: For exports under exemptions at § 126.16 or § 126.17 of this subchapter, the original end-use, program, project, or operation under which the item was exported must be identified.);

(2) A precise description, quantity, and value of the defense article or defense service;

(3) A description and identification of the new end-user, end-use, and destination; and

(4) With regard to any request for such approval relating to a defense article or defense service initially exported pursuant to an exemption contained in § 126.16 or § 126.17 of this subchapter, written request for the prior approval of the transaction from the Directorate of Defense Trade Controls must be submitted: By the original U.S. exporter, provided a written request is received from a member of the Australian Community, as identified in § 126.16 of this subchapter, or the United Kingdom Community, as identified in § 126.17 of this subchapter (where such a written request includes a written certification from the member of the Australian Community or the United Kingdom Community providing the information set forth in § 126.17 of this subchapter); or by a member of the Australian Community or the United Kingdom Community, where such request provides the information set forth in this section. All persons must continue to comply with statutory and regulatory requirements outside of this subchapter concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 C.F.R. Parts 447, 478, and 479, which are unaffected by the Defense Trade Cooperation Treaty between the United States and the United Kingdom and continue to apply fully to defense articles and defense services subject to either of the aforementioned treaties and the exemptions contained in § 126.17 of this subchapter.

(d) [Reserved]

(e) Reexports or retransfers of U.S.-origin components incorporated into a foreign defense article to NATO, NATO agencies, a government of a NATO country, or the governments of Australia, Israel, Japan, New Zealand, or the Republic of Korea are authorized without the prior written approval of the Directorate of Defense Trade Controls, provided:

(1) The U.S.-origin components were previously authorized for export from the United States, either by a license, written authorization, or an exemption other than those described in either § 126.16 or § 126.17 of this subchapter;

* * * *

(3) The person reexporting the defense article provides written notification to the Directorate of Defense Trade Controls of the retransfer not later than 30 days following the reexport. The notification must state the articles being reexported and the recipient government.

(4) The original license or other approval of the Directorate of Defense Trade Controls did not include retransfer or reexport restrictions prohibiting use of this exemption.

10. Section 123.15 is amended by revising paragraphs (a)(1), (a)(2), and (b) to read as follows:

§ 123.15 Congressional Certification Pursuant to Section 36(c) of the Arms Export Control Act

(a) * * *

(1) A license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more, or for defense articles and defense services sold under a contract in the amount of $50,000,000 or more, to any country that is not a member of the North Atlantic Treaty Organization (NATO), or Australia, Israel, Japan, New Zealand, or the Republic of Korea that does not authorize a new sales territory; or

(2) A license for export to a country that is a member country of NATO, or Australia, Israel, Japan, New Zealand, or the Republic of Korea, of major defense equipment sold under a contract in the amount in the amount of $25,000,000 or more, or for defense articles and defense services sold under a contract in the amount of $100,000,000 or more, and provided the transfer does not include any other countries; or

* * * *

(b) Unless an emergency exists which requires the final export in the national security interests of the United States, approval may not be granted for any transaction until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1) involving NATO, or Australia, Israel, Japan, New Zealand, or the Republic of Korea or at least 30 calendar days have elapsed for any other country; in the case of a license for an export of a commercial communications satellite for launch from, and by nationals of, the Russian Federation, Ukraine, or Kazakhstan, until at least 15 calendar days after the Congress receives such certification.

* * * *

11. Section 123.16 is amended by revising paragraphs (a), (b)(1)(iii), and (b)(2)(vi) to read as follows:

§ 123.16 Exemptions of General Applicability

(a) The following exemptions apply to exports of unclassified defense articles for which no approval is needed from the Directorate of Defense Trade Controls. These exemptions do not apply to: Proscribed destinations under § 126.1 of this subchapter; exports for which Congressional notification is required (see § 123.15 of this subchapter); MTCR articles; Significant Military Equipment (SME); and may not be used by persons who are generally ineligible as described in § 120.1(c) of this subchapter. All shipments of defense articles, including but not limited to those to Australia, Canada, and the United Kingdom, require an Electronic Export Information (EEI) filing or notification letter. If the export of a defense article is exempt from licensing, the EEI filing must cite the exemption. Refer to § 123.22 of this subchapter for EEI filing and letter notification

requirements.
(b) * * *
(1) * * *
(iii) The exporter identifies in the EEI filing by selecting the appropriate code that the export is exempt from the licensing requirements of this subchapter; and
* * * *
(2) * * *
* * * *
(vi) The exporter must certify on the invoice, the bill of lading, air waybill, or shipping documents that the export is exempt from the licensing requirements of this subchapter. This is done by writing "22 CFR 123.16(b)(2) applicable."
* * * *

12. Section 123.22 is amended by revising paragraphs (a) introductory text and (b)(2) introductory text to read as follows:

§ 123.22 Filing, Retention, and Return of Export Licenses and Filing of Export Information

(a) Any export, as defined in this subchapter, of a defense article controlled by this subchapter, to include defense articles transiting the United States, requires the electronic reporting of export information. The reporting of the export information shall be to the U.S. Customs and Border Protection using the Automated Export System (AES) or directly to the Directorate of Defense Trade Controls (DDTC). Any license or other approval authorizing the permanent export of hardware must be filed at a U.S. Port before any export. Licenses or other approvals for the permanent export of technical data and defense services shall be retained by the applicant who will send the export information directly to DDTC. Temporary export or temporary import licenses for such items need not be filed with the U.S. Customs and Border Protection, but must be presented to the U.S. Customs and Border Protection for decrementing of the shipment prior to departure and at the time of entry. The U.S. Customs and Border Protection will only decrement a shipment after the export information has been filed correctly using the AES. Before the export of any hardware using an exemption in this subchapter, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically provide export information using the AES (see paragraph (b) of this section). In addition to electronically providing the export information to the U.S. Customs and Border Protection before export, all the mandatory documentation must be presented to the port authorities (e.g., attachments, certifications, proof of AES filing; such as the Internal Transaction Number (ITN)). Export authorizations shall be filed, retained, decremented or returned to DDTC as follows:
* * * *

(b) * * *
* * * *
(2) *Emergency shipments of hardware that cannot meet the pre-departure filing requirements.* U.S. Customs and Border Protection may permit an emergency export of hardware by truck (e.g., departures to Mexico or Canada) or air, by a U.S. registered person, when the exporter is unable to comply with the Electronic Export Information (EEI) filing timeline in paragraph (b)(1)(i) of this section. The applicant, or an agent acting on the applicant's behalf, in addition to providing the EEI using the AES, must provide documentation required by U.S. Customs and Border Protection and this subchapter. The documentation provided to U.S. Customs and Border Protection at the port of exit must include the Internal Transaction Number (ITN) for the shipment and a copy of a notification to the Directorate of Defense Trade Controls stating that the shipment is urgent and must be accompanied by an explanation for the urgency. The original of the notification must be immediately provided to the Directorate of Defense Trade Controls. The AES filing of the export information must be made at least two hours prior to any departure by air from the United States. When shipping via ground, the AES filing must be made at the time when the exporter provides the articles to the carrier or at least one hour prior to departure from the United States, when the permanent export of the hardware has been authorized for export:

* * * *

13. Section 123.26 is revised to read as follows:

§ 123.26 Recordkeeping for Exemptions

Any person engaging in any export, reexport, transfer, or retransfer of a defense article or defense service pursuant to an exemption must maintain records of each such export, reexport, transfer, or retransfer. The records shall, to the extent applicable to the transaction and consistent with the requirements of § 123.22 of this subchapter, include the following information: A description of the defense article, including technical data, or defense service; the name and address of the end-user and other available contact information (e.g., telephone number and electronic mail address); the name of the natural person responsible for the transaction; the stated end-use of the defense article or defense service; the date of the transaction; the Electronic Export Information (EEI) Internal Transaction Number (ITN); and the method of transmission. The person using or acting in reliance upon the exemption shall also comply with any additional recordkeeping requirements enumerated in the text of the regulations concerning such exemption (e.g., requirements specific to the Defense Trade Cooperation Treaties in § 126.16 and § 126.17 of this subchapter).

PART 124 – AGREEMENTS, OFF-SHORE PROCUREMENT, AND OTHER DEFENSE SERVICES

14. The authority citation for part 124 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105-261; Pub. L. 111-266.

15. Section 124.11 is amended by revising paragraph (b) to read as follows:

§ 124.11 Congressional Certification Pursuant to Section 36(d) of the Arms Export Control Act
* * * *

(b) Unless an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States, approval may not be granted until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(d)(1) involving the North Atlantic Treaty Organization, any member country of that Organization, or Australia, Israel, Japan, New Zealand, or the Republic of Korea or at least 30 calendar days have elapsed for any other country. Approvals may not be granted when the Congress has enacted a joint resolution prohibiting the export.

* * * *

PART 126 – GENERAL POLICIES AND PROVISIONS

16. The authority citation for part 126 is revised to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp. p. 899; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117; Pub. L. 111-266.

17. Section 126.1 is amended by revising paragraph (e) to read as follows:

§ 126.1 Prohibited Exports, Imports, and Sales to or from Certain Countries
* * * *

(e) *Final sales.* No sale, export, transfer, reexport, or retransfer and no proposal to sell, export, transfer, reexport, or retransfer any defense articles or defense services subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of the Directorate of Defense Trade Controls. However, in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny licenses and approvals in such cases.

(1) Duty to Notify: Any person who knows or has reason to know of such a final or actual sale, export, transfer, reexport, or retransfer of such articles, services, or data must immediately inform the Directorate of Defense Trade Controls. Such notifications should be submitted to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.

(2) [Reserved]

* * * *

18. Section 126.3 is revised to read as follows:

§ 126.3 Exceptions

In a case of exceptional or undue hardship, or when it is otherwise in the interest of the United States Government, the Managing Director, Directorate of Defense Trade Controls, may make an exception to the provisions of this subchapter.

19. Section 126.4 is amended by revising paragraph (d) to read as follows:

§ 126.4 Shipments by or for United States Government Agencies

* * * *

(d) An Electronic Export Information (EEI) filing, required under § 123.22 of this subchapter, and a written statement by the exporter certifying that these requirements have been met must be presented at the time of export to the appropriate Port Directors of U.S. Customs and Border Protection or Department of Defense transmittal authority. A copy of the EEI filing and the written certification statement shall be provided to the Directorate of Defense Trade Controls immediately following the export.

20. Section 126.5 is amended by revising paragraphs (a), (b), (d) introductory text, and Notes 1 and 2, and removing and reserving paragraph (c) to read as follows:

§ 126.5 Canadian Exemptions

(a) *Temporary import of defense articles.* Port Directors of U.S. Customs and Border Protection and postmasters shall permit the temporary import and return to Canada without a license of any unclassified defense articles (see § 120.6 of this subchapter) that originate in Canada for temporary use in the United States and return to Canada. All other temporary imports shall be in accordance with §§ 123.3 and 123.4 of this subchapter.

(b) *Permanent and temporary export of defense articles.* Except as provided in Supplement No. 1 to part 126 of this subchapter and for exports that transit third countries, Port Directors of U.S. Customs and Border Protection and postmasters shall permit, when for end-use in Canada by Canadian Federal or Provincial governmental authorities acting in an official capacity or by a Canadian-registered person, or for return to the United States, the permanent and temporary export to Canada without a license of unclassified defense articles and defense services identified on the U.S. Munitions List (22 CFR 121.1). The exceptions are subject to meeting the requirements of this subchapter, to include 22 CFR 120.1(c) and (d), parts 122 and 123 (except insofar as exemption from licensing requirements is herein authorized) and § 126.1, and the requirement to

obtain non-transfer and use assurances for all significant military equipment. For purposes of this section, "Canadian-registered person" is any Canadian national (including Canadian business entities organized under the laws of Canada), dual citizen of Canada and a third country other than a country listed in § 126.1 of this subchapter, and permanent resident registered in Canada in accordance with the Canadian Defense Production Act, and such other Canadian Crown Corporations identified by the Department of State in a list of such persons publicly available through the Internet website of the Directorate of Defense Trade Controls and by other means.

(c) [Reserved]

(d) *Reexports/retransfer*. Reexport/retransfer in Canada to another end-user or end-use or from Canada to another destination, except the United States, must in all instances have the prior approval of the Directorate of Defense Trade Controls. Unless otherwise exempt in this subchapter, the original exporter is responsible, upon request from a Canadian-registered person, for obtaining or providing reexport/retransfer approval. In any instance when the U.S. exporter is no longer available to the Canadian end-user the request for reexport/retransfer may be made directly to the Directorate of Defense Trade Controls. All requests must include the information in § 123.9(c) of this subchapter. Reexport/retransfer approval is acquired by:

* * * *

Notes to § 126.5:

1. In any instance when the exporter has knowledge that the defense article exempt from licensing is being exported for use other than by a qualified Canadian-registered person or for export to another foreign destination, other than the United States, in its original form or incorporated into another item, an export license must be obtained prior to the transfer to Canada.

2. Additional exemptions exist in other sections of this subchapter that are applicable to Canada, for example §§ 123.9, 125.4, and 124.2, that allow for the performance of defense services related to training in basic operations and maintenance, without a license, for certain defense articles lawfully exported, including those identified in Supplement No. 1 to part 126 of this subchapter.

21. Section 126.7 is amended by revising the section heading and paragraphs (a)(3), (a)(7), and (e) introductory text to read as follows:

§ 126.7 Denial, Revocation, Suspension, or Amendment of Licenses and Other Approvals

(a) * * *

* * * *

(3) An applicant is the subject of a criminal complaint, other criminal charge (e.g., an information), or indictment for a violation of any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

* * * *

(7) An applicant has failed to include any of the information or documentation expressly required to support a license application, exemption, or other request for approval under this subchapter, or as required in the instructions in the applicable Department of State form or has failed to provide notice or information as required under this subchapter; or

* * * *

(e) *Special definition*. For purposes of this subchapter, the term *"Party to the Export"* means:

* * * *

22. Section 126.13 is amended by revising paragraphs (a) introductory text, (a)(1), and (a)(4) to read as follows:

§ 126.13 Required Information

(a) All applications for licenses (DSP–5, DSP–61, DSP–73, and DSP–85), all requests for approval of agreements and amendments thereto under part 124 of this subchapter, and all requests for other written authorizations (including requests for retransfer or reexport pursuant to § 123.9 of this subchapter) must include a letter signed by a responsible official empowered by the applicant and addressed to the Directorate of Defense Trade Controls, stating whether:

(1) The applicant or the chief executive officer, president, vice-presidents, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is the subject of a criminal complaint, other criminal charge (e.g., an information), or indictment for or has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter since the effective date of the Arms Export Control Act, Public Law 94–329, 90 Stat. 729 (June 30, 1976);

* * * *

(4) The natural person signing the application, notification or other request for approval (including the statement required by this subchapter) is a citizen or national of the United States, has been lawfully admitted to the United States for permanent residence (and maintains such lawful permanent residence status) under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a), section 101(a)20, 60 Stat. 163), or is an official of a foreign government entity in the United States, or is a foreign person making a request pursuant to § 123.9 of this subchapter.

* * * *

23. Section 126.17 is added to read as follows:

§ 126.17 Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom

(a) Scope of exemption and required conditions.

(1) Definitions

(i) An *export* means, for purposes of this section only, the initial movement of defense articles or defense services from the United States Community to the United Kingdom Community.

(ii) A *transfer* means, for purposes of this section only, the movement of a previously exported defense article or defense service by a member of the United Kingdom Community within the United Kingdom Community, or between a member of the United States Community and a member of the United Kingdom Community.

(iii) *Retransfer* and *reexport* have the meaning provided in § 120.19 of this subchapter.

(iv) *Intermediate consignee* means, for purposes of this section, an entity or person who receives defense articles, including technical data, but who does not have access to such defense articles, for the sole purpose of effecting onward movement to members of the Approved Community (see paragraph (k) of this section).

(2) Persons or entities exporting or transferring defense articles or defense services are exempt from the otherwise applicable licensing requirements if such persons or entities comply with the regulations set forth in this section. Except as provided in Supplement No. 1 to part 126 of this subchapter, Port Directors of U.S. Customs and Border Protection and postmasters shall permit the permanent and temporary export without a license from members of the U.S. Community to members of the United Kingdom Community (see paragraph (d) of this section regarding the identification of members of the United Kingdom Community) of defense articles and defense services not listed in Supplement No. 1 to part 126, for the end-uses specifically identified pursuant to paragraphs (e) and (f) of this section. The purpose of this section is to specify the requirements to export, transfer, reexport, retransfer, or otherwise dispose of a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom. All persons must continue to comply with statutory and regulatory requirements outside of this subchapter concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 C.F.R. Parts 447, 478, and 479, which are unaffected by the Defense Trade Cooperation Treaty between the United States and the United Kingdom and continue to apply fully to defense articles and defense services subject to either of the aforementioned treaties and the exemptions contained in § 126.17 of this subchapter.

(3) *Export.* In order for an exporter to export a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom, all of the following conditions must be met:

(i) The exporter must be registered with the Directorate of Defense Trade Controls and must be eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency of the U.S. Government without restriction (see paragraphs (b) and (c) of this section for specific requirements);

(ii) The recipient of the export must be a member of the United Kingdom Community (see paragraph (d) of this section regarding the identification of members of the United Kingdom Community). United Kingdom nongovernmental entities and facilities that become ineligible for such membership will be removed from the United Kingdom Community;

(iii) Intermediate consignees involved in the export must not be ineligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to handle or receive a defense article or defense service without restriction (see paragraph (k) of this section for specific requirements);

(iv) The export must be for an end-use specified in the Defense Trade Cooperation Treaty between the United States and the United Kingdom and mutually agreed to by the U.S. Government and the Government of the United Kingdom pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and the Implementing Arrangement thereto (United Kingdom Implementing Arrangement) (see paragraphs (e) and (f) of this section regarding authorized end-uses);

(v) The defense article or defense service is not excluded from the scope of the Defense Trade Cooperation Treaty between the United States and the United Kingdom (see paragraph (g) of this section and Supplement No. 1 to part 126 of this subchapter for specific information on the scope of items excluded from export under this exemption) and is marked or identified, at a minimum, as "Restricted USML" (see paragraph (j) of this section for specific requirements on marking exports);

(vi) All required documentation of such export is maintained by the exporter and recipient and is available upon the request of the U.S. Government (see paragraph (l) of this section for specific requirements); and

(vii) The Department of State has provided advance notification to the Congress, as required, in accordance with this section (see paragraph (o) of this section for specific requirements).

(4) *Transfers.* In order for a member of the Approved Community (*i.e.*, the U.S. Community and United Kingdom Community) to transfer a defense article or defense service under the Defense Trade Cooperation Treaty within the Approved Community, all of the following conditions must be met:

(i) The defense article or defense service must have been previously exported in accordance with paragraph (a)(3) of this section or transitioned from a license or other approval in accordance with paragraph (i) of this section;

(ii) The transferor and transferee of the defense article or defense service are members of the United Kingdom Community (see paragraph (d) of this section regarding the identification of members of the United Kingdom Community) or the United States Community (see paragraph (b) of this section for information on the United States Community/approved exporters);

(iii) The transfer is required for an end-use specified in the Defense Trade Cooperation Treaty between the United States and the United Kingdom and mutually agreed to by the United States and the Government of United Kingdom pursuant to the terms of the Defense Trade Cooperation Treaty between the United States and the United Kingdom and the United Kingdom Implementing Arrangement (see paragraphs (e) and (f) of this section regarding authorized end-uses);

(iv) The defense article or defense service is not identified in paragraph (g) of this section and Supplement No. 1 to part 126 of this subchapter as ineligible for export under this exemption, and is marked or otherwise identified, at a minimum, as "Restricted USML" (see paragraph (j) of this section for specific requirements on marking exports);

(v) All required documentation of such transfer is maintained by the transferor and transferee and is available upon the request of the U.S. Government (see paragraph (l) of this section for specific requirements); and

(vi) The Department of State has provided advance notification to the Congress in accordance with this

section (see paragraph (o) of this section for specific requirements).
(5) This section does not apply to the export of defense articles or defense services from the United States pursuant to the Foreign Military Sales program. Once such items are delivered to Her Majesty's Government, they may be treated as if they were exported pursuant to the Treaty and then must be marked, identified, transmitted, stored and handled in accordance with the Treaty, the United Kingdom Implementing Arrangement, and the provisions of this section.

(b) *United States Community.* The following persons compose the United States Community and may export or transfer defense articles and defense services pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom:
(1) Departments and agencies of the U.S. Government, including their personnel acting in their official capacity, with, as appropriate, a security clearance and a need-to-know; and
(2) Non-governmental U.S. persons registered with the Directorate of Defense Trade Controls and eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency of the U.S. Government without restriction, including their employees acting in their official capacity with, as appropriate, a security clearance and a need-to-know.

(c) An exporter that is otherwise an authorized exporter pursuant to paragraph (b) of this section may not export or transfer pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom if the exporter's president, chief executive officer, any vice-president, any other senior officer or official (e.g., comptroller, treasurer, general counsel); any member of the board of directors of the exporter; any party to the export; or any source or manufacturer is ineligible to receive export licenses (or other forms of authorization to export) from any agency of the U.S. Government.

(d) United Kingdom Community. For purposes of the exemption provided by this section, the United Kingdom Community consists of:
(1) Her Majesty's Government entities and facilities identified as members of the Approved Community through the Directorate of Defense Trade Controls website at the time of a transaction under this section; and
(2) The non-governmental United Kingdom entities and facilities identified as members of the Approved Community through the Directorate of Defense Trade Controls website at the time of a transaction under this section; non-governmental United Kingdom entities and facilities that become ineligible for such membership will be removed from the United Kingdom Community.
(e) Authorized End-uses. The following end-uses, subject to paragraph (f) of this section, are specified in the Defense Trade Cooperation Treaty between the United States and the United Kingdom:
(1) United States and United Kingdom combined military or counter-terrorism operations;
(2) United States and United Kingdom cooperative security and defense research, development, production, and support programs;
(3) Mutually determined specific security and defense projects where the Government of the United Kingdom is the end-user; or
(4) U.S. Government end-use.
(f) Procedures for identifying authorized end-uses pursuant to paragraph (e) of this section:
(1) Operations, programs, and projects that can be publicly identified will be posted on the Directorate of Defense Trade Controls website;
(2) Operations, programs, and projects that cannot be publicly identified will be confirmed in written correspondence from the Directorate of Defense Trade Controls; or
(3) U.S. Government end-use will be identified specifically in a U.S. Government contract or solicitation as being eligible under the Treaty.
(4) No other operations, programs, projects, or end-uses qualify for this exemption.

(g) *Items eligible under this section.* With the exception of items listed in Supplement No. 1 to part 126 of this subchapter, defense articles and defense services may be exported under this section subject to the following:

(1) An exporter authorized pursuant to paragraph (b)(2) of this section may market a defense article to members of the United Kingdom Community if that exporter has been licensed by the Directorate of Defense Trade Controls to export (as defined by § 120.17 of this subchapter) the identical type of defense article to any foreign person and end-use of the article is for an end-use identified in paragraph (e) of this section.

(2) The export of any defense article specific to the existence of (e.g., reveals the existence of or details of) anti-tamper measures made at U.S. Government direction always requires prior written approval from the Directorate of Defense Trade Controls.

(3) U.S.-origin classified defense articles or defense services may be exported only pursuant to a written request, directive, or contract from the U.S. Department of Defense that provides for the export of the classified defense article(s) or defense service(s).

(4) U.S.-origin defense articles specific to developmental systems that have not obtained written Milestone B approval from the Department of Defense milestone approval authority are not eligible for export unless such export is pursuant to a written solicitation or contract issued or awarded by the Department of Defense for an end-use identified pursuant to paragraphs (e)(1), (2), or (4) of this section.

(5) Defense articles excluded by paragraph (g) of this section or Supplement No. 1 to part 126 of this subchapter (*e.g.*, USML Category XI (a)(3) electronically scanned array radar excluded by Note 2) that are embedded in a larger system that is eligible to ship under this section (*e.g.*, a ship or aircraft) must separately comply with any restrictions placed on that embedded defense article under this subchapter. The exporter must obtain a license or other authorization from the Directorate of Defense Trade Controls for the export of such embedded defense articles (for example, USML Category XI (a)(3) electronically scanned array radar systems that are exempt from this section that are incorporated in an aircraft that is eligible to ship under this section continue to require separate authorization from the Directorate of Defense Trade Controls for their export, transfer, reexport, or retransfer).

(6) No liability shall be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of an export conducted pursuant to this section.

(7) Sales by exporters made through the U.S. Government shall not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for information which the U.S. Government has a right to use and disclose to others, which is in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon its use and disclosure to others.

(8) Defense articles on the European Union Dual Use List (as described in Annex 1 to EC Council Regulation No. 428/2009) are not eligible for export under the Defense Trade Cooperation Treaty between the United States and the United Kingdom. These articles have been identified and included in Supplement No.1 to part 126.

(h) *Transfers, Retransfers, and Reexports*

(1) Any transfer of a defense article or defense service not exempted in Supplement No. 1 to part 126 of this subchapter by a member of the United Kingdom Community (see paragraph (d) of this section for specific information on the identification of the Community) to another member of the United Kingdom Community or the United States Community for an end-use that is authorized by this exemption (see paragraphs (e) and (f) of this section regarding authorized end-uses) is authorized under this exemption.

(2) Any transfer or other provision of a defense article or defense service for an end-use that is not authorized by the exemption provided by this section is prohibited without a license or the prior written approval of the Directorate of Defense Trade Controls (see paragraphs (e) and (f) of this section regarding authorized end-uses).

(3) Any retransfer or reexport, or other provision of a defense article or defense service by a member of the United Kingdom Community to a foreign person that is not a member of the United Kingdom Community, or to a U.S. person that is not a member of the United States Community, is prohibited without a license or the prior written approval of the Directorate of Defense Trade Controls (see paragraph (d) of this section for specific information on the identification of the United Kingdom Community).

(4) Any change in the use of a defense article or defense service previously exported, transferred, or obtained under this exemption by any foreign person, including a member of the United Kingdom Community, to an

end-use that is not authorized by this exemption is prohibited without a license or other written approval of the Directorate of Defense Trade Controls (see paragraphs (e) and (f) of this section regarding authorized end-uses).

(5) Any retransfer, reexport, or change in end-use requiring such approval of the U.S. Government shall be made in accordance with § 123.9 of this subchapter.

(6) Defense articles excluded by paragraph (g) of this section or Supplement No. 1 to part 126 of this subchapter (e.g., USML Category XI (a)(3) electronically scanned array radar systems) that are embedded in a larger system that is eligible to ship under this section (e.g., a ship or aircraft) must separately comply with any restrictions placed on that embedded defense article unless otherwise specified. A license or other authorization must be obtained from the Directorate of Defense Trade Controls for the export, transfer, reexport, or retransfer or change in end-use of any such embedded defense article (for example, USML Category XI(a)(3) electronically scanned array radar systems that are excluded from this section by Supplement No. 1 to part 126, Note 2 that are incorporated in an aircraft that is eligible to ship under this section continue to require separate authorization from the Directorate of Defense Trade Controls for their export, transfer, reexport, or retransfer).

(7) A license or prior approval from the Directorate of Defense Trade Controls is not required for a transfer, retransfer, or reexport of an exported defense article or defense service under this section, if:

(i) The transfer of defense articles or defense services is made by a member of the United States Community to United Kingdom Ministry of Defence elements deployed outside the Territory of the United Kingdom and engaged in an authorized end-use (see paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section;

(ii) The transfer of defense articles or defense services is made by a member of the United States Community to an Approved Community member (either U.S. or UK) that is operating in direct support of United Kingdom Ministry of Defence elements deployed outside the Territory of the United Kingdom and engaged in an authorized end-use (see paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section;

(iii) The reexport is made by a member of the United Kingdom Community to United Kingdom Ministry of Defence elements deployed outside the Territory of the United Kingdom engaged in an authorized end-use (see paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section;

(iv) The reexport is made by a member of the United Kingdom Community to an Approved Community member (either U.S. or UK) that is operating in direct support of United Kingdom Ministry of Defence elements deployed outside the Territory of the United Kingdom engaged in an authorized end-use (see paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section; or

(v) The defense article or defense service will be delivered to the United Kingdom Ministry of Defence for an authorized end-use (see paragraphs (e) and (f) of this section regarding authorized end-uses); the United Kingdom Ministry of Defence may deploy the item as necessary when conducting official business within or outside the Territory of the United Kingdom. The item must remain under the effective control of the United Kingdom Ministry of Defence while deployed and access may not be provided to unauthorized third parties.

(8) U.S. persons registered, or required to be registered, pursuant to part 122 of this subchapter and members of the United Kingdom Community must immediately notify the Directorate of Defense Trade Controls of any actual or proposed sale, retransfer, or reexport of a defense article or defense service on the U.S. Munitions List originally exported under this exemption to any of the countries listed in § 126.1 of this subchapter or any person acting on behalf of such countries, whether within or outside the United States. Any person knowing or having reason to know of such a proposed or actual sale, reexport, or retransfer shall submit such information in writing to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.

(i) *Transitions*

(1) Any previous export of a defense article under a license or other approval of the U.S. Department of State remains subject to the conditions and limitations of the original license or authorization unless the Directorate of Defense Trade Controls has approved in writing a transition to this section.

(2) If a U.S. exporter desires to transition from an existing license or other approval to the use of the provisions of this section, the following is required:

(i) The U.S. exporter must submit a written request to the Directorate of Defense Trade Controls, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were originally exported, and the Treaty-eligible end-use for which the defense articles or defense services will be used. Any license(s) filed with U.S. Customs and Border Protection should remain on file until the exporter has received approval from the Directorate of Defense Trade Controls to retire the license(s) and transition to this section. When this approval is conveyed to U.S. Customs and Border Protection by the Directorate of Defense Trade Controls, the license(s) will be returned to the Directorate of Defense Trade Controls by U.S. Customs and Border Protection in accord with existing procedures for the return of expired licenses in § 123.22(c) of this subchapter.

(ii) Any license(s) not filed with U.S. Customs and Border Protection must be returned to the Directorate of Defense Trade Controls with a letter citing approval by the Directorate of Defense Trade Controls to transition to this section as the reason for returning the license(s).

(3) If a member of the United Kingdom Community desires to transition defense articles received under an existing license or other approval to the processes established under the Treaty, the United Kingdom Community member must submit a written request to the Directorate of Defense Trade Controls, either directly or through the original U.S. exporter, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were received, and the Treaty-eligible end-use (see paragraphs (e) and (f) of this section regarding authorized end-uses) for which the defense articles or defense services will be used. The defense article or defense service shall remain subject to the conditions and limitations of the existing license or other approval until the United Kingdom Community member has received approval from the Directorate of Defense Trade Controls to transition to this section.

(4) Authorized exporters identified in paragraph (b)(2) of this section who have exported a defense article or defense service that has subsequently been placed on the list of exempted items in Supplement No. 1 to part 126 of this subchapter must review and adhere to the requirements in the relevant Federal Register notice announcing such removal. Once removed, the defense article or defense service will no longer be subject to this section, such defense article or defense service previously exported shall remain on the U.S. Munitions List and be subject to the International Traffic in Arms Regulations unless the applicable Federal Register notice states otherwise. Subsequent reexport or retransfer must be made pursuant to § 123.9 of this subchapter.

(5) Any defense article or defense service transitioned from a license or other approval to treatment under this section must be marked in accordance with the requirements of paragraph (j) of this section.

(j) *Marking of Exports*

(1) All defense articles and defense services exported or transitioned pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section shall be marked or identified as follows:

(i) For classified defense articles and defense services the standard marking or identification shall read: "//CLASSIFICATION LEVEL USML//REL GBR and USA Treaty Community//." For example, for defense articles classified SECRET, the marking or identification shall be "//SECRET USML//REL GBR and USA Treaty Community//."

(ii) Unclassified defense articles and defense services exported under or transitioned pursuant to this section shall be handled while in the UK as "Restricted USML" and the standard marking or identification shall read "//RESTRICTED USML //REL GBR and USA Treaty Community//."

(2) Where U.S.-origin defense articles are returned to a member of the United States Community identified in paragraph (b) of this section, any defense articles marked or identified pursuant to paragraph (j)(1)(ii) of this section as "//RESTRICTED USML //REL GBR and USA Treaty Community//" will be considered unclassified and the marking or identification shall be removed; and

(3) The standard marking and identification requirements are as follows:

(i) Defense articles (other than technical data) shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section; or, where such labeling is impracticable (e.g.,

propellants, chemicals), shall be accompanied by documentation (such as contracts or invoices) clearly associating the defense articles with the appropriate markings as detailed in paragraph (j)(1)(i) and (ii) of this section;

(ii) Technical data (including data packages, technical papers, manuals, presentations, specifications, guides and reports), regardless of media or means of transmission (physical, oral, or electronic), shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section; or, where such labeling is impracticable shall be accompanied by documentation (such as contracts or invoices) or verbal notification clearly associating the technical data with the appropriate markings as detailed in paragraph (j)(1)(i) and (ii) of this section; and

(4) Defense services shall be accompanied by documentation (contracts, invoices, shipping bills, or bills of lading) clearly labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section.

(5) The exporter shall incorporate the following statement as an integral part of the bill of lading and the invoice whenever defense articles are to be exported: "These U.S. Munitions List commodities are authorized by the U.S. Government under the U.S.-UK Defense Trade Cooperation Treaty for export only to United Kingdom for use in approved projects, programs or operations by members of the United Kingdom Community. They may not be retransferred or reexported or used outside of an approved project, program, or operation, 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."

(k) *Intermediate Consignees*

(1) Unclassified exports under this section may only be handled by:

(i) U.S. intermediate consignees who are:

(A) Exporters registered with the Directorate of Defense Trade Controls and eligible;

(B) Licensed customs brokers who are subject to background investigation and have passed a comprehensive examination administered by U.S. Customs and Border Protection; or

(C) Commercial air freight and surface shipment carriers, freight forwarders, or other parties not exempt from registration under § 129.3(b)(3) of this subchapter, that are identified at the time of export as being on the U.S. Department of Defense Civil Reserve Air Fleet (CRAF) list of approved air carriers, a link to which is available on the Directorate of Defense Trade Controls website.

(ii) United Kingdom intermediate consignees who are:

(A) Members of the United Kingdom Community; or

(B) Freight forwarders, customs brokers, commercial air freight and surface shipment carriers, or other United Kingdom parties that are identified at the time of export as being on the list of Authorized United Kingdom Intermediate Consignees, which is available on the Directorate of Defense Trade Controls website.

(2) Classified exports must comply with the security requirements of the National Industrial Security Program Operating Manual (DoD 5220.22-M and supplements or successors).

(l) *Records*

(1) All exporters authorized pursuant to paragraph (b)(2) of this section who export pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section shall maintain detailed records of their exports, imports, and transfers made by that exporter of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section. Exporters shall also maintain detailed records of any reexports and retransfers approved or otherwise authorized by the Directorate of Defense Trade Controls of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section. These records shall be maintained for a minimum of five years from the date of export, import, transfer, reexport, or retransfer and shall be made available upon request to the Directorate of Defense Trade Controls or a person designated by the Directorate of Defense Trade Controls (e.g. the Diplomatic Security Service) or U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection. Records in an electronic format must be maintained using a process or system capable of reproducing all records on paper. Such records when displayed on a viewer, monitor, or reproduced on paper, must exhibit a high degree of legibility and readability. (For the purpose of this section, ''legible'' and ''legibility'' mean the quality of a

letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. ''Readable'' and ''readability'' means the quality of a group of letters or numerals being recognized as complete words or numbers.) These records shall consist of the following:

(i) Port of entry/exit;

(ii) Date of export/import;

(iii) Method of export/import;

(iv) Commodity code and description of the commodity, including technical data;

(v) Value of export;

(vi) Reference to this section and justification for export under the Treaty;

(vii) End-user/end-use;

(viii) Identification of all U.S. and foreign parties to the transaction;

(ix) How the export was marked;

(x) Security classification of the export;

(xi) All written correspondence with the U.S. Government on the export;

(xii) All information relating to political contributions, fees, or commissions furnished or obtained, offered, solicited, or agreed upon as outlined in paragraph (m) of this section;

(xiii) Purchase order or contract;

(xiv) Technical data actually exported;

(xv) The Internal Transaction Number for the Electronic Export Information filing in the Automated Export System;

(xvi) All shipping documentation (including, but not limited to the airway bill, bill of lading, packing list, delivery verification, and invoice); and

(xvii) Statement of Registration (Form DS-2032).

(2) *Filing of export information.* All exporters of defense articles under the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section must electronically file Electronic Export Information (EEI) using the Automated Export System citing one of the four below referenced codes in the appropriate field in the EEI for each shipment:

(i) For exports in support of United States and United Kingdom combined military or counter-terrorism operations identify § 126.17(e)(1) (the name or an appropriate description of the operation shall be placed in the appropriate field in the EEI, as well);

(ii) For exports in support of United States and United Kingdom cooperative security and defense research, development, production, and support programs identify § 126.17(e)(2) (the name or an appropriate description of the program shall be placed in the appropriate field in the EEI, as well);

(iii) For exports in support of mutually determined specific security and defense projects where the Government of the United Kingdom is the end-user identify 126.17(e)(3) (the name or an appropriate description of the project shall be placed in the appropriate field in the EEI, as well); or

(iv) For exports that will have a U.S. Government end-use identify 126.17(e)(4) (the U.S. Government contract number or solicitation number (e.g., "U.S. Government contract number XXXXX") shall be placed in the appropriate field in the EEI, as well). Such exports must meet the required export documentation and filing guidelines, including for defense services, of §§ 123.22(a), (b)(1), and (b)(2) of this subchapter.

(m) *Fees and Commissions.* All exporters authorized pursuant to paragraph (b)(2) of this section shall, with respect to each export, transfer, reexport, or retransfer, pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section, submit a statement to the Directorate of Defense Trade Controls containing the information identified in § 130.10 of this subchapter relating to fees, commissions, and political contributions on contracts or other instruments valued in an amount of $500,000 or more.

(n) *Violations and Enforcement*

(1) Exports, transfers, reexports, and retransfers that do not comply with the conditions prescribed in this section will constitute violations of the Arms Export Control Act and this subchapter, and are subject to all relevant criminal, civil, and administrative penalties (see § 127.1 of this subchapter), and may also be subject to

penalty under other statutes or regulations.

(2) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers may take appropriate action to ensure compliance with this section as to the export or the attempted export of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft.

(3) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers have the authority to investigate, detain, or seize any export or attempted export of defense articles or technical data that does not comply with this section or that is otherwise unlawful.

(4) The Directorate of Defense Trade Controls or a person designated by the Directorate of Defense Trade Controls (e.g., the Diplomatic Security Service) or U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection may require the production of documents and information relating to any actual or attempted export, transfer, reexport, or retransfer pursuant to this section. Any foreign person refusing to provide such records within a reasonable period of time shall be suspended from the United Kingdom Community and ineligible to receive defense articles or defense services pursuant to the exemption under this section or otherwise.

(o) *Procedures for Legislative Notification*

(1) Exports pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section by any person identified in paragraph (b)(2) of this section shall not take place until 30 days after the Directorate of Defense Trade Controls has acknowledged receipt of a Form DS-4048 (entitled, "Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act") from the exporter notifying the Department of State if the export involves one or more of the following:

(i) A contract or other instrument for the export of major defense equipment in the amount of $25,000,000 or more, or for defense articles and defense services in the amount of $100,000,000 or more;

(ii) A contract for the export of firearms controlled under Category I of the U.S. Munitions List of the International Traffic in Arms Regulations in an amount of $1,000,000 or more;

(iii) A contract, regardless of value, for the manufacturing abroad of any item of significant military equipment; or

(iv) An amended contract that meets the requirements of paragraphs (o)(1)(i) through (o)(1)(iii) of this section.

(2) The Form DS-4048 required in paragraph (o)(1) of this section shall be accompanied by the following additional information:

(i) The information identified in § 130.10 and § 130.11 of this subchapter;

(ii) A statement regarding whether any offset agreement is final to be entered into in connection with the export and a description of any such offset agreement;

(iii) A copy of the signed contract; and

(iv) If the notification is for paragraph (o)(1)(ii) of this section, a statement of what will happen to the weapons in their inventory (for example, whether the current inventory will be sold, reassigned to another service branch, destroyed, etc.).

(3) The Department of State will notify the Congress of exports that meet the requirements of paragraph (o)(1) of this section.

24. Supplement No. 1 to Part 126 is added to read as follows:

SUPPLEMENT N0. 1

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
I-XXI	Classified defense articles and services. *See* Note 1.	X		X

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
I-XXI	Defense articles listed in the Missile Technology Control Regime (MTCR) Annex.	X		X
I-XXI	U.S. origin defense articles and services used for marketing purposes and not previously licensed for export in accordance with this subchapter.			X
I-XXI	Defense services for or technical data related to defense articles identified in this supplement as excluded from the Canadian exemption.	X		
I-XXI	Any transaction involving the export of defense articles and services for which congressional notification is required in accordance with §123.14 and §124.11 of this subchapter.	X		
I-XXI	U.S. origin defense articles and services specific to developmental systems that have not obtained written Milestone B Approval from the U.S. Department of Defense milestone approval authority, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in paragraphs (e)(1), (2), or (4) of §126.16 or §126.17 of this subchapter and is consistent with other exclusions of this supplement.			X
I-XXI	Nuclear weapons strategic delivery systems and all components, parts, accessories, and attachments specifically designed for such systems and associated equipment.	X		
I-XXI	Defense articles and services specific to the existence or method of compliance with anti-tamper measures made at U.S. Government direction.			X
I-XXI	Defense articles and services specific to reduced observables or counter low observables in any part of the spectrum. *See* Note 2.			X
I-XXI	Defense articles and services specific to sensor fusion beyond that required for display or identification correlation. *See* Note 3.			X
I-XXI	Defense articles and services specific to the automatic target acquisition or recognition and cueing of multiple autonomous unmanned systems.			X
I-XXI	Nuclear power generating equipment or propulsion equipment (e.g., nuclear reactors), specifically designed for military use and components therefore, specifically designed for military use. *See* also §124.20 of this subchapter.			X
I-XXI	Libraries (parametric technical databases) specially designed for military use with equipment controlled on the USML. *See* Note 13.			X
I-XXI	Defense services or technical data specific to applied research as defined in §125.4(c)(3) of this subchapter, design methodology as defined in §125.4(c)(4) of this subchapter, engineering analysis as defined in §125.4(c)(5) of this subchapter, or manufacturing know-how as defined in §125.4(c)(6) of this subchapter. *See* Note 12.	X		

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
I-XXI	Defense services other than those required to prepare a quote or bid proposal in response to a written request from a Department or Agency of the United States Federal Government or from a Canadian Federal, Provincial, or Territorial Government; or defense services other than those required to produce, design, assemble, maintain or service a defense article for use by a registered U.S. company, or a U.S. Federal Government Program, or for end-use in a Canadian Federal, Provincial, or Territorial Government Program. See Note 14.	X		
I	Defense articles and services specific to firearms, close assault weapons, and combat shotguns.	X		
II(k)	Software source code related to Categories II(c), II(d), or II(i). *See* Note 4.			X
II(k)	Manufacturing know-how related to Category II(d). *See* Note 5.	X		X
III	Defense articles and services specific to ammunition for firearms, close assault weapons, and combat shotguns listed in Category I.	X		
III	Defense articles and services specific to ammunition and fuse setting devices for guns and armament controlled in Category II.			X
III(e)	Manufacturing know-how related to Categories III(d)(1) or III(d)(2) and their specially designed components. *See* Note 5.	X		X
III(e)	Software source code related to Categories III(d)(1) or III(d)(2). *See* Note 4.			X
IV	Defense articles and services specific to man-portable air defense systems (MANPADS). *See* Note 6.	X		X
IV	Defense articles and services specific to rockets, designed or modified for non-military applications that do not have a range of 300 km (i.e., not controlled on the MTCR Annex).			X
IV	Defense articles and services specific to torpedoes.			X
IV	Defense articles and services specific to anti-personnel landmines.	X		X
IV	Defense articles specific to cluster munitions that are controlled by The Convention on Cluster Munitions of 3 December 2008.	X		X
IV(i)	Software source code related to Categories IV(a), IV(b), IV(c), or IV(g). *See* Note 4.			X
IV(i)	Manufacturing know-how related to Categories IV(a), IV(b), IV(c), or IV(g) and their specially designed components. *See* Note 5.	X		X
V	The following energetic materials and related substances: a. TATB (triaminotrinitrobenzene) CCAS 3058-38-6); b. Explosives controlled in USML Category V(a)(32) or V(a)(33); c. Iron powder (CAS 7439-89-6) with particle size of 3 micrometers or less produced by reduction of iron oxide with hydrogen; d. BABBA-8 (bis(2-methylaziridinyl)2-(2-hydroxypropanoxy)			X

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USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
	propylamino phosphine oxide), and other MAPO derivatives; e. N-methyl--p-nitroaniline (CAS 100-15-2); or f. Trinitrophenylmethylnitramine (tetryl) (CAS 479-45-8)			
V(c)(7)	Pyrotechnics and pyrophorics specifically formulated for military purposed to enhance or control radiated energy in any part of the IR spectrum.			X
V(d)(3)	Bis-2, 2-dinitropropylnitrate (BDNPN).			X
VI	Defense articles specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103K (-170°C).			X
VI	Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VI	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10.			X
VI(a)	Nuclear powered vessels.	X		X
VI(c)	Defense articles and services specific to submarine combat control systems.			X
VI(d)	Harbor entrance detection devices.			X
VI(e)	Defense articles and services specific to naval nuclear propulsion equipment. See Note 7.	X		X
VI(g)	Technical data and defense services for gas turbine engine hot sections related to Category VI(f). *See* Note 8.	X		X
VI(g)	Software source code related to Categories VI(a) or VI(c). *See* Note 4.			X
VII	Defense articles specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103K (-170°C).			X
VII	Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators			X

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
	that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			
VII	Armored all wheel drive vehicles, other than vehicles specifically designed or modified for military use, fitted with, or designed or modified to be fitted with, a plough or flail for the purpose of land mine clearance.			X
VII(c)	Amphibious vehicles.			X
VII(f)	Technical data and defense services for gas turbine engine hot sections. *See* Note 8.	X		X
VIII	Defense articles specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103K (-170°C).			X
VIII	Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VIII(a)	All Category VIII(a) items.	X		
VIII(b)	Defense articles and services specific to gas turbine engine hot section components and digital engine controls. *See* Note 8.			X
VIII(f)	Developmental aircraft, engines and components identified in Category VIII(f).	X		
VIII(g)	Ground Effect Machines (GEMS).			X
VIII(i)	Technical data and defense services for gas turbine engine hot sections related to Category VIII(b). *See* Note 8.	X		X
VIII(i)	Manufacturing know-how related to Categories VIII(a), VIII(b), or VIII(e) and their specially designed components. *See* Note 5.	X		X
VIII(i)	Software source code related to Categories VIII(a) or VIII(e). *See* Note 4.			X
IX	Training or simulation equipment for MANPADS. *See* Note 6.			X
IX(e)	Software source code related to Categories IX(a) or IX(b). *See* Note 4.			X
IX(e)	Software that is both specifically designed or modified for military use and specifically designed or modified for modeling or simulating military operation scenarios.			X

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
X(e)	Manufacturing know-how related to Categories X(a)(1) or X(a)(2) and their specially designed components. *See* Note 5.	X		X
XI(a)	Defense articles and services specific to countermeasures and counter-countermeasures. *See* Note 9.			X
XI	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10.			X
XI(b) XI(c) XI(d)	Defense articles and services specific to communications security (e.g., COMSEC and TEMPEST).			X
XI(d)	Software source code related to Categories XI(a). *See* Note 4.			X
XI(d)	Manufacturing know-how related to Categories XI(a)(3) or XI(a)(4) and their specially designed components. *See* Note 5.	X		X
XII	Defense articles and services specific to countermeasures and counter-countermeasures. *See* Note 9.			X
XII(c)	Defense articles and services specific to XII(c) articles, except any 1st- and 2nd-generation image intensification tubes ad 1st- and 2nd-generation image intensification night sighting equipment. End items in XII(c) and related technical data limited to basic operations, maintenance, and training information as authorized under the exemption in §125.4(b)(5) of this subchapter may be exported directly to a Canadian Government entity (i.e., federal, provincial, territorial, or municipal) consistent with § 126.5, other exclusions, and the provisions of this subchapter.	X		
XII(c)	Technical data or defense services for night vision equipment beyond basic operations, maintenance, and training data. However, the AS and UK Treaty exemptions apply when such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in paragraphs (e)(1), (2), or (4) of §125.16 or §126.17 of this subchapter and is consistent with other exclusions of this supplement.	X		X
XII(f)	Manufacturing know-how related to Categories XII(d) and their specially designed components. *See* Note 5.	X		X
XII(f)	Software source code related to Categories XII(a), XII(b), XII(c), or XII(d). *See* Note 4.			X
XIII(b)	Defense articles and services specific to Military Information Security Assurance Systems.			X
XIII(c)	Defense articles and services specific to armored plate manufactured to comply with a military standard or specification or suitable for military use. *See* Note 11.			X
XIII(d)	Carbon/carbon billets and preforms which are reinforced in three or more dimensional planes, specifically designed, developed, modified,			X

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
	configured or adapted for defense articles.			
XIII(f)	Structural materials.			X
XIII(g)	Defense articles and services related to concealment and deception equipment and materials.			X
XIII(h)	Energy conversion devices other than fuel cells.			X
XIII(i)	Metal embrittling agents.			X
XIII(j)	Defense articles and services related to hardware associated with the measurement or modification of system signatures for detection of defense articles as described in Note 2.			X
XIII(k)	Defense articles and services related to tooling and equipment specifically designed or modified for the production of defense articles identified in Category XIII(b).			X
XIII(l)	Software source code related to Categories XIII(a). *See* Note 4.			X
XIV	Defense articles and services related to toxicological agents, including chemical agents, biological agents, and associated equipment.			X
XIV(a) XIV(b) XIV(d) XIV(e) XIV(f)	Chemical agents listed in Category XIV(a), (d) and (e), biological agents and biologically derived substances in Category XIV(b), and equipment listed in Category XIV(f) for dissemination of the chemical agents and biological agents listed in Category XIV(a), (b), (d), and (e).	X		
XV(a)	Defense articles and services specific to spacecraft/satellites. However, the Canadian exemption may be used for commercial communications satellites that have no other type of payload.	X		X
XV(b)	Defense articles and services specific to ground control stations for spacecraft telemetry, tracking, and control.			X
XV(c)	Defense articles and services specific to GPS/PPS security modules.			X
XV(c)	Defense articles controlled in XV(c) except end items for end use by the Federal Government of Canada exported directly or indirectly through a Canadian-registered person.	X		
XV(d)	Defense articles and services specific to radiation-hardened microelectronic circuits.	X		
XV(e)	Anti-jam systems with the ability to respond to incoming interference by adaptively reducing antenna gain (nulling) in the direction of the interference.	X		
XV(e)	Antennas having any of the following: a. Aperture (overall dimension of the radiating portions of the antenna) greater than 30 feet; b. All sidelobes less than or equal to -35 dB relative to the peak of the main beam; or	X		

Supplement No. 1*				
USML Category	Exclusion	(CA) 126.5	[Reserved for (AS) §126.16]	(UK) §126.17
	c. Designed, modified, or configured to provide coverage area on the surface of the early less than 200 nautical miles in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam.)			
XV(e)	Optical intersatellite data links (cross links) and optical ground satellite terminals.	X		
XV(e)	Spaceborne regenerative baseband processing (direct up and down conversion to and from baseband) equipment.	X		
XV(e)	Propulsion systems which permit acceleration of the satellite on-orbit (i.e., after mission orbit injection) at rates greater than 0.1 g.	X		
XV(e)	Attitude control and determination systems designed to provide spacecraft pointing determination and control or payload pointing system control better than 0.02 degrees per axis.	X		
XV(e)	All specifically designed or modified systems, components, parts, accessories, attachments, and associated equipment for all Category XV(a) items, except when specifically designed or modified for use in commercial communications satellites.	X		
XV(e)	Defense articles and services specific to spacecraft and ground control station systems (only for telemetry, tracking and control as controlled in XV(b)), subsystems, components, parts, accessories, attachments, and associated equipment.			X
XV(f)	Technical data and defense services directly related to the other defense articles excluded from the exemptions for Category XV.	X		X
XVI	Defense articles and services specific to design and testing of nuclear weapons.	X		X
XVI(c)	Nuclear radiation measuring devices manufactured to military specifications.	X		
XVI(e)	Software source code related to Category XVI(c). *See* Note 4.			X
XVII	Classified articles and defense services not elsewhere enumerated. *See* Note 1.	X		X
XVIII	Defense articles and services specific to directed energy weapon systems.			X
XX	Defense articles and services related to submersible vessels, oceanographic, and associated equipment.	X		X
XXI	Miscellaneous defense articles and services.	X		X

Note 1: Classified defense articles and services are not eligible for export under the Canadian exemptions. U.S. origin defense articles and services controlled in Category XVII are not eligible for export under the UK Treaty exemption. U.S. origin classified defense articles and services are not eligible for export under either the UK or

AS Treaty exemptions except when being released pursuant to a U.S. Department of Defense written request, directive, or contract that provides for the export of the defense article or service.

Note 2: The phrase "any part of the spectrum includes radio frequency (RF), infrared (IR), electro-optical, visual, ultraviolet (UV), acoustic, and magnetic. Defense articles related to reduced observables or counter reduced observables are defined as:

Signature reduction (radio frequency (RF), infrared (IR), electro-optical, visual, ultraviolet (UV), acoustic, magnetic, RF emissions) of defense platforms, including systems, subsystems, components, materials, (including dual-purpose materials used fro [sic][375] Electromagnetic Interference (EM reduction) technologies, and signature prediction, test and measurement equipment and software and material transmissivity / reflectivity prediction codes and optimization software.

Electronically scanned array radar, high power radars, radar processing algorithms, periscope-mounted radar systems (PATRIOT), LADAR, multistatic and IR focal plane array-based sensors, to include systems, subsystems, components, materials, and technologies.

Note 3: Defense articles related to sensor fusion beyond that required for display or identification correlation is defined as techniques designed to automatically combine information from two or more sensors/sources for the purpose of target identification, tracking, designation, or passing of data in support of surveillance or weapons engagement. Sensor fusion involves sensors such as acoustic, infrared, electro-optical, frequency, etc. Display or identification correlation refers to the combination of target detections from multiple sources for assignment of common target track designation.

Note 4: Software source code beyond that source code required for basic operation, maintenance, and training for programs, systems, and/or subsystems is not eligible for use of the UK or AS Treaty Exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in paragraphs (e)(1), (2), or (4) of §126.16 or §126.17 of this subchapter and is consistent with other exclusions of this supplement.

Note 5: Manufacturing know-how, as defined in §125.4(c)(5) of this subchapter, is not eligible for use of the UK or AS Treaty Exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in paragraphs (e)(1), (2), or (4) of §126.16 or §126.17 of this subchapter and is consistent with other exclusions of this supplement.

Note 6: Defense articles specific to Man Portable Air Defense systems (MANPADS) includes missiles which can be used without modification in other applications. It also includes production and test equipment and components specifically designed or modified for MANPAD systems, as well as training equipment specifically designed or modified for MANPAD systems.

Note 7: Naval nuclear propulsion plants includes all of USML Category VI(e). Naval nuclear propulsion information is technical data that concerns the design, arrangement, development, manufacture, testing, operation, administration, training, maintenance, and repair of the propulsion plants of naval nuclear-powered ships and prototypes, including the associated shipboard and shore-based nuclear support facilities. Examples of defense articles covered by this exclusion include nuclear propulsion plants and nuclear submarine technologies or systems; nuclear powered vessels (*see* USML Categories VI and XX).

Note 8: Examples of gas turbine engine hot section exempted defense article components and technology are combustion chambers/lines; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; advanced cooled augmenters; and advanced cooled nozzles. Examples of gas turbine engine hot section developmental technologies are Integrated High Performance Turbine Engine Technology (IHPTET), Versatile, Affordable Advanced Turbine Engine (VAATE), Ultra-Efficient Engine Technology (UEET).

Note 9: Examples of countermeasures and counter-countermeasures related to defense articles not exportable

[375] So in original. Should be "for".

under the AS or UK Treaty exemptions are:

IR countermeasures;

Classified techniques and capabilities;

Exports for precision radio frequency location that directly or indirectly supports fire control and is used for situation awareness, target identification, target acquisition, and weapons targeting and Radio Direction Finding (RDF) capabilities. Precision RF location is defined as angle of arrival of less than five degrees (RMS) ad RF emitter location of less than ten percent range error;

Providing the capability to reprogram; and

Acoustics (including underwater), active and passive countermeasures, and counter-countermeasures.

Note 10: Examples of defense articles covered by this exclusion include underwater acoustic vector sensors; acoustic reduction; off-board, underwater, active and passive sensing, propeller/propulsor technologies; fixed mobile/floating/powered detection systems which include in-buoy signal processing for target detection and classification; autonomous underwater vehicles capable of long endurance in ocean environments (manned submarines excluded)j; automated control algorithms embedded in on-board autonomous platforms which enable (a) group behaviors for target detection and classification, (b) adaptation to the environment or tactical situation for enhancing target detection and classification; "intelligent autonomy" algorithms which define the status, group (greater than 2) behaviors, and responses to detection stimuli by autonomous, underwater vehicles; and low frequency, broad-band "acoustic color," active acoustic "fingerprint" sensing for the purpose of long range, single pass identification of ocean bottom objects, buried or otherwise. (Controlled under Category XI(a), (1) and (2) and in (b), (c) and (d)).

Note 11: The defense articles include construction of metallic or non-metallic materials or combinations thereof specially designed to provide protection for military systems. The phrase "suitable for military use" applies to any articles or material s which have been tested to level IIIA or above IAW NIJ standard 0108.01 or comparable national standard. This exclusion does not include military helmets, body armor, or other protective garments which may be exported IAW the terms of the AS or UK Treaties.

Note 12: Defense services or technical data specific to applied research (§125.4(c)(3)), design methodology (§125.4(c)(4)), engineering analysis (§125.4(c)(5)), or manufacturing know-how (§125.4(c)(6)) are not eligible for export under the Canadian exemptions. However, this exclusion this does not include defense services or technical data specific to build-to-print as defined in §125.4(c)(1), build/design-to-specification as defined in §125.4(c)(2), or basic research as defined in §125.4(c)(3), or maintenance (i.e., inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items parts or components, but excluding any modification, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item) of non-excluded defense articles which may be exported subject to other exclusions or terms of the Canadian exemptions.

Note 13: The term "libraries" (parametric technical databases) means a collection of technical information of a military nature, reference to which may enhance the performance of military equipment or systems.

Note 14: In order to utilize the authorized defense services under the Canadian exemption, the following must be complied with:

The Canadian contractor and subcontractor must certify, in writing, to the U.S. exporter that the technical data and defense services being exported will be used only for an activity identified in Supplement No. 1 and in accordance with 22 CFR 126.5; and

A written arrangement between the U.S. exporter and the Canadian recipient must:

Limit delivery of the defense articles being produced directly to an identified manufacturer in the United States registered in accordance with part 122 of this subchapter; a Department or Agency of the United States Federal Government; a Canadian-registered person authorized in writing to manufacture defense articles by and for the Government of Canada; a Canadian Federal, Provincial, or Territorial Government;

Prohibit the disclosure of the technical data to any other contractor or subcontractor who is not a Canadian-registered person;

Provide that any subcontract contain all the limitations of § 126.5;

Require that the Canadian contractor, including subcontractors, destroy or return to the U.S. exporter in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of the contract, unless for use by a Canadian or United States Government entity that requires in writing the technical data be maintained. The U.S. exporter must be provided written certification that the technical data is being retained or destroyed; and

Include a clause requiring that al documentation created from U.S. origin technical data contain the statement that "This document contains technical data, the use of which is restricted by the U.S. Arms Export Control Act. This data has been provided in accordance with, and is subject to, the limitations specified in § 126.5 of the International Traffic in Arms Regulations (ITAR). By accepting this data, the consignee agrees to honor the requirements of the ITAR."

The U.S. exporter must provide the Directorate of Defense Trade Controls a semi-annual report of all their on-going activities authorized under § 126.5. The report shall include the article(s) being produced; the end-user(s); the end item into which the product is to be incorporated; the intended end-use of the product; the name and address of all the Canadian contractors and subcontractors.

NOTE: An "X" in the chart indicates that the item is excluded from use under the exemption reference in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.

PART 127 – VIOLATIONS AND PENALTIES

25. The authority citation for part 127 is revised to read to as follows:

Authority: Secs. 2, 38, and 42, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; Pub. L. 111-266.

26. Section 127.1 is revised to read as follows:

§ 127.1 Violations

(a) Without first obtaining the required license or other written approval from the Directorate of Defense Trade Controls, it is unlawful:
(1) To export or attempt to export from the United States any defense article or technical data or to furnish or attempt to furnish any defense service for which a license or written approval is required by this subchapter;
(2) To reexport or retransfer or attempt to reexport or retransfer any defense article, technical data, or defense service from one foreign end-user, end-use, or destination to another foreign end-user, end-use, or destination for which a license or written approval is required by this subchapter, including, as specified in § 126.16(h) and § 126.17(h) of this subchapter, any defense article, technical data, or defense service that was exported from the United States without a license pursuant to any exemption under this subchapter;
(3) To import or attempt to import any defense article whenever a license is required by this subchapter; or
(4) To conspire to export, import, reexport, retransfer, furnish or cause to be exported, imported, reexported, retransferred or furnished, any defense article, technical data, or defense service for which a license or written approval is required by this subchapter.

(b) It is unlawful:
(1) To violate any of the terms or conditions of a license or approval granted pursuant to this subchapter, any exemption contained in this subchapter, or any rule or regulation contained in this subchapter;

(2) To engage in the business of brokering activities for which registration and a license or written approval is required by this subchapter without first registering or obtaining the required license or written approval from the Directorate of Defense Trade Controls. For the purposes of this subchapter, engaging in the business of brokering activities requires only one occasion of engaging in an activity as reflected in § 129.2(b) of this subchapter.

(3) To engage in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services without complying with the registration requirements. For the purposes of this subchapter, engaging in the business of manufacturing or exporting defense articles or furnishing defense services requires only one occasion of manufacturing or exporting a defense article or furnishing a defense service.

(c) Any person who is granted a license or other approval or who acts pursuant to an exemption under this subchapter is responsible for the acts of employees, agents, and all authorized persons to whom possession of the defense article or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article or technical data abroad. All persons abroad subject to U.S. jurisdiction who obtain temporary or permanent custody of a defense article exported from the United States or produced under an agreement described in part 124 of this subchapter, and irrespective of the number of intermediate transfers, are bound by the regulations of this subchapter in the same manner and to the same extent as the original owner or transferor.

(d) A person with knowledge that another person is then ineligible pursuant to §§ 120.1(c) or 126.7 of this subchapter may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to, and written authorization from, the Directorate of Defense Trade Controls:

(1) Apply for, obtain, or use any export control document as defined in § 127.2(b) of this subchapter for such ineligible person; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any transaction which may involve any defense article or the furnishing of any defense service for which a license or approval is required by this subchapter or an exemption is available under this subchapter for export, where such ineligible person may obtain any benefit therefrom or have any direct or indirect interest therein.

(e) No person may knowingly or willfully cause, or aid, abet, counsel, demand, induce, procure, or permit the commission of, any act prohibited by, or the omission of any act required by, 22 U.S.C. 2778 and 2779, or any regulation, license, approval, or order issued thereunder.

27. Section 127.2 is amended by revising paragraphs (a), (b) introductory text, (b)(1), (b)(2), and adding (b)(14), to read as follows:

§ 127.2 Misrepresentation and omission of facts

(a) It is unlawful to use or attempt to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting, transferring, reexporting, retransferring, obtaining, or furnishing any defense article, technical data, or defense service. Any false statement, misrepresentation, or omission of material fact in an export or temporary import control document will be considered as made in a matter within the jurisdiction of a department or agency of the United States for the purposes of 18 U.S.C. 1001, 22 U.S.C. 2778, and 22 U.S.C. 2779.

(b) For the purpose of this subchapter, export or temporary import control documents include the following:

(1) An application for a permanent export, reexport, retransfer, or a temporary import license and supporting documents.

(2) Electronic Export Information filing.

* * * *

(14) Any other shipping document that has information related to the export of the defense article or defense service.

28. Section 127.3 is revised to read as follows:

§ 127.3 Penalties for violations. Any person who willfully:

(a) Violates any provision of § 38 or § 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or any rule or regulation issued under either § 38 or § 39 of the Act, or any undertaking specifically required by part 124 of this subchapter; or

(b) In a registration, license application, or report required by § 38 or § 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or by any rule or regulation issued under either section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be subject to a fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).

29. Section 127.4 is amended by revising paragraphs (a) and (c), and adding paragraph (d), to read as follows:

§ 127.4 Authority of U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers

(a) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers may take appropriate action to ensure observance of this subchapter as to the export or the attempted export or the temporary import of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft. This applies whether the export is authorized by license or by written approval issued under this subchapter or by exemption.

* * * *

(c) Upon the presentation to a U.S. Customs and Border Protection Officer of a license or written approval, or claim of an exemption, authorizing the export of any defense article, the customs officer may require the production of other relevant documents and information relating to the final export. This includes an invoice, order, packing list, shipping document, correspondence, instructions, and the documents otherwise required by the U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement.

(d) If an exemption under this subchapter is used or claimed to export, transfer, reexport or retransfer, furnish, or obtain a defense article, technical data, or defense service, law enforcement officers may rely upon the authorities noted, additional authority identified in the language of the exemption, and any other lawful means or authorities to investigate such a matter.

30. Section 127.7 is amended by revising paragraph (a) to read as follows:

§ 127.7 Debarment

(a) *Debarment*. In implementing § 38 of the Arms Export Control Act, the Assistant Secretary of State for Political-Military Affairs may prohibit any person from participating directly or indirectly in the export, reexport and retransfer of defense articles, including technical data, or in the furnishing of defense services for any of the reasons listed below and publish notice of such action in the Federal Register. Any such prohibition is referred to as a debarment for purposes of this subchapter. The Assistant Secretary of State for Political-Military Affairs shall determine the appropriate period of time for debarment, which shall generally be for a

period of three years. However, reinstatement is not automatic and in all cases the debarred person must submit a request for reinstatement and be approved for reinstatement before engaging in any export or brokering activities subject to the Arms Export Control Act or this subchapter.

* * * *

31. Section 127.10 is amended by revising paragraph (a) to read as follows:

§ 127.10 Civil penalty

(a) The Assistant Secretary of State for Political-Military Affairs is authorized to impose a civil penalty in an amount not to exceed that authorized by 22 U.S.C. 2778, 2779a, and 2780 for each violation of 22 U.S.C. 2778, 2779a, and 2780, or any regulation, order, license, or written approval issued thereunder. This civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.
* * * *

32. Section 127.12 is amended by adding paragraph (b)(5), and revising paragraph (d), to read as follows:

§ 127.12 Voluntary Disclosures
* * * *

(b) * * *
* * * *
(5) Nothing in this section shall be interpreted to negate or lessen the affirmative duty pursuant to §§ 126.1(e), 126.16(h)(5), and 126.17(h)(5) of this subchapter upon persons to inform the Directorate of Defense Trade Controls of the actual or final sale, export, transfer, reexport, or retransfer of a defense article, technical data, or defense service to any country referred to in § 126.1 of this subchapter, any citizen of such country, or any person acting on its behalf.
* * * *

(d) *Documentation.* The written disclosure should be accompanied by copies of substantiating documents. Where appropriate, the documentation should include, but not be limited to:
(1) Licensing documents (e.g., license applications, export licenses, and end-user statements), exemption citation, or other authorization description, if any;
(2) Shipping documents (e.g., Electronic Export Information filing, including the Internal Transaction Number, air waybills, and bills of laden, invoices, and any other associated documents); and
(3) Any other relevant documents must be retained by the person making the disclosure until the Directorate of Defense Trade Controls requests them or until a final decision on the disclosed information has been made.
* * * *

PART 129 – REGISTRATION AND LICENSING OF BROKERS

33. The authority citation for part 129 continues to read as follows:

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

34. Section 129.6 is amended by revising paragraph (b)(2) to read as follows:

§ 129.6 Requirements for License/Approval

* * * *
(b) * * *
* * *.*

(2) Brokering activities that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, any member country of that Organization, Australia, Israel, Japan, New Zealand, or the Republic of Korea, except in the case of the defense articles or defense services specified in § 129.7(a) of this subchapter, for which prior approval is always required.

35. Section 129.7 is amended by revising paragraphs (a)(1)(vii) and (a)(2) to read as follows:

§ 129.7 Prior Approval (License)

(a) * * *
(1) * * *
* * * *
(vii) Foreign defense articles or defense services (other than those that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, any member country of that Organization, Australia, Israel, Japan, New Zealand, or the Republic of Korea (see §§ 129.6(b)(2) and 129.7(a)).
(2) Brokering activities involving defense articles or defense services covered by, or of a nature described by part 121, of this subchapter, in addition to those specified in § 129.7(a), that are designated as significant military equipment under this subchapter, for or from any country not a member of the North Atlantic Treaty Organization, Australia, Israel, Japan, New Zealand, or the Republic of Korea whenever any of the following factors are present:
* * * *

Dated: March 16, 2012
Rose Gottemoeller, Acting Under Secretary, Arms Control and International Security, Department of State.

Apr. 19, 2012 (77 FR 23538-23539): Announcement of Entry Into Force of the Defense Trade Cooperation Treaty Between the United States and the United Kingdom

(Source: http://www.gpo.gov/fdsys/pkg/FR-2012-04-19/html/2012-9451.htm)

* ACTION: Notice.
* SUMMARY: On April 13, 2012, the United States and the United Kingdom exchanged diplomatic notes bringing the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (Treaty Doc. 110-7) into force. This Notice announces the entry into force of the Treaty. This Notice also announces April 13, 2012 as the effective date of the rule published on March 21, 2012 (77 FR 16592) implementing the Treaty and making other updates to the International Traffic in Arms Regulations (ITAR).
* DATES: This notice is effective April 19, 2012.
* FOR FURTHER INFORMATION CONTACT: Sarah J. Heidema, Office of Defense Trade Controls Policy, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522-0112, telephone (202) 663-2809, email at heidemasj@state.gov.
* SUPPLEMENTARY INFORMATION: On March 21, 2012, the Department of State published a rule (77 FR 16592) amending the ITAR to implement the Treaty, and identify via a supplement the defense articles and defense services that may not be exported pursuant to the Treaty. The rule also amended the ITAR section pertaining to the Canadian exemption and added Israel to the list of countries and entities that have a shorter Congressional notification certification time period and a higher dollar value reporting threshold. This rule indicated it would become effective upon the entry into force of the Treaty and that the Department of State would publish a rule document in the Federal Register announcing the effective date of this rule. This notice is being published to make such announcement.
Dated: April 13, 2012.

Beth M. McCormick, Deputy Assistant Secretary, Defense Trade and Regional Security, Bureau of Political-Military Affairs, U.S. Department of State.

Feb. 29, 2012: 77 FR 12201; 22 CFR Part 126: Haiti

(Source: http://www.gpo.gov/fdsys/pkg/FR-2012-02-29/pdf/2012-4855.pdf; http://www.gpo.gov/fdsys/pkg/FR-2012-02-29/html/2012-4855.htm)

77 FR 12201-12202: 22 CFR Part 126; Amendment to the International Traffic in Arms Regulations: Haiti
* AGENCY: Department of State.
* ACTION: Final rule.
* SUMMARY: The Department of State is amending the International Traffic in Arms Regulations to clarify that the Coast Guard of Haiti is an eligible end-user. This change makes it clear that the existing exceptions allow for exports to the Coast Guard of Haiti.
* DATES: Effective Date: This rule is effective February 29, 2012.
* FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Acting Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663-2792, or email DDTCResponseTeam@state.gov. ATTN: Regulatory Change, Part 126, Haiti.
* SUPPLEMENTARY INFORMATION: This rule implements section 7045(c) of Public Law 112-74 by amending ITAR Sec. 126.1(j) to clarify that U.S. policy on arms exports to the Government of Haiti includes the Coast Guard as an eligible end-user. Therefore, "to include the Coast Guard" is added to Sec. 126.1(j)(1). In addition, in paragraph (j)(2), the word ``exemptions'' is replaced with ``exceptions,'' as it more accurately describes the listing in paragraph (j)(1).
[Portions of item deleted by Update editor.] List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is amended as follows:

PART 126--GENERAL POLICIES AND PROVISIONS

(1) The authority citation for part 126 is revised to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117; Sec. 7045, Pub. L. 112-74.

(2) Section 126.1 is amended by revising paragraphs (j)(1)(i) and (j)(2) to read as follows:

§ 126.1 Prohibited Exports, Imports, and Sales To or From Certain Countries

* * * * *

(j) Haiti

(1) * * *

(i) Defense articles and defense services intended solely for the support of or use by security units that operate under the command of the Government of Haiti, to include the Coast Guard;

* * * * *

(2) All shipments of arms and related materials consistent with the above exceptions shall only be made to Haitian security units as designated by the Government of Haiti, in coordination with the U.S. Government.

* * * * *

Dated: February 21, 2012.

Rose E. Gottemoeller, Acting Under Secretary, Arms Control and International Security, Department of State.

Dec. 6, 2011: 76 FR 76035; 22 CFR Part 126, Additional Method of Electronic Payment

of Registration Fees

(Source: http://www.gpo.gov/fdsys/pkg/FR-2011-12-06/html/2011-31273.htm; http://www.gpo.gov/fdsys/pkg/FR-2011-12-06/pdf/2011-31273.pdf)

*** AGENCY:** Department of State.
*** ACTION:** Final Rule.
*** SUMMARY:** The Department of State is amending the International Traffic in Arms Regulations (ITAR) to identify the Federal Reserve Wire Network (FedWire) as another method of electronic payment of registration fees, so as to provide a choice in and facilitate the submission of fees by registrants.
*** DATES:** This rule is effective December 6, 2011.
* **FOR FURTHER INFORMATION CONTACT:** Tanya A. Phillips, Office of Defense Trade Controls Compliance, U.S. Department of State, telephone (202) 632-2797, or e-mail DDTCResponseTeam@state.gov. ATTN: Registration – Additional Method of Electronic Payment of Registration Fees.
*** SUPPLEMENTARY INFORMATION:** The Directorate of Defense Trade Controls (DDTC) is responsible for the collection of registration fees from persons in the business of manufacturing, exporting, and/or brokering defense articles or defense services. On February 24, 2011, the Department proposed electronic payment as the sole method of the submission of registration fees (*see* the proposed rule, "Amendment to the International Traffic in Arms Regulations: Electronic Payment of Registration Fees; 60-Day Notice of the Proposed Statement of Registration Information Collection," 76 FR 10291). That proposal received no public comment within the established comment period. The final rule (76 FR 45195, July 28, 2011) took effect on September 26, 2011, and identified Automated Clearing House (ACH) as the means by which U.S. entities may electronically submit their registration fees.
Since the implementation of that rule, a considerable number of intended registrants have contacted the Department, inquiring if payment may be made using the Federal Reserve Wire Network (FedWire), as they were experiencing difficulties in originating ACH transactions. This rule seeks to address these concerns. Therefore, to §§ 122.2 and 129.4 of the ITAR, where registration fee payment is described, FedWire is added as an acceptable electronic payment method.

*** Regulatory Analysis and Notices** [Deleted by editor]

List of Subjects in 22 CFR Parts 122 and 129

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 122 and 129 are amended as follows:

PART 122 – REGISTRATION OF MANUFACTURERS AND EXPORTERS

1) The authority citation for part 122 continues to read as follows: **Authority:** Secs. 2 and 38, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311; 1977 Comp. p. 79, 22 U.S.C. 2651a.

2) Section 122.2 is amended by revising paragraph (a) to read as follows:

§ 122.2 Submission of Registration Statement.

(a) *General.* An intended registrant must submit a Department of State Form DS-2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by registered or overnight mail delivery, and must submit an electronic payment via Automated Clearing House or Federal Reserve Wire Network payable to the Department of State of one of the fees prescribed in § 122.3(a) of this subchapter. Automated Clearing House (ACH) and Federal Reserve Wire Network (FedWire) are electronic networks used to process financial transactions in the United States. Intended registrants should access the Directorate of Defense Trade Control's website at www.pmddtc.state.gov for detailed guidelines on submitting an ACH or FedWire electronic payment. Electronic payments must be in U.S. currency and must be payable through a U.S. financial institution. Cash, checks, foreign currency, or money orders will not be accepted. In addition, the Statement of

Registration must be signed by a senior officer (e.g., Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant also shall submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees. * * * * *

PART 129 – REGISTRATION AND LICENSING OF BROKERS

3. The authority citation for part 129 continues to read as follows:

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

4. Section 129.4 is amended by revising paragraph (a) to read as follows:

§ 129.4 Registration statement and fees.

(a) *General*. An intended registrant must submit a Department of State Form DS-2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by registered or overnight mail delivery, and must submit an electronic payment via Automated Clearing House (ACH), Federal Reserve Wire Network (FedWire), or Society for Worldwide Interbank Financial Telecommunications (SWIFT), payable to the Department of State of the fees prescribed in § 122.3(a) of this subchapter. Automated Clearing House and FedWire are electronic networks used to process financial transactions originating from within the United States and SWIFT is the messaging service used by financial institutions worldwide to issue international transfers for foreign accounts. Payment methods (i.e., ACH, FedWire, and SWIFT) are dependent on the source of the funds (U.S. or foreign bank) drawn from the applicant's account. The originating account must be the registrant's account and not a third party's account. Intended registrants should access the Directorate of Defense Trade Control's website at www.pmddtc.state.gov for detailed guidelines on submitting ACH, FedWire, and SWIFT electronic payments. Payments, including from foreign brokers, must be in U.S. currency, payable through a U.S. financial institution. Cash, checks, foreign currency, or money orders will not be accepted. The Statement of Registration must be signed by a senior officer (e.g., Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant, whether a U.S. or foreign person, shall submit documentation that demonstrates it is incorporated or otherwise authorized to do business in its respective country. Foreign persons who are required to register shall provide information that is substantially similar in content to that which a U.S. person would provide under this provision (e.g., foreign business license or similar authorization to do business). The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees. * * * * *

November 29, 2011

Ellen O. Tauscher, Under Secretary, Arms Control and International Security, Department of State.

Nov. 9, 2011: 76 FR 69612; 22 CFR Part 126; Sudan

(Source: http://www.gpo.gov/fdsys/pkg/FR-2011-11-09/html/2011-29041.htm)

* AGENCY: Department of State.
* ACTION: Final rule.
* SUMMARY: The Department of State is amending the International Traffic in Arms Regulations to include the Republic of the Sudan as a proscribed destination, pursuant to a United Nations Security Council arms embargo, and to clarify that this policy does not apply to the Republic of South Sudan.

* DATES: Effective Date: This rule is effective November 9, 2011.
* FOR FURTHER INFORMATION CONTACT: Mr. Charles B. Shotwell, Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663-2792, or email DDTCResponseTeam@state.gov. ATTN: Regulatory Change, Sudan.
* SUPPLEMENTARY INFORMATION: Section 126.1(v) is added to set out U.S. policy on arms exports to the Republic of the Sudan, in accordance with UN Security Council resolutions imposing an arms embargo and recent political developments in Sudan. UNSC resolution 1556, adopted July 30, 2004, imposes an arms embargo on non-governmental entities and individuals operating in Darfur, with certain exceptions. Subsequently, UNSC resolution 1591, adopted on March 29, 2005, expanded the arms embargo to all parties to the N'djamena Ceasefire Agreement, including the Government of the Republic of Sudan. UNSC resolution 1945, adopted on October 14, 2010, reaffirmed and strengthened the arms embargo. Accordingly, it is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Republic of the Sudan. The exceptions, as provided in the referenced resolutions, are for (1) Supplies and related technical training and assistance to monitoring, verification, or peace support operations, including those authorized by the UN or operating with the consent of the relevant parties; (2) supplies of non-lethal military equipment intended solely for humanitarian, human rights monitoring, or protective uses, and related technical training and assistance; (3) personal protective gear for the personal use of United Nations personnel, human rights monitors, representatives of the media, and humanitarian and development workers and associated personnel; and (4) assistance and supplies provided in support of implementation of the Comprehensive Peace Agreement. Licenses submitted pursuant to these exceptions will be considered on a case-by-case basis.

Sections 126.1(c) and (d) are revised to change ``Sudan'' to ``The Republic of the Sudan.''

On July 9, 2011, the Republic of South Sudan declared independence from Sudan and was recognized as a sovereign state by the United States. The policy of denial as it applies to the Republic of the Sudan does not apply to the Republic of South Sudan. Licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Republic of the South Sudan will be considered on a case-by-case basis.

* Regulatory Analysis and Notices [deleted by Update editor.]

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is amended as follows:

PART 126--GENERAL POLICIES AND PROVISIONS

1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p.899; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117.

2. Section 126.1 is amended by revising paragraphs (c)(11) and (d), and adding paragraph (v), to read as follows:

§ 126.1 Prohibited Exports and Sales to Certain Countries

* * * * *

(c) * * *

* * * *

(11) The Republic of the Sudan (see also paragraph (v) of this section).

(d) *Terrorism.* Exports to countries which the Secretary of State has determined to have repeatedly provided support for acts of international terrorism are contrary to the foreign policy of the United States and are thus

subject to the policy specified in paragraph (a) of this section and the requirements of section 40 of the Arms Export Control Act (22 U.S.C. 2780) and the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986 (22 U.S.C. 4801, note). The countries in this category are: Cuba, Iran, the Republic of the Sudan, and Syria.

* * * * *

(v) *Sudan.* It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Republic of the Sudan, except a license or other approval may be issued, on a case-by-case basis, for:

(1) Supplies and related technical training and assistance to monitoring, verification, or peace support operations, including those authorized by the United Nations or operating with the consent of the relevant parties;

(2) Supplies of non-lethal military equipment intended solely for humanitarian, human rights monitoring, or protective uses and related technical training and assistance;

(3) Personal protective gear for the personal use of United Nations personnel, human rights monitors, representatives of the media, and humanitarian and development workers and associated personnel; or

(4) Assistance and supplies provided in support of implementation of the Comprehensive Peace Agreement.

Note to Sec. 126.1. On July 9, 2011, the Republic of South Sudan declared independence from Sudan and was recognized as a sovereign state by the United States. This policy does not apply to the Republic of South Sudan. Licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Republic of the South Sudan will be considered on a case-by-case basis.

Dated: November 2, 2011.

Ellen O. Tauscher, Under Secretary, Arms Control and International Security, Department of State.

Nov. 4, 2011: 76 FR 68311; 22 CFR Part 123; Filing, Retention, and Return of Export Licenses and Filing of Export Information.
(Source: http://www.gpo.gov/fdsys/pkg/FR-2011-11-04/html/2011-28548.htm)

*** AGENCY:** Department of State.
*** ACTION:** Final Rule.
*** SUMMARY:** The Department of State is amending the International Traffic in Arms Regulations (ITAR) to reflect changes in the requirements for the return of licenses. Applicants are no longer required to return certain expired DSP-5s. This change will reduce the administrative burden on applicants.
*** EFFECTIVE DATE:** This rule is effective November 4, 2011.
*** FOR FURTHER INFORMATION CONTACT:** Nicholas Memos, Office of Defense Trade Controls Policy, Bureau of Political-Military Affairs, Department of State, (202) 663-2829 or FAX (202) 261-8199; E-mail memosni@state.gov, ATTN: ITAR Amendment – License Return.
*** SUPPLEMENTARY INFORMATION:** The Department of State is amending §123.22(c) to institute changes in the requirements for the return of licenses. With this change, applicants with DSP-5 licenses that have been issued electronically by the Directorate of Defense Trade Controls (DDTC) and decremented electronically by the U.S. Customs and Border Protection (CBP) through the Automated Export System (AES) are no longer required to return them to DDTC when they expire, to include when the total authorized value or quantity has been shipped. The return of these licenses is redundant and unnecessary as all of the export information has been captured and saved electronically. If a DSP-5 license issued electronically is decremented physically in one or more instance the license must be returned to the Department of State.
All other DSP-5 licenses that do not meet the criteria described above, and all DSP-61, DSP-73, and DSP-85

licenses, and DSP-94 authorizations, must be returned by the applicant, or the government agency with which the license or authorization was filed, to DDTC, as these licenses and authorizations are not decremented electronically, even if an Electronic Export Information is filed via AES.
New §123.22(c)(3) addresses the return of the DSP-94 authorization.
New §123.22(c)(4) provides that licenses issued but not used by the applicant do not need to be returned to DDTC.
New §123.22(c)(5) provides that licenses which have been revoked by DDTC are considered expired.
Section 123.21(b) is amended to conform to the changes to §123.22(c).
This rule was first presented as a proposed rule for public comment on July 14, 2011. That comment period ended August 29, 2011. Three comments were received. The Department's evaluation of the written comments and recommendations are as follows.

One commenting party recommended the Department revise the provision regarding the return of the DSP-85, as the issued license is not held by the applicant, but by an officer of the Defense Security Service. The Department accepted this recommendation, and has revised §123.22(c)(2) to provide that "the government agency with which the license or authorization was filed" may also return an expired license or authorization to the Department.

One commenting party recommended revising the sentence in §123.22(c)(1) addressing the maintenance of records. The commenting party correctly pointed out that, as drafted in the proposed rule, the requirement to maintain records of an electronically issued and decremented DSP-5 pertained only when the license was fully decremented or expired, when in fact the requirement, per ITAR §122.5, is for record maintenance on an ongoing basis. Section (c)(1) is revised accordingly.

One commenting party recommended revising a section of the ITAR not the subject of this rule. The Department, though, takes this opportunity to address the recommendation. The commenting party recommended revising ITAR §123.22(a)(1) to allow the exporter to present to CBP an electronically issued DSP-5 license at the time of permanent export, and not prior to filing the license in the Automated Export System. This procedure is a requirement set by CBP, for enforcement purposes, and not by the Department.

One commenting party recommended the elimination of the requirement to return any expired license to the Department, stating that it is inefficient, redundant of other recordkeeping requirements, and not in keeping with the Department's initiative to provide end-to-end electronic licensing. The Department observes that while it has instituted electronic processes for the majority of defense trade licensing transactions, it has not completed this initiative. Therefore, certain requirements cannot be completed electronically by the public. This includes providing the Department with a record of certain expired licenses. As an alternative, the commenting party suggested providing D-Trade, the Department's electronic licensing system, as a means of returning certain expired licenses, but D-Trade is currently not configured to support this function. The Department also observes that the recordkeeping requirement of ITAR §122.5 pertains to registrants; for enforcement purposes, the Department also must have record of which exports were completed from approved authorizations. For the foregoing reasons, the Department did not accept this commenting party's recommendation.

Having thoroughly reviewed and evaluated the written comments and recommended changes, the Department has determined that it will accept, and hereby does adopt with the noted changes, the proposed rule as a final rule.

REGULATORY ANALYSIS AND NOTICES . . . . [Deleted by editor.]

List of Subjects in 22 CFR Part 123 Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 123 is amended as follows:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec 1205(a), Pub. L. 107–228.

2. Section 123.21 is amended by revising the section heading and paragraph (b) to read as follows:

§123.21 Duration, renewal, and disposition of licenses.

* * * * *

(b) Unused, expired, suspended, or revoked licenses must be handled in accordance with §123.22(c) of this subchapter.

3. Section 123.22 is amended by revising paragraph (c) to read as follows: **§123.22 Filing, retention, and return of export licenses and filing of export information.**

* * * * *

(c) *Return of licenses.* Per §123.21 of this subchapter, all DSP licenses issued by the Directorate of Defense Trade Controls (DDTC) must be disposed of in accordance with the following:

(1) A DSP-5 license issued electronically by DDTC and decremented electronically by the U.S. Customs and Border Protection through the Automated Export System (AES) is not required to be returned to DDTC. If a DSP-5 license issued electronically is decremented physically in one or more instance the license must be returned DDTC. A copy of the DSP-5 license must be maintained by the applicant in accordance with §122.5 of this subchapter.

(2) DSP-5, DSP-61, DSP-73, and DSP-85 licenses issued by DDTC but not decremented electronically by the U.S. Customs and Border Protection through AES (e.g., oral or visual technical data releases or temporary import and export licenses retained in accordance with paragraph (a)(2) of this section), must be returned by the applicant, or the government agency with which the license was filed, to DDTC upon expiration, to include when the total authorized value or quantity has been shipped. A copy of the license must be maintained by the applicant in accordance with §122.5 of this subchapter. AES does not decrement the DSP-61, DSP-73, and DSP-85 licenses. Submitting the Electronic Export Information is not considered to be decremented electronically for these licenses.

(3) A DSP-94 authorization filed with the U.S. Customs and Border Protection must be returned by the applicant, or the government agency with which the authorization was filed, to DDTC upon expiration, to include when the total authorized value or quantity has been shipped, or when all shipments against the Letter of Offer and Acceptance have been completed. AES does not decrement the DSP-94 authorization. Submitting the Electronic Export Information is not considered to be decremented electronically for the DSP-94. A copy of the DSP-94 must be maintained by the applicant in accordance with §122.5 of this subchapter.

(4) A license issued by DDTC but not used by the applicant does not need to be returned to DDTC, even when expired.

(5) A license revoked by DDTC is considered expired and must be handled in accordance with paragraphs (c)(1) and (c)(2) of this section.

Nov. 4, 2011: 76 FR 68313; 22 CFR Part 126, Libya and UNSCR 2009

(State: http://www.gpo.gov/fdsys/pkg/FR-2011-11-04/html/2011-28544.htm)

*** AGENCY:** Department of State.
* **ACTION:** Final Rule.
* **SUMMARY:** The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update the policy regarding Libya to reflect the additional modifications to the United Nations Security Council arms embargo of Libya adopted in September 2011.

* **EFFECTIVE DATE:** This rule is effective November 4, 2011.
* **FOR FURTHER INFORMATION CONTACT:** Charles B. Shotwell, Director, Office of Defense Trade Controls Policy, Department of State, by telephone: (202) 663-2792; fax: (202) 261-8199; or e-mail: DDTCResponseTeam@state.gov. ATTN: Part 126, Libya.
* **SUPPLEMENTARY INFORMATION:** On September 16, 2011, the United Nations Security Council adopted resolution 2009, which modifies the arms embargo against Libya put in place by the adoption in February and March of resolutions 1970 and 1973, respectively. Resolutions 1970 and 1973, and the May 2011 ITAR Amendment Regarding Libya

On February 26, 2011, the United Nations Security Council adopted Resolution 1970, paragraph 9 of which provides that UN member states shall immediately take the necessary measures to prevent the sale, supply, or transfer of arms and related materiel of all types to the Libyan Arab Jamahiriya, with certain exceptions. On March 17, 2011, the UN Security Council adopted Resolution 1973, paragraph 4 of which authorizes member states to take all necessary measures, notwithstanding the arms embargo established by paragraph 9 of Resolution 1970, to protect civilians and civilian populated areas under threat of attack in Libya. On May 24, 2011, the Department amended the ITAR to implement the Security Council's actions by adding Libya to §126.1(c), which identifies countries subject to UN Security Council arms embargoes. *See* 76 FR 30001. The Department also revised the previous policy on Libya contained in §126.1(k) to announce a policy of denial for all requests for licenses or other approvals to export or otherwise transfer defense articles and services to Libya, except where not prohibited under UNSC embargo and determined to be in the interests of the national security and foreign policy of the United States. Resolution 2009

To the existing exceptions to the arms embargo, delineated in resolutions 1970 and 1973, resolution 2009 adds the supply, sale, or transfer to Libya of arms and related materiel, including technical assistance, intended solely for security or disarmament assistance to the Libyan authorities, and small arms, light weapons, and related materiel for the sole use of UN personnel, representatives of the media, and humanitarian and development workers and associated personnel. License applications submitted pursuant to these exceptions are notified in advance to the Committee of the Security Council concerning Libya, and are eligible for approval in the absence of a negative decision by the Committee within five working days of such a notification.

Accordingly, the ITAR is amended to reflect these exceptions.

Regulatory Analysis and Notices [Deleted by editor.]

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126, is amended as follows:

PART 126 – GENERAL POLICIES AND PROVISIONS

1. The authority citation for part 126 continues to read as follows: **Authority**: Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791 and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p.899; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117.

2. Section 126.1 is amended by revising paragraph (k) to read as follows:

§126.1 Prohibited exports and sales to certain countries.

*** * * * ***

(k) *Libya.* It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Libya, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Arms and related materiel of all types, including technical assistance and training, intended solely for security or disarmament assistance to the Libyan authorities and notified in advance to the Committee of the Security Council concerning Libya and in the absence of a negative decision by the Committee within five working days of such a notification;

(2) Small arms, light weapons, and related materiel temporarily exported to Libya for the sole use of UN

personnel, representatives of the media, and humanitarian and development workers and associated personnel, notified in advance to the Committee of the Security Council concerning Libya and in the absence of a negative decision by the Committee within five working days of such a notification; or

(3) Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee.

*** * * * ***

Ellen O. Tauscher, Under Secretary, Arms Control and International Security, Department of State.

Aug. 8, 2011: 76 FR 47993: Part 126, Country Policies and Other Changes

(Source: http://www.gpo.gov/fdsys/search/getfrtoc.action)

76 FR 47990-47993: 22 CFR Part 126, Amendment to the International Traffic in Arms Regulations: Updates to Country Policies, and Other Changes
* AGENCY: Department of State.
* ACTION: Final rule.
* SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update country policies regarding Afghanistan, Côte d'Ivoire, Cyprus, the Democratic Republic of the Congo, Eritrea, Fiji, Iraq, Lebanon, Liberia, North Korea, Sierra Leone, Somalia, Sri Lanka, Yemen, and Zimbabwe, and to correct administrative and typographical errors.
* EFFECTIVE DATE: This rule is effective August 8, 2011.
* FOR FURTHER INFORMATION CONTACT: Nicholas Memos, Office of Defense Trade Controls Policy, Department of State, by telephone: (202) 663-2804; fax: (202) 261-8199; or e-mail: memosni@state.gov, ATTN: Part 126, Country Policies.
* SUPPLEMENTARY INFORMATION:
A number of country policy updates and corrections are made in §126.1, described as follows.

Afghanistan: Section 126.1(g) is amended to delete reference to the "Afghan Interim Authority." The Islamic Republic of Afghanistan has replaced the Afghan Interim Authority as the Government of Afghanistan. The Security Council committees established pursuant to United Nations Security Council (UNSC) resolutions 1267 (1999) and 1988 (2011), concerning Al-Qaida and the Taliban and associated individuals and entities, oversee the implementation by UN member states of sanctions measures (including arms embargoes) imposed by the Security Council on Al-Qaida and the Taliban, and those individuals, groups, undertakings, and entities associated with them. The committees maintain lists of individuals, groups, undertakings, and entities subject to the sanctions. By UNSC resolutions 1267 (1999), 1333 (2000), 1390 (2002), as reiterated in resolutions 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008) and 1904 (2009), and reiterated and modified by resolutions 1988 and 1989 (2011), the Security Council has obliged all member countries to prevent the direct or indirect supply, sale, or transfer of arms and related materiel to the individuals, groups, undertakings, and entities placed on these lists. Section 126.1(g) is amended accordingly.

Côte d'Ivoire: On November 15, 2004, the United Nations Security Council adopted resolution 1572, which provided for an arms embargo with certain exceptions. Resolution 1946 of October 15, 2010, reaffirmed the embargo, and added to the exceptions provided in resolution 1572. Resolution 1980 of April 28, 2011, renewed the terms of the modified arms embargo. Section 126.1(q) is added to reflect the arms embargo and exceptions thereto.

Cyprus: Section 126.1(r) is added to reflect the U.S. policy on arms exports to Cyprus, first published by the Department of State on December 18, 1992 (57 FR 60265).

Democratic Republic of the Congo: On March 31, 2008, the United Nations Security Council adopted resolution 1807, which modified the existing Democratic Republic of the Congo arms embargo. Subsequent resolutions (1857, adopted on December 22, 2008; 1896, adopted on November 30, 2009; and 1952, adopted on November 29, 2010) renewed the terms of the modified arms embargo in resolution 1807. Section 126.1(i) is amended to reflect the prohibitions contained in resolution 1807.

Eritrea: On December 23, 2009, the United Nations Security Council adopted resolution 1907, which prohibits the sale, supply or transfer of arms and related materiel to Eritrea, or the sale, supply or transfer of arms and related materiel from

Eritrea. Consequently, Eritrea is added to the list of countries subject to a UNSC arms embargo contained in §126.1(c). Since October 3, 2008, and as identified in §126.1(a), it has been the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in Eritrea.

Fiji: As a result of a military coup in Fiji, as of December 2006, the United States suspended all sales and deliveries of defense articles and defense services to Fiji. Such sales in support of peacekeeping activities are excepted, and will be reviewed on a case-by-case basis. Section 126.1(p) is added to reflect the policy and exceptions thereto.

Iraq: Section 126.1(f) is amended to remove reference to lapsed statutory authority and requirements.

Lebanon: On August 11, 2006, the United Nations Security Council adopted resolution 1701, establishing an arms embargo, with the exception that it would not apply to arms and related materiel for the United Nations Interim Force in Lebanon or as authorized by the Government of Lebanon. Most recently, resolution 1937 (adopted on August 30, 2010) emphasized the importance of full compliance with the terms of the arms embargo. Section 126.1(t) is added to reflect the arms embargo and exceptions thereto.

Liberia: On December 17, 2009, the United Nations Security Council adopted resolution 1903, which modified the existing Liberia arms embargo set forth in resolution 1521 (2003) and modified by resolutions 1683 and 1731 (2006). Subsequently, resolution 1961 (adopted on December 17, 2010) renewed the terms of the modified arms embargo. Section 126.1(o) is added to reflect the arms embargo and exceptions thereto. In addition, §126.1(a) is revised to remove Liberia as an example of a country with which the United States maintains an arms embargo.

North Korea: On October 24, 2008, the Secretary of State rescinded the determination of January 20, 1988, that North Korea repeatedly provided support for acts of international terrorism. The rescission satisfied the provisions of section 620(c) of the Foreign Assistance Act of 1961, Public Law 87-195, as amended (22 U.S.C. 2371(c)), and section 40(f) of the Arms Export Control Act, Public Law 90-629, as amended (22 U.S.C. 2780(f)). Consequently, §126.1(d) is amended to remove mention of North Korea. However, North Korea is subject to an arms embargo according to the United Nations Security Council resolutions 1718 (2006) and 1874 (2009). Consequently, North Korea remains subject to the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in North Korea (§126.1(a)).

Sierra Leone: On September 29, 2010, the United Nations Security Council adopted resolution 1940, which terminated the prohibition of the sale or supply of arms and related materiel to non-governmental forces in Sierra Leone adopted in UNSC resolution 1171 of June 5, 1998. Resolution 1171, in turn, had modified the provision of UNSC resolution 1132, adopted October 8, 1997, which prohibited the sale or supply of arms and related materiel to Sierra Leone. The United States, which had maintained the complete prohibition as provided in resolution 1132, now lifts the prohibition, in accordance with UNSC resolution 1940. Consequently, Sierra

Leone is removed from the list of countries subject to a UN arms embargo at §126.1(c) and is no longer considered a proscribed country under the ITAR.

Somalia: Title IV of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, the Child Soldiers Prevention Act of 2008, provides in Section 404 that no licenses for direct commercial sales of military equipment may be issued to the government of a country that is clearly identified as having governmental armed forces or government supported armed groups that recruit and use child soldiers. Somalia has been so identified by the U.S. government in the "Trafficking in Persons Report," dated June 2010. Therefore, §126.1(m) is amended to reflect the statutory bar on issuance of licenses for defense articles for the purpose of developing security sector institutions in Somalia. Sri Lanka: In accordance with Section 7089 of the Consolidated Appropriations Act, 2010 (Public Law 111-117), the Department of State is amending §126.1(n) to update the policy toward Sri Lanka. It is the policy of the United States to deny licenses and other approvals to export or otherwise transfer defense articles and defense services to Sri Lanka except, on a case-by-case basis, for humanitarian demining.

Yemen: Section 126.1(u) is added to set out the U.S. policy on arms exports to Yemen, first published by the Department of State on December 16, 1992 (57 FR 59852).

Zimbabwe: Section 126.1(s) is added to set out U.S. policy on arms exports to Zimbabwe, first published by the Department of State on April - 6 -
17, 2002 (67 FR 18978), and modified in a notice published on July 23, 2002 (67 FR 48242). Additionally, §126.1(j) is amended to standardize usage and structure, §§126.1(l) and (m) are amended to correct the spelling of "United States," and the title of §126.14 is amended to add the country "Sweden."

* REGULATORY ANALYSIS AND NOTICES . . . . [Deleted by Update Editor.]

List of Subjects in 22 CFR Part 126, Arms and munitions, Exports.
Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126, is amended as follows:
PART 126 – GENERAL POLICIES AND PROVISIONS

[1] The authority citation for part 126 is revised to read as follows:
Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p.899; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117.

[2] Section 126.1 is amended by revising the section heading and paragraphs (a), (c), (d), (f), (g), (i), (j), (l) introductory text, (m), and (n), and by adding paragraphs (o) through (u), to read as follows:

§126.1 Prohibited exports, imports, and sales to or from certain countries.
(a) General. It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services destined for or originating in certain countries. This policy applies to Belarus, Cuba, Eritrea, Iran, North Korea, Syria, and Venezuela. This policy also applies to countries with respect to which the United States maintains an arms embargo (*e.g.*, Burma, China, and the Republic of the Sudan) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a State Department notice published in the Federal Register. The exemptions provided in the regulations in this subchapter, except §123.17 of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries, areas, or persons in this §126.1.
* * * * *

(c) Exports and sales prohibited by United Nations Security Council embargoes. Whenever the United Nations Security Council mandates an arms embargo, all transactions that are prohibited by the embargo and that involve U.S. persons (see §120.15 of this subchapter) anywhere, or any person in the United States, and defense articles or services of a type enumerated on the United States Munitions List (22 CFR part 121), irrespective of origin, are prohibited under the ITAR for the duration of the embargo, unless the Department of State publishes a notice in the Federal Register specifying different measures. This would include, but is not limited to, transactions involving trade by U.S. persons who are located inside or outside of the United States in defense articles or services of U.S. or foreign origin that are located inside or outside of the United States. United Nations Security Council arms embargoes include, but are not necessarily limited to, the following countries:

(1) Cote d'Ivoire (see also paragraph (q) of this section).
(2) Democratic Republic of Congo (see also paragraph (i) of this section).
(3) Eritrea.
(4) Iraq (see also paragraph (f) of this section).
(5) Iran.
(6) Lebanon (see also paragraph (t) of this section).
(7) Liberia (see also paragraph (o) of this section).
(8) Libya (see also paragraph (k) of this section).
(9) North Korea.
(10) Somalia (see also paragraph (m) of this section).
(11) Sudan.

(d) Terrorism. Exports to countries which the Secretary of State has determined to have repeatedly provided support for acts of international terrorism are contrary to the foreign policy of the United States and are thus subject to the policy specified in paragraph (a) of this section and the requirements of section 40 of the Arms Export Control Act (22 U.S.C. 2780) and the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986 (22 U.S.C. 4801, note). The countries in this category are: Cuba, Iran, Sudan, and Syria.

* * * * *

(f) Iraq. It is the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services, destined for or originating in Iraq, except that a license or other approval may be issued, on a case-by-case basis for:

(1) Non-lethal military equipment; and
(2) Lethal military equipment required by the Government of Iraq or coalition forces.

(g) Afghanistan. It is the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services, destined for or originating in Afghanistan, except that a license or other approval may be issued, on a case-by-case basis, for the Government of Afghanistan or coalition forces. In addition, the names of individuals, groups, undertakings, and entities subject to broad prohibitions, including arms embargoes, due to their affiliation with the Taliban, Al-Qaida, or those associated with them, are published in lists maintained by the Security Council committees established pursuant to United Nations Security Council resolutions 1267 and 1988.

* * * * *

(i) Democratic Republic of the Congo. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Democratic Republic of the Congo, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services for the Government of the Democratic Republic of the Congo as notified in advance to the Committee of the Security Council concerning the Democratic Republic of the Congo;

(2) Defense articles and defense services intended solely for the support of or use by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC);

(3) Personal protective gear temporarily exported to the Democratic Republic of the Congo by United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only; and

(4) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as notified in advance to the Committee of the Security Council concerning the Democratic Republic of the Congo.

(j) Haiti.

(1) It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Haiti, except that a license or other approval may be issued, on a case-by-case basis, for:

(i) Defense articles and defense services intended solely for the support of or use by security units that operate under the command of the Government of Haiti;

(ii) Defense articles and defense services intended solely for the support of or use by the United Nations or a United Nations-authorized mission; and

(iii) Personal protective gear for use by personnel from the United Nations and other international organizations, representatives of the media, and development workers and associated personnel.

(2) All shipments of arms and related materials consistent with such exemptions shall only be made to Haitian security units as designated by the Government of Haiti, in coordination with the U.S. Government.

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(l) Vietnam. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Vietnam, except that a license or other approval may be issued, on a case-by-case basis, for:

* * * * *

(m) Somalia. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Somalia, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services intended solely for support for the African Union Mission to Somalia (AMISOM); and

(2) Defense services for the purpose of helping develop security sector institutions in Somalia that further the objectives of peace, stability and reconciliation in Somalia, after advance notification of the proposed export by the United States Government to the UNSC Somalia Sanctions Committee and the absence of a negative decision by that committee.

Exemptions from the licensing requirement may not be used with respect to any export to Somalia unless specifically authorized in writing by the Directorate of Defense Trade Controls.

(n) Sri Lanka. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Sri Lanka, except that a license or other approval may be issued, on a case-by-case basis, for humanitarian demining.

(o) Liberia. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Liberia, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services for the Government of Liberia as notified in advance to the Committee of the Security Council concerning Liberia;

(2) Defense articles and defense services intended solely for support of or use by the United Nations Mission in Liberia (UNMIL);

(3) Personal protective gear temporarily exported to Liberia by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only; and

(4) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as notified in advance to the Committee of the Security Council concerning Liberia.

(p) Fiji. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Fiji, except that a license or other approval may be issued, on a case-by-case basis, for defense articles and defense services intended solely in support of peacekeeping activities.

(q) Côte d'Ivoire. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Côte d'Ivoire, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services intended solely for support of or use by the United Nations Operations in Côte d'Ivoire (UNOCI) and the French forces that support them;

(2) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as approved in advance to the Committee of the Security Council concerning Côte d'Ivoire;

(3) Personal protective gear temporarily exported to Côte d'Ivoire by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only;

(4) Supplies temporarily exported to Côte d'Ivoire to the forces of a State which is taking action, in accordance with international law, solely and directly to facilitate the evacuation of its nationals and those for whom it has consular responsibility in Côte d'Ivoire, as notified in advance to the Committee of the Security Council concerning Côte d'Ivoire; and

(5) Non-lethal equipment intended solely to enable the Ivorian security forces to use only appropriate and proportionate force while maintaining public order, as approved in advance by the Sanctions Committee.

(r) Cyprus. It is the policy of the United States to deny licenses or other approvals, for exports or imports of defense articles and defense services destined for or originating in Cyprus, except that a license or other approval may be issued, on a case-by-case basis, for the United Nations Forces in Cyprus (UNFICYP) or for civilian end-users.

(s) Zimbabwe. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Zimbabwe, except that a license or other approval may be issued, on a case-by-case basis, for the temporary export of firearms and ammunition for personal use by individuals (not for resale or retransfer, including to the Government of Zimbabwe). Such exports may meet the licensing exemptions of §123.17 of this subchapter.

(t) Lebanon. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Lebanon, except that a license or other approval may be issued, on a case-by-case basis, for the United Nations Interim Force in Lebanon (UNIFIL) and as authorized by the Government of Lebanon.

(u) Yemen. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Yemen, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Non-lethal defense articles and defense services; and

(2) Non-lethal, safety-of-use defense articles (*e.g.*, cartridge actuated devices, propellant actuated devices and technical manuals for military aircraft for purposes of enhancing the safety of the aircraft crew) for lethal end-items.

[3] Section 126.14 is amended by revising the section heading to read as follows:

§126.14 Special comprehensive export authorizations for NATO, Australia, Japan, and Sweden.

* * * * *

August 1, 2011

Ellen O. Tauscher, Under Secretary, Arms Control and International Security, Department of State.

July 28, 2011: 76 FR 45195; Parts 120, 122, 123, and 129; Electronic Payment of Fees

(Source: http://www.gpo.gov/fdsys/pkg/FR-2011-07-28/html/2011-19115.htm)

76 FR 45195-45198: 22 CFR Parts 120, 122, 123, and 129; International Traffic in Arms Regulations: Electronic Payment of Registration Fees

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to change the method of payment to electronic submission of registration fees. The institution of the electronic submission of registration fees will simplify the collection and verification of payments, eliminate the need to manually process and collect returned payments, and eliminate the possibility of lost payments. Definitions for ``Foreign Ownership'' and ``Foreign Control'' are also added.

DATES: Effective Date: This rule is effective September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Lisa V. Aguirre, Director, Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls, Department of State, 2401 E Street, NW., SA-1, Room H1200, Washington, DC 20522-0112; telephone 202-632-2798 or fax 202-632-2878; or e-mail through DDTCResponseTeam@state.gov, with the subject line, ``Electronic Payment of Registration Fees.''

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC) is responsible for the collection of registration fees from persons in the business of manufacturing, exporting, and/or brokering defense articles or defense services.

Previously, registrants submitted registration fees to DDTC by check or money order, and these payments were processed manually. The institution of the electronic submission of registration fees will simplify the collection and verification of payments, eliminate the need to manually process and collect returned payments, and eliminate the possibility of lost payments.

Section 122.2(a) is revised to provide for electronic payment as the sole means of registration fee submission. The form used for obtaining registration, the DS-2032 Statement of Registration, has been revised to reflect that fee payments are to be made electronically. Additionally, the certifications previously required through the transmittal letter referenced in Sec. 122.2(b) of the ITAR are incorporated into the revised DS-2032. Consequently, Sec. 122.2(b) no longer requires a separate transmittal letter; rather, it addresses certain certifications to be made on the Statement of Registration that previously were provided via the transmittal letter. The new Sec. 122.2(b) title will be ``Statement of Registration Certification.''

Definitions for ``ownership'' and ``control'' are removed from part 122 by the removal of Sec. 122.2(c). Definitions for ``Foreign Ownership'' and ``Foreign Control'' constitute the new Sec. 120.37.

Section 122.3(a) is revised to remove reference to the transmittal letter.

The revision to Sec. 129.4(a) is in line with the change in part 122 regarding the provision of electronic payment of registration fees. References to the transmittal letter are removed from Sec. Sec. 129.4(a) and (b).

Title and number of the registration form is corrected in Sec. 120.28(a)(2), and Sec. 123.16(b)(9) is revised to correct a reference to Sec. 122.2(c) and replace it with a reference to Sec. 120.37.

This rule was first presented as a proposed rule for public comment on February 24, 2011. That comment period ended April 25, 2011. No comments pertinent to this rule were received.

Having thoroughly reviewed and evaluated the rule, the Department has determined that it will accept, and hereby does adopt, the proposed rule as a final rule.

Regulatory Analysis and Notices [Deleted]

List of Subjects in 22 CFR Parts 120, 122, 123, and 129

Arms and munitions, Registration, Exports, Brokering.

Accordingly, for the reasons set forth in the preamble, Title 22, Chapter I, Subchapter M, parts 120, 122, 123, and 129 are amended as follows:

PART 120--PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105-261, 112 Stat. 1920.

2. In Sec. 120.28, paragraph (a)(2) is revised to read as follows:

Sec. 120.28 Listing of forms referred to in this subchapter.

* * * * *

(a) * * *

(2) Statement of Registration (Form DS-2032).

* * * * *

Sec. Sec. 120.33-120.36 [Reserved]

3. Part 120 is amended by reserving Sec. Sec. 120.33 through 120.36 and adding Sec. 120.37 to read as follows:

Sec. 120.37 Foreign ownership and foreign control.

Foreign ownership means more than 50 percent of the outstanding voting securities of the firm are owned by one or more foreign persons (as defined in Sec. 120.16). Foreign control means one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Foreign control is presumed to exist where foreign persons own 25 percent or more of the outstanding voting securities unless one U.S. person controls an equal or larger percentage.

PART 122--REGISTRATION OF MANUFACTURERS AND EXPORTERS

4. The authority citation for part 122 continues to read as follows:

Authority: Secs. 2 and 38, Public Law 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311; 1977 Comp. p. 79, 22 U.S.C. 2651a.

5. Section 122.2 is revised to read as follows:

Sec. 122.2 Submission of registration statement.

(a) General. An intended registrant must submit a Department of State Form DS-2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by registered or overnight mail delivery, and must submit an electronic payment via Automated Clearing House payable to the Department of State of one of the fees prescribed in Sec. 122.3(a) of this subchapter. Automated Clearing House (ACH) is an electronic network used to process financial transactions in the United States. Intended registrants should access the Directorate of Defense Trade Control's Web site at http://www.pmddtc.state.gov for detailed guidelines on submitting an ACH electronic payment. Electronic payments must be in U.S. currency and must be payable through a U.S. financial institution. Cash, checks, foreign currency, or money orders will not be accepted. In addition, the Statement of Registration must be signed by a senior officer (*e.g.*, Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant also shall submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the

registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

(b) Statement of Registration Certification. The Statement of Registration of the intended registrant shall include a certification by an authorized senior officer of the following:

(1) Whether the intended registrant, chief executive officer, president, vice presidents, other senior officers or officials (*e.g.*, Comptroller, Treasurer, General Counsel) or any member of the board of directors:

(i) Has ever been indicted for or convicted of violating any of the U.S. criminal statutes enumerated in Sec. 120.27 of this subchapter; or

(ii) Is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government.

(2) Whether the intended registrant is foreign owned or foreign controlled (see Sec. 120.37 of this subchapter). If the intended registrant is foreign owned or foreign controlled, the certification shall also include whether the intended registrant is incorporated or otherwise authorized to engage in business in the United States.

6. Section 122.3 is amended by revising paragraph (a) introductory text to read as follows:

Sec. 122.3 Registration fees.

(a) A person who is required to register must do so on an annual basis upon submission of a completed Form DS-2032 and payment of a fee as follows:

* * * * *

PART 123--LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

7. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105-261, 112 Stat. 1920; Sec 1205(a), Pub. L. 107-228.

8. Section 123.16 is amended by revising paragraph (b)(9) introductory text to read as follows:

Sec. 123.16 Exemptions of general applicability.

* * * * *

(b) * * *

(9) Port Directors of U.S. Customs and Border Protection shall permit the temporary export without a license by a U.S. person of any unclassified component, part, tool or test equipment to a subsidiary, affiliate or facility owned or controlled by the U.S. person (see Sec. 120.37 of this subchapter for definition of foreign ownership and foreign control) if the component, part, tool or test equipment is to be used for manufacture, assembly, testing, production, or modification provided:

* * * * *

PART 129--REGISTRATION AND LICENSING OF BROKERS

9. The authority citation for part 129 continues to read as follows:

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

10. Section 129.4 is amended by revising paragraphs (a) and (b) to read as follows:

Sec. 129.4 Registration statement and fees.

(a) General. An intended registrant must submit a Department of State Form DS-2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by registered or overnight mail delivery, and must submit an electronic payment via Automated Clearing House (ACH) or Society for Worldwide Interbank Financial Telecommunications (SWIFT), payable to the Department of State of the fees prescribed in Sec. 122.3(a) of this subchapter. Automated Clearing House is an electronic network used to process financial transactions originating from within the United States and SWIFT is the messaging service used by financial institutions worldwide to issue international transfers for foreign accounts. Payment methods (*i.e.*, ACH and SWIFT) are dependent on the source of the funds (U.S. or foreign bank) drawn from the applicant's account. The originating account must be the registrant's account and not a third party's account. Intended registrants should access the Directorate of Defense Trade Control's Web site at http://www.pmddtc.state.gov for detailed guidelines on submitting ACH and SWIFT electronic payments. Payments, including from foreign brokers, must be in U.S. currency, payable through a U.S. financial institution. Cash, checks, foreign currency, or money orders will not be accepted. The Statement of Registration must be signed by a senior officer (*e.g.*, Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant, whether a U.S. or foreign person, shall submit documentation that demonstrates it is incorporated or otherwise authorized to do business in its respective country. Foreign persons who are required to register shall provide information that is substantially similar in content to that which a U.S. person would provide under this provision (*e.g.*, foreign business license or similar authorization to do business). The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

(b) A person registering as a broker who is already registered as a manufacturer or exporter in accordance with part 122 of this subchapter must cite their existing manufacturer or exporter registration, and must pay an additional fee according to the schedule prescribed in Sec. 122.3(a) of this subchapter for registration as a broker.

* * * * *

Dated: July 20, 2011.

Ellen O. Tauscher,

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

May 24, 2011: 76 FR 30001; Libya

(Source: http://www.gpo.gov/fdsys/pkg/FR-2011-05-24/html/2011-12621.htm)

Amendment to the International Traffic in Arms Regulations: Libya

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update the policy regarding Libya to reflect the United Nations Security Council arms embargoes adopted in February and March.

DATES: Effective Date: This rule is effective May 24, 2011.

FOR FURTHER INFORMATION CONTACT: Nicholas Memos, Office of Defense Trade Controls Policy, Department of State, by telephone: (202) 663-2804; fax: (202) 261-8199; or e-mail: memosni@state.gov. Attn: Part 126, Libya.

SUPPLEMENTARY INFORMATION: On February 26, 2011, the United Nations Security Council adopted Resolution 1970, paragraph 9 of which provides that U.N. member states shall immediately take the necessary

measures to prevent the sale, supply or transfer of arms and related materiel of all types to the Libyan Arab Jamahiriya, with certain exceptions. Additionally, on March 17, 2011, the U.N. Security Council adopted Resolution 1973, paragraph 4 of which authorizes member states to take all necessary measures, notwithstanding the arms embargo established by paragraph 9 of Resolution 1970, to protect civilians and civilian populated areas under threat of attack in Libya. This rulemaking implements the Security Council's actions within the ITAR by adding Libya to Sec. 126.1(c) and revising the previous policy on Libya contained in Sec. 126.1(k) to announce a policy of denial for all requests for licenses or other approvals to export or otherwise transfer defense articles and services to Libya, except where not prohibited under UNSC embargo and determined to be in the interests of the national security and foreign policy of the United States.

Regulatory Analysis and Notices [Deleted by Editor.]

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126, is amended as follows:

PART 126--GENERAL POLICIES AND PROVISIONS

1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791 and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p.899; Sec. 1225, Pub. L. 108-375.

2. Section 126.1 is amended by revising paragraphs (c) and (k) to read as follows:

Sec. 126.1 Prohibited exports and sales to certain countries.

* * * * *

(c) Exports and sales prohibited by United Nations Security Council embargoes. Whenever the United Nations Security Council mandates an arms embargo, all transactions that are prohibited by the embargo and that involve U.S. persons (see Sec. 120.15 of this chapter) anywhere, or any person in the United States, and defense articles or services of a type enumerated on the United States Munitions List (22 CFR part 121), irrespective of origin, are prohibited under the ITAR for the duration of the embargo, unless the Department of State publishes a notice in the Federal Register specifying different measures. This would include, but is not limited to, transactions involving trade by U.S. persons who are located inside or outside of the United States in defense articles or services of U.S. or foreign origin that are located inside or outside of the United States. United Nations Arms Embargoes include, but are not necessarily limited to, the following countries: (1) Cote d'Ivoire.

(2) Democratic Republic of Congo (see also paragraph (i) of this section).

(3) Iraq.

(4) Iran.

(5) Lebanon.

(6) Liberia.

(7) Libya[376] (see also paragraph (k) of this section).

(8) North Korea.

(9) Sierra Leone.

(10) Somalia.

(11) Sudan.

* * * * *

(k) Libya. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Libya, except where it determines, upon case-by-case review, that the transaction (or activity) is not prohibited under applicable U.N. Security Council resolutions and that the transaction (or activity) is in furtherance of the national security and foreign policy of

[376] Added to § 126.1

the United States.
* * * * *

Dated: May 17, 2011.
Ellen O. Tauscher, Under Secretary, Arms Control and International Security, Department of State.
[FR Doc. 2011-12621 Filed 5-23-11; 8:45 am]

May 16, 2011: 76 FR 28174; Dual/3rd-Country Nationals

76 FR 28174-28178; International Traffic in Arms Regulations: Dual Nationals and Third-Country Nationals Employed by End-Users
(Source: http://www.gpo.gov/fdsys/pkg/FR-2011-05-16/html/2011-11697.htm)

RIN 1400-AC68

* AGENCY: Department of State.

* ACTION: Final Rule.

* SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to establish a policy to address those who are unable to implement the exemption for intra-company, intraorganization, and intra-government transfers of defense articles and defense services by approved end-users to dual national and third-country nationals who are employees of such approved end-users. Prior to making transfers to certain dual national and third-country national employees under this policy, approved end-users must screen employees, make an affirmative decision to allow access, and maintain records of screening procedures to prevent diversion of ITAR-controlled technology for purposes other than those authorized by the applicable export license or other authorization.

EFFECTIVE DATE: This rule is effective August 15, 2011

FOR FURTHER INFORMATION CONTACT: Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663-2792 or Fax (202) 261-8199; E-mail DDTCResponseTeam@state.gov. ATTN: Regulatory Change, Dual and Third-Country Nationals.

SUPPLEMENTARY INFORMATION: This is part of the President's Export Control Reform effort. The Department of State is amending parts 124 and 126 of the ITAR to reflect new policy regarding end-user employment of dual nationals and third-country nationals. As a part of the President's Task Force on Export Control Reform, the previous policy regarding the treatment of dual nationals and third-country nationals employed by approved end users was re-evaluated. A proposed rule to eliminate the separate licensing requirement for dual nationals and third-country nationals employed by licensed end-users was presented for public comment. The proposed rule had a comment period ending September 10, 2010. Thirty-two (32) parties filed comments 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 changes noted and minor edits, and promulgates it as a final rule. The Department's evaluation of the written comments and recommendations follows. Comment Analysis The overwhelming majority of commenting parties expressed dissatisfaction with the current rule regarding dual and third-country nationals, citing conflicts with foreign human rights laws as well as the burden of compliance, and welcomed the Directorate of Defense Trade Controls' (DDTC) efforts to reform current practice. One commenting party asserted that the "tremendous administrative burden" imposed on foreign end-users is exaggerated. By contrast, six inputs, including one from a group representing 21 nations, agreed with the assessment that current rules impose a large administrative burden, such as separate accounting and licensing of foreign nationals. Four commenting parties, including a major U.S. industry association, pointed out that the current rule is an extensive administrative burden for U.S. manufacturers and exporters, not just foreign end-users, and places U.S. companies at a disadvantage with foreign competitors. One commenting party recommended adding language to § 126.18(a) to make clear that the exemption applies "notwithstanding any other provisions of this

Part" to make clear that the limitations of the last sentence of § 126.1(a), which would have conflicted with the intent of the proposed rule, did not apply. DDTC agreed and adopted this change.

One commenting party argued that the current nationality (or place of birth) standard should stay in place, citing recent prosecutions of Chi Mak, Greg Chung, and Noshir Gowadia. We note that all three cases involve naturalized U.S. citizens, whose prosecutions would not have been affected by the proposed rule. It should also be pointed out that *even if* the proposed rule had applied to them, all three would have failed the substantive contacts test and, thus, could not have received the defense articles at issue under the exemption.

Another commenting party criticized the concept of "substantive contacts" in favor of clarifying the definition of "non-U.S." person or foreign person. We note that the current definition of foreign person in §120.16 is consistent with both U.S. law and usage in the proposed rule. Therefore, we find no need to change the definition of foreign person and do not adopt the recommendation.

One commenting party, a large U.S. aerospace firm, argued that DDTC should return to its pre-1999 rules, where there was no additional licensing requirement for dual nationals or third-country nationals working for authorized end-users. This option was explored early on in the development of this proposed rule, but DDTC chose not to pursue that option any further due to policy implications outside of the Department of State. Ten commenting parties recommended that the exemption proposed in §126.18 be expanded to include "defense services." The current proposal was limited to "defense articles," which by the definition in §120.6 includes technical data. We note that the rule was intended to address concerns about restrictions on dual national and third-country national employees of licensed end-users and consignees who would have access to defense articles, which, as noted above, includes technical data per §120.6, within the scope of their employment. The intent of the rule was to create a policy for such transfers in a manner that would prevent diversions of such articles to unauthorized end-users. Thus, the proposed rule was limited to use of the defense article within a company and within the scope of the license in question. Defense services, on the other hand, cannot be "transferred" within a company in the manner in which defense articles can. Rather, defense services are rendered to specific end-users identified in the license or other authorization. As such, the defense services are rendered to the named company rather than the individual employees. In any event, if the contemplated defense service involves defense articles already licensed to the company, the proposed exemption would generally cover dual and third-country national employees receiving the defense service. We deem it neither necessary nor prudent to specifically add defense services to this rule and thus do not adopt the recommendation.

One commenting party asserted that there was uncertainty regarding whether the exemption applied to academic institutions. This proposed rule is an incremental change in favor of foreign business entities, foreign governmental entities, and international organizations, recognizing internal incentives for the protection of export controlled articles and data. The Department of State is not prepared to extend the exemption to academic institutions at the present time.

Ten commenting parties recommended that the current §124.16 not be removed. That provision allows for a limited exception for access to unclassified defense articles exported in furtherance of or produced as a result of a Technical Assistance Agreement/Manufacturing License Agreement, retransfer of technical data and defense services to dual national and third-country national employees of licensed signatories that are nationals exclusively of NATO member states, EU member states, Australia, Japan, New Zealand, or Switzerland. A major concern was that the proposed rule, unlike §124.16, did not include approved sub-licensees. After careful consideration, we concurred with the recommendation to retain §124.16 and have amended the section to include workers who have long term employment relationships with licensed end-users, per a new definition to "regular employee" added in part 120. One foreign governmental commenting party observed that there is a need to expand the exemption beyond the physical territories of the governmental end-user or international organization. For example, such would be required to facilitate repair of a disabled aircraft overseas. This change was adopted subject to a requirement that such operations are in the conduct of official business by the government or international organization and provided such activities are within the scope of the license.

Nine commenting parties recommended the proposed rule apply to contract employees, not just "bona fide, regular employees." The intent of the proposed rule was to recognize vested interests within companies,

international organizations, and foreign governmental entities to carefully screen employees for purposes of trustworthiness. Full-time employment meets that criterion as it indicates a higher level of scrutiny and represents a long-term relationship with the entity at issue, as opposed to the transactional, temporary nature of the contractual arrangement.

Furthermore, companies, international organizations, and foreign governmental entities bear significantly more legal responsibility for the acts of their regular employees than they do for the acts of contactors. However, DDTC is prepared to narrowly extend this policy to workers who have long term employment relationships with licensed end-users, per a new definition to "regular employee" added in part 120. Several commenting parties recommended clarification of the meaning of "substantive contacts." Many of the requests for clarification center around specific areas discussed below. One commenting party expressed concern that any employee with a family member in a proscribed country would automatically be disqualified. It is not DDTC's intent to deny access based solely upon relationships or contacts with family members in a context posing no risk of diversion. We note that contacts with government officials and agents of governments of §126.1(a) countries, be they family or not, would require higher scrutiny.

Another commenting party expressed concern that any personal or business travel to a country listed in §126.1 would disqualify that person from access to a defense article. The intent of the proposed rule is not to automatically disqualify a person on the basis of such travel, where the travel does not involve contacts with foreign agents or proxies likely to lead to diversion of controlled data or articles. Instead, full disclosure about travel is required, which would be the basis of an assessment of diversion risk on a case-by-case basis. One commenting party objected to the limitation of the exemption to the country where the end-user is located, pointing out that international organizations operate in more than one country. We note that licenses for international organization end-users will specify the location(s) and country(ies) where the end-item will be utilized. Therefore, DDTC believes that transfers to locations (and end-users) within the scope of the license poses no problems. Any contemplated transfers beyond the authorized and licensed location(s) will require an additional license (or an amendment to an existing license), and is a prudent limitation on the rule. This rule is not intended to authorize unlimited transfers around the world for end-users with nominal connections throughout the globe.

One commenting party recommended that the requirement for screening not apply to citizens (including dual nationals) and permanent residents of the host country. This approach would exclude from screening a large group of individuals who continue to maintain affiliation by citizenship with a third country (*i.e.*, different than that of the authorized end-user). Though we agree that citizens who relinquish citizenship of the former country would not require screening, the nature of continuing relationships with the third country for those maintaining citizenship remains relevant, especially if the country is subject to restrictions in §126.1. In any event, this rule does not present foreign citizenship alone as a bar to access to ITAR controlled defense articles.

Several commenting parties recommended clarification of whether the proposed rule would apply to both classified and unclassified data. In the absence of explicit inclusion, this rule will not apply to classified data. The word "unclassified" was added to the first sentence in §126.18(a) as a qualifier to make the point clearer. We note that the release of classified data to foreign persons is governed by separate National Disclosure directives and policies. To be clear, this rule is not a grant of a separate authority for the transfer of classified information.

Several commenting parties expressed concern about the recordkeeping requirements, especially where local privacy laws may apply. We note that the records in question are intended for use by DDTC, a governmental entity for governmental use and not for public release. DDTC's function in this capacity is analogous to the exchange of information with cross-border law enforcement agencies that regularly receive and have a similar obligation to protect information subject to privacy laws.

Regulatory Analysis and Notices: [Deleted by Editor.]

List of Subjects in 22 CFR Parts 120, 124, and 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 124, and 126 are amended as follows:

PART 120 – PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

§§120.33 through 120.38 [Reserved]

2. Add reserved §§ 120.33 through 120.38 and § 120.39 to read as follows:

§120.39 Regular employee.

(a) A regular employee means for purposes of this subchapter:

(1) An individual permanently and directly employed by the company, or (2) An individual in a long term contractual relationship with the company where the individual works at the company's facilities, works under the company's direction and control, works full time and exclusively for the company, and executes nondisclosure certifications for the company, and where the staffing agency that has seconded the individual has no role in the work the individual performs (other than providing that individual for that work) and the staffing agency would not have access to any controlled technology (other than where specifically authorized by a license).

PART 124 – AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

3. The authority citation for part 124 continues to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261.

4. In § 124.8, paragraph (5) is revised to read as follows:

§ 124.8 Clauses required both in manufacturing license agreements and technical assistance agreements.

* * * * *

(5) The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a foreign person except pursuant to §§ 124.16 and 126.18, as specifically authorized in this agreement, or where prior written approval of the Department of State has been obtained.

* * * * *

5. Section 124.16 is revised to read as follows:

§124.16 Special retransfer authorizations for unclassified technical data and defense services to member states of NATO and the European Union, Australia, Japan, New Zealand, and Switzerland.

The provisions of § 124.8(5) of this subchapter notwithstanding, the Department may approve access to unclassified defense articles exported in furtherance of or produced as a result of a TAA/MLA, and retransfer of technical data and defense services to individuals who are dual national or third-country national employees of the foreign signatory or its approved sub-licensees, including the transfer to dual nationals or third-country nationals who are bona fide regular employees, directly employed by the foreign signatory or approved sub-licensees, provided they are nationals exclusively of countries that are members of NATO the European Union, Australia, Japan, New Zealand, and Switzerland and their employer is a signatory to the agreement or has executed a Non Disclosure Agreement. The retransfer must take place completely within the physical territories of these countries or the United States. Permanent retransfer of hardware is not authorized.

PART 126 – GENERAL POLICIES AND PROVISIONS

6. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918; 59 FR 28205, 3 CFR, 1994 Comp. p. 899; Sec. 1225, Pub. L. 108-375.

§§ 126.16 and 126.17 [Reserved]

7. Add reserved §§ 126.16 and 126.17 and § 126.18 to read as follows:

§ 126.18 Exemptions regarding intra-company, intra-organization, and intra-governmental transfers to employees who are dual nationals or third-country nationals.

(a) Subject to the requirements of paragraphs (b) and (c) of this section and notwithstanding any other provisions of this part, and where the exemption provided in § 124.16 cannot be implemented because of applicable domestic laws, no approval is needed from the Directorate of Defense Trade Controls (DDTC) for the transfer of unclassified defense articles, which includes technical data (see § 120.6), to or within a foreign business entity, foreign governmental entity, or international organization that is an authorized end-user or consignee (including approved sub-licensees) for those defense articles, including the transfer to dual nationals or third-country nationals who are bona fide regular employees, directly employed by the foreign consignee or end-user. The transfer of defense articles pursuant to this section must take place completely within the physical territory of the country where the end-user is located, where the governmental entity or international organization conducts official business, or where the consignee operates, and be within the scope of an approved export license, other export authorization, or license exemption.

(b) The provisions of § 127.1(b) are applicable to any transfer under this section. As a condition of transferring to foreign person employees described in paragraph (a) of this section any defense article under this provision, any foreign business entity, foreign governmental entity, or international organization, as a "foreign person" within the meaning of §120.16, that receives a defense article, must have effective procedures to prevent diversion to destinations, entities, or for purposes other than those authorized by the applicable export license or other authorization (*e.g.*, written approval or exemption) in order to comply with the applicable provisions of the Arms Export Control Act and the ITAR.

(c) The end-user or consignee may satisfy the condition in paragraph (b) of this section, prior to transferring defense articles, by requiring:

(1) A security clearance approved by the host nation government for its employees, or

(2) The end-user or consignee to have in place a process to screen its employees and to have executed a Non-Disclosure Agreement that provides assurances that the employee will not transfer any defense articles to persons or entities unless specifically authorized by the consignee or end-user. The end-user or consignee must screen its employees for substantive contacts with restricted or prohibited countries listed in § 126.1. Substantive contacts include regular travel to such countries, recent or continuing contact with agents, brokers, and nationals of such countries, continued demonstrated allegiance to such countries, maintenance of business relationships with persons from such countries, maintenance of a residence in such countries, receiving salary or other continuing monetary compensation from such countries, or acts otherwise indicating a risk of diversion. Although nationality does not, in and of itself, prohibit access to defense articles, an employee who has substantive contacts with persons from countries listed in § 126.1(a) shall be presumed to raise a risk of diversion, unless DDTC determines otherwise. End-users and consignees must maintain a technology security/clearance plan that includes procedures for screening employees for such substantive contacts and maintain records of such screening for five years. The technology security/clearance plan and screening records shall be made available to DDTC or its agents for civil and criminal law enforcement purposes upon request.

Dated: April 26, 2011

Ellen O. Tauscher, Under Secretary, Arms Control and International Security, Department of State.

Aug. 27, 2010: 75 FR 52625; Exemptions for Technical Data

75 FR 52625-52626: 22 CFR Part 125; Amendment to the International Traffic in Arms Regulations: Export Exemption for Technical Data
(Source: http://edocket.access.gpo.gov/2010/2010-21450.htm)

* 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 DDTC ResponseTeam@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 Sec. Sec. 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 Sec. Sec. 125.4(b)(9), 125.4(b)(9)(i), 125.4(b)(9)(ii), and 125.4(b)(9)(iii). Also, Sec. 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,[377] 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 [Deleted by editor.]

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

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[377] DoD Manual 5220.22-M, National Industrial Security Program Operating Manual ("NISPOM") (Feb 28, 2006), *available at* http://www.dtic.mil/whs/directives/corres/pdf/522022m.pdf (last viewed Sept. 1, 2012).

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:

Sec. 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 Sec. 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.

Aug. 27, 2010: 75 FR 52622; Prior Approval for SME Proposals

(Source: http://edocket.access.gpo.gov/2010/2010-21451.htm)

* AGENCY: Department of State.

* ACTION: Final rule.

* SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to remove the requirements for prior approval or prior notification for certain proposals to foreign persons relating to significant military equipment.

* 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. ATTN: Regulatory Change, Section 126.8.

* SUPPLEMENTARY INFORMATION: In accordance with the President's Export Control Reform effort, on March 29, 2010, the Department published a Notice of Proposed Rulemaking (NPRM) to eliminate the requirements for prior approval or prior notification for certain proposals to foreign persons relating to significant military equipment at Sec. 126.8 of the ITAR. Effective September 1, 1977, the Department of State amended Sec. 123.16 to require Department of State approval before a proposal or presentation is made that is designed to constitute the basis for a decision to purchase significant combat equipment, involving the export of an item on the U.S. Munitions List, valued at $7,000,000 or more for use by the armed forces of a foreign country (42 FR 41631, dated August 18, 1977). Also, Sec. 124.06, entitled, ``Approval of proposals for technical assistance and manufacturing license agreements,'' was amended to require similar prior approval with respect to proposals and presentations for technical assistance and manufacturing license agreements involving the production or assembly of significant combat equipment.

``Proposals to foreign persons relating to significant military equipment'' became Sec. 126.8 in a final rule effective January 1, 1985 (49 FR 47682, dated December 6, 1984). Section 126.8 did not require prior approval of the Department of State when the proposed sale was to the armed forces of a member of the North Atlantic Treaty Organization (NATO), Australia, Japan, or New Zealand, except with respect to manufacturing license agreements or technical assistance agreements.

A prior notification requirement, instead of prior approval, was added to Sec. 126.8 in a final rule effective March 31, 1985 (50 FR 12787, dated April 1, 1985). Prior notification to the Department of State was required 30 days in advance of a proposal or presentation to any foreign person where such proposals or presentations concerned equipment previously approved for export.

The current Sec. 126.8 requires prior approval or prior notification for certain proposals and presentations to make a determination whether to purchase significant military equipment valued at $14,000,000 or more (other than a member of NATO, Australia, New Zealand, Japan, or South Korea), or whether to enter into a manufacturing license agreement or technical assistance agreement for the production or assembly of significant military equipment, regardless of dollar value.

These types of proposals and presentations usually involve large dollar amounts. Before the defense industry undertakes the effort involved in formulating its proposals and presentations, if there is any doubt that the corresponding license application or proposed agreement would be authorized by the Department of State, the industry may request an advisory opinion (see Sec. 126.9). The written advisory opinion, though not binding on the Department, helps inform the defense industry whether the Department would likely grant a license application or proposed agreement. Currently, the time between submitting a license application or proposed agreement and obtaining a decision from the Department of State whether to authorize such transactions has been decreased sufficiently that requiring prior approval or prior notification for proposals is unnecessary and imposes an administrative burden on industry.

References to Sec. 126.8 have been removed at Sec. Sec. 124.1(a), 125.4(a), 126.13, 129.7(e), and 129.8(c).

The Proposed Rule had a comment period ending May 28, 2010. Three parties filed comments by May 28 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 commended the proposed change as removing an unnecessary and redundant licensing burden, without suggesting any changes.

One commenting party supported the proposed change, but recommended certain ``clerical'' changes to other parts of the ITAR for purposes of consistency. Specifically, Sec. 126.1(e) requires the Directorate of Defense Trade Controls' (DDTC) written approval or a license prior to a proposal to sell defense articles or services to any country covered in that section (*i.e.*, restricted destinations). The commenting party suggested the definition of ``proposal'' in Sec. 126.8(b) be incorporated into Sec. 126.1(e). We believe the incorporation of

the Sec. 126.8(b) definition of ``proposal'' could confuse exporters, potentially encouraging ``preliminary discussions'' with prohibited destinations. Therefore, we do not support that change. We do, however, concur with this commenting party's recommendation that we delete the references to Sec. 126.8 in Sec. Sec. 124.1(a), 125.4(a), and

129.7(e). This has been accomplished in our proposed change to Sec. 124.1(a). Appropriate changes to Sec. 125.4(a) and Sec. 129.7(e) have been added to this notice.

One commenting party expressed concern that the elimination of the prior notification requirement would contravene ``the fundamental goals of the ITAR'' through arms deals furthering the persecution of individuals, denial of human rights, terrorism, and genocide, with special concern about foreign military sales. We note at the outset that foreign military sales are not controlled by the ITAR, as opposed to direct commercial sales. We also note that we are not lessening control over the export of any defense article, technology, or service. Nor are we lessening scrutiny over prohibited/restricted destinations (Sec. 126.1(e) remains in place). Rather, we are eliminating the requirement for reviewing an export transaction twice, which we consider to be a redundant burden on industry and government.

One commenting party stated that the change would ``limit or eliminate the President's ability to remain informed of `negotiations' * * * '' in contravention of the spirit of Sec. 2778(a)(3) of the Arms Export Control Act (AECA). Our experience from a practical day-to-day review of exports gives us a different perspective. We note that advance notice of pending export transactions was a meaningful concept in the days when the average license processing time was over 60 days. But when the average processing time is approximately 15 days, it is easier and faster to review the export transaction (*e.g.,* manufacturing licensing agreement) as a whole rather than piecemeal. With the challenge of over 84,000 licenses per year, a requirement to review export transactions (in effect) twice is an unnecessary burden that provides the executive branch with effectively no advance notice. Most importantly, the requirement to obtain a license or other authorization before passing ITAR controlled technical data remains in place, placing a significant limitation on the content of negotiations. Furthermore, we will maintain the Sec. 126.1(e) requirement of notice for proposed transactions with restricted destinations, where in most cases there would be a presumption against the export.

The same commenting party also advised that an unintended consequence of the change is the ``elimination of any recordkeeping requirements'' for proposals. We do not agree, since the Sec. 126.8 requirement to report certain proposals is an obligation separate and independent from recordkeeping requirements. It will continue to be good practice to maintain records of such transactions for an appropriate duration in compliance with Sec. 122.5, particularly to rebut any post hoc allegations that ITAR controlled technical data were transferred without a license or authorization.

The same commenting party recommended alternatively that Sec. 126.8 be retained, but the definition of ``proposal'' in Sec. 126.8(b) be expanded to better define what constitutes ``sufficient detail.'' For the reasons already mentioned above, we believe that elimination of Sec. 126.8 altogether is simpler and less confusing than whittling away at the definition of proposal. Another alternative recommended was elimination of Sec. 126.8, but replacement with an exemption. We note that exemptions are used to exempt transactions from licensing requirements when they would otherwise apply. If we eliminate Sec. 126.8, there would be no requirement from which the exporter would require exemption. Therefore, the recommendation is rejected.

Finally, we disagree with the commenting party's allegation that by this action DDTC would ``abandon its authority to implement Sec. 2778(a)(3) of the AECA.'' Since the operative language was that the ``President may require that persons engaged in the negotiation of defense articles and services keep the President fully and currently informed of the progress and future prospects of such negotiations,'' this is a discretionary authority. Practical experience has demonstrated that the prior notification/approval requirement is an unnecessary burden on industry without adding any information of value to DDTC's review of exports.

* Regulatory Analysis and Notices [Deleted by editor.]

List of Subjects

22 CFR Parts 124 and 129

Arms and munitions, Exports, Technical assistance.

22 CFR Part 125

Arms and munitions, Exports.

22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 124, 125, 126, and 129 are amended as follows:

PART 124--AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

1. The authority citation for part 124 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105-261.

2. Section 124.1 is amended by revising paragraph (a) to read as follows:

Sec. 124.1 Manufacturing license agreements and technical assistance agreements.

(a) Approval. The approval of the Directorate of Defense Trade Controls must be obtained before the defense services described in Sec. 120.9(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement to the Directorate of Defense Trade Controls. Such agreements are generally characterized as manufacturing license agreements, technical assistance agreements, distribution agreements, or off-shore procurement agreements, and may not enter into force without the prior written approval of the Directorate of Defense Trade Controls. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with Sec. Sec. 124.3 and 125.4(b)(2) of this subchapter. The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services described in Sec. 120.9(a) of this subchapter (*e.g.*, all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from licensing requirements of this subchapter pursuant to Sec. 125.4 of this subchapter). This requirement also applies to the training of any foreign military forces, regular and irregular, in the use of defense articles. Technical assistance agreements must be submitted in such cases. In exceptional cases, the Directorate of Defense Trade Controls, upon written request, will consider approving the provision of defense services described in Sec. 120.9(a) of this subchapter by granting a license under part 125 of this subchapter.

* * * * *

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

3. 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.

4. Section 125.4 is amended by revising paragraph (a) to read as follows:

Sec. 125.4 Exemptions of general applicability.

(a) The following exemptions apply to exports of technical data for which approval is not needed from the Directorate of Defense Trade Controls. The exemptions, except for paragraph (b)(13) of this section, do not apply to exports to proscribed destinations under Sec. 126.1 of this subchapter or for persons considered generally ineligible under Sec. 120.1(c) of this subchapter. The exemptions are also not applicable for purposes of establishing offshore procurement arrangements or producing defense articles offshore (see Sec.

124.13), except as authorized under Sec. 125.4(c). Transmission of classified information must comply 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) and the exporter must certify to the transmittal authority that the technical data does not exceed the technical limitation of the authorized export.

* * * * *

PART 126--GENERAL POLICIES AND PROVISIONS

5. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42 and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791 and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108-375.

Sec. 126.8 [Removed and Reserved]

6. Section 126.8 is removed and reserved.

7. Section 126.13 is amended by revising paragraph (a) introductory

text to read as follows:

Sec. 126.13 Required information.

(a) All applications for licenses (DSP-5, DSP-61, DSP-73, and DSP-85), all requests for approval of agreements and amendments thereto under part 124 of this subchapter, and all requests for written authorizations must include a letter signed by a responsible official empowered by the applicant and addressed to the Directorate of Defense Trade Controls, stating whether:

* * * * *

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).

Sec. 129.7 [Amended]

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

Sec. 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.

Aug. 4, 2010: 75 FR 46843; Commodity Jurisdiction

(Source: http://edocket.access.gpo.gov/2010/2010-19136.htm)

* AGENCY: Department of State.

* ACTION: Final rule.

* SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to address electronic submission of a request for a commodity jurisdiction determination using "Commodity Jurisdiction (CJ) Determination Form" (Form DS-4076).

* DATES: Effective Date: This rule is effective August 4, 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. ATTN: Regulatory Change, Part 120.

* SUPPLEMENTARY INFORMATION: A new form entitled ``Commodity Jurisdiction (CJ) Determination Form'' (Form DS-4076) has been added to the listing of forms at 22 CFR 120.28(a)(8). This form was made available via the Directorate of Defense Trade Controls' (DDTC) Web site (http://www.pmddtc.state.gov) for public use on a trial basis (as well as comment) on September 30, 2009. As already noted in form DS-4076, information contained in the description block (Block 5) (exclusive of information legitimately identified as proprietary in Block 15) will be used in DDTC's published Commodity Jurisdiction determinations list, to be available on the DDTC Web site. Also, 22 CFR 120.4(a) is amended to state that the ``Commodity Jurisdiction (CJ) Determination Form'' must be electronically submitted to DDTC. For twenty-nine (29) days after the effective date of this final rule, a request for a commodity jurisdiction determination may be submitted electronically or via a paper format. After thirty (30) days from the effective date of this final rule, electronic submission via the ``Commodity Jurisdiction (CJ) Determination Form'' (Form DS-4076) will be mandatory. Additionally, Sec. 120.4(c) was amended to eliminate the instruction to submit seven collated sets of supporting documentation. . . . .

List of Subjects in 22 CFR Part 120

Arms and munitions, Classified information, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 120 is amended as follows:

PART 120--PURPOSE AND DEFINITIONS

1) The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105-261, 112 Stat. 1920.

2) Section 120.4 is amended by revising paragraphs (a) and (c) to read as follows:

Sec. 120.4 Commodity jurisdiction.

(a) The commodity jurisdiction procedure is used with the U.S. Government if doubt exists as to whether an article or service is covered by the U.S. Munitions List. It may also be used for consideration of a redesignation of an article or service currently covered by the U.S. Munitions List. The Department must provide notice to Congress at least 30 days before any item is removed from the U.S. Munitions List. Upon electronic submission of a Commodity Jurisdiction (CJ) Determination Form (Form DS-4076), the Directorate of Defense Trade Controls shall provide a determination of whether a particular article or service is covered by the U.S. Munitions List. The determination, consistent with Sec. Sec. 120.2, 120.3, and 120.4, entails consultation among the Departments of State, Defense, Commerce, and other U.S. Government agencies and industry in appropriate cases.

* * * * *

(c) Requests shall identify the article or service, and include a history of this product's design, development, and use. Brochures, specifications, and any other documentation related to the article or service should be submitted as electronic attachments per the instructions for Form DS-4076.

* * * * *

3) Section 120.28 is amended by adding paragraph (a)(8) to read as follows:

Sec. 120.28 Listing of forms referred to in this subchapter.

* * * * *

(a) * * *

(8) Commodity Jurisdiction (CJ) Determination Form (Form DS-4076).

* * * * *

Dated: July 15, 2010.

Ellen O. Tauscher, Under Secretary, Arms Control and International Security, Department of State

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Aug. 6, 2009: 74 FR 39212; Part 123; Temporary Export Exemption for Body Armor

(Source: http://edocket.access.gpo.gov/2009/E9-18843.htm)

* ACTION: Final rule.

* SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to add an exemption for the temporary export of body armor for exclusive personal use to destinations not subject to restrictions under the ITAR §126.1 and to Afghanistan and Iraq under specified conditions.

* EFFECTIVE DATE: This rule is effective August 6, 2009.

* SUPPLEMENTARY INFORMATION: U.S. individuals are traveling to hazardous areas in foreign countries where they need to wear body armor for personal safety. Consequently, the Department of State is amending the International Traffic in Arms Regulations (ITAR) to add an exemption for the temporary export of body armor covered by 22 CFR 121.1, Category X(a)(1). The exemption is available for destinations not subject to restrictions under ITAR §126.1 and to Afghanistan and Iraq under specified conditions. In order to use the exemption, the protective equipment must be for the individual's exclusive use and must be returned to the United States. The individual may not re-export the protective equipment to a foreign person or otherwise transfer ownership. The protective equipment may not be exported to any country where the importation would be in violation of that country's laws. The U.S. person declaring the temporary export of body armor to U.S. Customs and Border Protection should use CBP Form 4457 entitled the "Certificate of Registration for Personal Effects Taken Abroad." The export information is not required to be reported electronically using the Automated Export System (AES). Upon re-entering the United States, the CBP Form 4457 should be presented. In the event the body armor is lost or otherwise not returned to the United States, a detailed report about the incident must be submitted to the Office of Defense Trade Controls Compliance. The report should describe all attempts to locate the body armor.

Aug. 3, 2009: 74 FR 38342; Congressional Certification re South Korea

(Source: http://edocket.access.gpo.gov/2009/E9-18332.htm)

* ACTION: Final rule.

* SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) regarding Congressional certification for the Republic of Korea (also referred to as South Korea). South Korea is now in the same category as the countries in the North Atlantic Treaty Organization (NATO), Japan, Australia, and New Zealand concerning certification to Congress, requiring such certification prior to granting any license for export of major defense equipment sold under a contract in the amount of $25,000,000 or more, or for defense articles or defense services sold under a contract in the amount of $100,000,000 or more, provided the transfer does not include any other countries. The ITAR is being amended at numerous sections to reflect these statutory changes and to update two provisions.

* EFFECTIVE DATE: This rule is effective August 3, 2009.

* SUPPLEMENTARY INFORMATION: Section 203 of the Public Law 110-429 amended, inter alia, Sections 3(d)(3)(A)(i), 36(c), and 36(d)(2)(A) of the Arms Export Control Act by inserting "Republic of Korea" before "New Zealand." This amendment added South Korea to the category of countries for which higher dollar thresholds apply for mandatory certification to Congress in advance of approving the export or transfer of defense articles and defense services. South Korea is now in the same category as the countries in the North Atlantic Treaty Organization (NATO), Japan, Australia, and New Zealand concerning certification to Congress, requiring such certification prior to granting any license for export of major defense equipment sold under a contract in the amount of $25,000,000 or more, or for defense articles or defense services sold under a contract in the amount of $100,000,000 or more, provided the transfer does not include any other countries. The ITAR is being amended at numerous sections, as described below, to reflect these statutory changes and to update two provisions.

Section 123.9(e) of the ITAR is being amended to add "South Korea." This section is also being amended to correct outdated information regarding the dollar limits for sales without prior written approval and to add New Zealand to the list of countries eligible for certain reexports or retransfers without prior written approval.

Section 123.15 of the ITAR entitled "Congressional certification pursuant to Section 36(c) of the Arms Export Control Act" is being amended to add "South Korea" at sections 123.15(a)(1), 123.15(a)(2), and 123.15(b).

Section 124.11 of the ITAR entitled "Congressional certification pursuant to Section 36(d) of the Arms Export Control Act" is being amended to add "South Korea" at section 124.11(b).

Section 126.8 of the ITAR entitled "Proposals to foreign persons relating to significant military equipment" is being amended to add "South Korea" at section 126.8(a)(ii).

Part 129 of the ITAR regarding brokering activities is being amended at section 129.6(b)(2) to add "South Korea" to the category of NATO, Japan, Australia, and New Zealand for purposes of an exemption from prior written approval.

Sections 129.7(a)(1)(vii) and 129.7(a)(2) are being amended to add "South Korea" to the category of NATO, Japan, Australia, and New Zealand or purposes of defining brokering activities requiring prior written approval.

July 20, 2009: 74 FR 35115; Cat XII(c) Correction ("hold" instead of "hole")

(Source: http://edocket.access.gpo.gov/2009/E9-16798.htm)

* ACTION: Correcting amendment.

* SUMMARY: The Department of State published a final rule in the Federal Register on September 9, 1994 (59 FR 46548), revising Category XII(c) of the United States Munitions List. The language in the note after paragraph (c) contains a typographical error by using the term "hold" instead of "hole." A technical error in that rule resulted in the unintended removal of the note after Category XII paragraph (c). Consequently, a correction was published on April 24, 2009 (74 FR 18628) to restore the language in the note after Category XII paragraph (c). That correction used the term ``hold" when the correct term is "hole." This document corrects the typographical error dating from September 9, 1994 to utilize the correct term ``hole."

* DATES: Effective Date: Effective on July 20, 2009.

* SUPPLEMENTARY INFORMATION: The Department of State published a final rule (Public Notice 4723) in the Federal Register of May 21, 2004, amending Category XII of the United States Munitions List. This document restores the language in the note after Category XII(c).

Apr. 24, 2009: 74 FR 18628; 22 CFR Part 121.1(c); Cat. XII Correction
(Source: http://edocket.access.gpo.gov/2009/E9-9291.htm)

* ACTION: Correcting amendment.

* SUMMARY: The Department of State published a final rule in the Federal Register on May 21, 2004 (69 FR 29222), revising Category XII(c) of the United States Munitions List. A technical error in that rule resulted in the unintended removal of language in a note after Category XII paragraph (c). This document corrects the final regulations by restoring the language in the note.

* DATES: Effective on April 24, 2009.

* SUPPLEMENTARY INFORMATION: The Department of State published a final rule (Public Notice 4723) in the Federal Register of May 21, 2004, amending Category XII of the United States Munitions List. This document restores the language in the note after Category XII(c).

Sept. 25, 2008: 73 Fed. Reg. 5,541; Rwanda
(Source: http://edocket.access.gpo.gov/2008/pdf/E8-22578.pdf)

Sept. 24, 2008: 73 Fed. Reg. 55,439; Registration Fee Change
(Source: http://edocket.access.gpo.gov/2008/pdf/E8-22574.pdf)

Sept. 19, 2008: 73 Fed. Reg. 54,314; U.S. Munitions List Interpretation; Definition of "Chemical Agents"
(Source: http://edocket.access.gpo.gov/2008/pdf/E8-21832.pdf)

Aug. 14, 2008: 73 Fed. Reg. 47,523; The United States Munitions List Category VIII
(Source: http://edocket.access.gpo.gov/2008/pdf/E8-18844.pdf)

Sept. 10, 2008: 73 Fed. Reg. 52,578; Correction pertaining to Renewal of Registration
(Source: http://edocket.access.gpo.gov/2008/pdf/E8-21018.pdf)

APPENDIX D — MONOGRAPH ON U.S. DEFENSE TRADE ENFORCEMENT

by John C. Pisa-Relli, Esq.[378]

Revised July 1, 2012

Foreword

The purpose of this monograph is to provide a legal and compliance practitioner's reference guide on the enforcement of international defense trade controls in the United States, with an emphasis on the U.S. State Department's civil and administrative enforcement program. Though it is useful to take note both of administrative and criminal enforcement trends, it is predominantly through its considerable administrative enforcement powers that the State Department most clearly and consistently signals to regulated parties its expectations for what constitutes adequate compliance.

Part 1 is an executive summary of U.S. defense trade controls and their enforcement by the U.S. federal government. Part 2 is a detailed chronological digest of all reported civil penalty cases that the State Department has settled since 2001. Part 3 is a chronological table of those cases intended to provide a "snapshot" of key enforcement data.[379]

This monograph is provided for general informational purposes only, and does not constitute the provision of legal advice or professional services. Corrections, criticisms, and suggestions are welcomed.

John C. Pisa-Relli

PART 1: EXECUTIVE SUMMARY OF U.S. DEFENSE TRADE CONTROLS ENFORCEMENT

Overview

The U.S. State Department's Directorate of Defense Trade Controls ("DDTC") administers the International Traffic in Arms Regulations (the "ITAR"), 22 C.F.R. Parts 120 – 130, which implement the Arms Export Control Act (the "AECA") and regulate international defense trade involving the United States. In most cases, companies in the United States that engage in ITAR-regulated activities must register with DDTC and pay an annual fee.

The ITAR regulate the permanent and temporary exportation from the United States, temporary importation into the United States, and retransfer from an authorized end user, of defense articles and technical data identified on the U.S. Munitions List at Part 121 of the ITAR. The ITAR also regulate the provision by U.S. persons of defense services to non-U.S. persons, as well as certain defense brokering activities whether conducted by U.S. or non-U.S. persons. ITAR-regulated activities require prior DDTC authorization unless a specific ITAR exemption applies.

Strict Enforcement

As reflected by the AECA, DDTC's mission and authority are driven by no less than the "furtherance of world peace and the security and foreign policy of the United States…." DDTC views the privilege to engage in

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[378] Special Counsel, Fried, Frank, Harris, Shriver & Jacobson LLP, Washington, DC; john.pisa-relli@friedfrank.com. Author's note: This monograph is provided for general informational purposes only, and does not constitute the provision of legal advice or professional services. Corrections, criticisms, and suggestions are welcomed. I would like to thank Melissa D'Arcy, Esq., and Maria Cirincione, Esq., for their valuable editorial contributions.

[379] Part 3 is not reprinted in this publication, but may be obtained from the author.

defense trade as one which must be exercised with extraordinary integrity, transparency, and competency. Against this ideological backdrop it is unsurprising that the U.S. government has enforced defense trade controls aggressively. Because of the potential for serious harm to vital national interests, even technical or unintentional violations may carry substantial penalties to serve as a deterrent for careless behavior. Collateral consequences include negative publicity and corresponding reputational damage.

Criminal Penalties

Criminal penalties for willful misconduct under the AECA and ITAR include a fine of up to $1 million, and imprisonment for up to ten years, per violation. To establish willfulness, the government typically must prove there was a specific intent to violate a known legal duty.[380]

Civil Penalties and Administrative Enforcement

DDTC is authorized to impose a civil penalty of up to $500,000 per violation. The standard of intent for civil penalties is strict liability; *i.e.*, no intent is required to violate the law. In accordance with well-settled principles, DDTC often holds parent companies liable for the acts of their subsidiaries. And when a company with compliance problems is sold off, DDTC may assess penalties against both the seller and buyer under theories of predecessor and successor liability, as it has done in several cases.

Agency officials have explained publicly that DDTC pursues civil penalties for significant violations that impact U.S. national security or foreign policy interests, as well as for significant violations that challenge the U.S. government's regulatory authority. Many cases have involved unauthorized technology transfers and exports to China and other countries of concern to the United States. And to the latter point, cases settled in recent years have reflected a trend for DDTC to penalize companies that it perceives have flouted DDTC's authority, questioned its judgment, or deceived the agency in some manner.

For example, a 2006 case against Boeing, which resulted in a $15 million fine and burdensome mandatory compliance requirements, was driven largely by the fact that the company, following advice of counsel, disregarded DDTC's position on the classification of an aircraft guidance component and defied the agency's mandates. A companion case against Goodrich Corporation and L-3 Communications was advanced on the premise that Goodrich misled DDTC by omitting material information in a request for a commodity jurisdiction determination. In its draft charging letter, DDTC publicly rebuked the company's outside lawyers for "aiding and abetting" the alleged misconduct and L-3 paid for violations that occurred before it acquired the company.

Civil penalties may be assessed together with or independent from criminal penalties. Typically DDTC pursues civil penalties through a negotiated settlement process that begins with the presentation of a proposed or draft charging letter describing the violations DDTC intends to charge, and concludes with the execution of a consent agreement and order resolving the case.

Over the years, DDTC has established a reputation for calculating civil penalties aggressively and often has charged a separate violation for each instance of repetitive conduct. For example, in a case involving numerous unauthorized shipments of the same type of defense article or technical data to the same end user, DDTC may assess a separate fine for each shipment, which can result in staggering cumulative penalties. In addition, one transaction may result in multiple violations. For example, shipping a defense article or transferring controlled technical data improperly may, depending on the circumstances, lead to several distinct charges, including making an unauthorized exportation, conspiring to violate the ITAR, aiding and abetting a violation, and making a false statement or omitting a material fact on a related shipping document.

A formal hearing procedure before an administrative law judge is available under Part 128 the ITAR, with evidentiary safeguards and rights to a rehearing and an appeal. But for all intents and purposes, administrative due process has been nonexistent to date. No reported administrative enforcement matter has ever involved such a hearing. As a practical matter, DDTC's authority (and demonstrated willingness) to suspend defense

[380] Jurisprudence varies in different federal judicial circuits on the precise legal elements for establishing willful intent to violate federal criminal law.

trade activities pending the outcome of an enforcement case has discouraged anyone from ever pursuing a formal hearing. As a further disincentive to challenge its authority, DDTC asserts the position that defense trade enforcement is largely immune from judicial review under the Administrative Procedure Act because of the sensitive national security and foreign policy interests implicated.

Debarment, Denial, Revocation, and Suspension

Debarment is a prohibition from engaging directly or indirectly in ITAR-regulated defense trade. A criminal conviction under the AECA, the Export Administration Act, the Foreign Corrupt Practices Act, U.S. sanctions laws, or other specified national security laws triggers an automatic statutory debarment for three years. And any violation of the ITAR, regardless of intent, may trigger discretionary administrative debarment, likewise for a period of three years.

Reinstatement of defense trade privileges is not automatic; the debarred party must petition DDTC and demonstrate that it has mitigated law enforcement concerns raised by the conduct triggering debarment. As a matter of administrative discretion, DDTC often will waive the three-year period and permit a debarred party to petition for reinstatement after one year. Nevertheless, reinstatement is a costly, burdensome, and often lengthy process.

An indictment under the AECA or the other specified criminal statutes, ineligibility to contract with the U.S. government, denial of export or import privileges by another government agency, imposition of missile proliferation sanctions, or even the mere suspicion of violations of U.S. trade controls, provides DDTC with discretionary authority to deny, revoke, or suspend defense trade authorizations. In such cases, the petition process and timing for restoration of defense trade privileges varies depending on the precise nature of the conduct triggering the adverse action.

The ability to control and deny access to the U.S. defense market provides DDTC with powerful leverage to compel even non-U.S. companies to comply with its mandates.

Directed Remediation

In addition to a fine and the prospect of debarment or other limitations on defense trade privileges, administrative enforcement generally includes execution of a consent agreement under which the respondent is required to institute enhanced compliance measures, usually for a period of three to five years.

These measures include appointing a Special Compliance Official, often from outside the company, as well as conducting compliance audits with DDTC-approved outside auditors, instituting a “cradle-to-grave” export tracking system, and dedicating a specified and typically substantial amount of money to compliance improvements. Each consent agreement is tailored to the nature of the violations, the level of cooperation, and the adequacy of existing compliance measures at the time of settlement.

Voluntary Disclosure

DDTC has created powerful incentives for companies to make voluntary disclosures of suspected violations. Although no guarantees are offered, submission of a voluntary disclosure is well-recognized as a substantial mitigating factor, and often results in DDTC taking no enforcement action. In fact, agency officials have stated publicly that they expect regulated companies to submit voluntary disclosures as a reflection of transparency and a commitment that their compliance programs actually work to detect and correct violations.

For example, at a defense trade compliance conference in Washington, D.C. in July 2010, Lisa Aguirre, Esq., who became director of DDTC’s compliance and enforcement office in early 2010, articulated with heretofore unusual clarity the agency’s vision for enforcement going forward. Ms. Aguirre explained that “if there has been a voluntary submission of information and the company is generally working with our office, it is extremely unlikely—I can’t say it can’t happen—but I say it is unlikely and it is not our practice to impose monetary penalties.” She also explained that DDTC will give mitigating credit for disclosures made at any time, even if another federal agency already knew about the potential violation. She emphasized that “working with our office, volunteering information, being honest and open, and just generally trying to fix the issues, will go an extremely long way.”

In contrast to the benefits earned through voluntary disclosure, DDTC looks suspiciously upon companies without a track record for making them, and perceives those companies as having something to hide. Moreover, nondisclosure is treated as an aggravating factor in calculating penalties when violations are discovered—as often they are—through other sources. The risk that violations will be revealed independently is significant because of the participation of other parties in a defense trade transaction such as suppliers or shippers who themselves may be inclined to make a disclosure to protect their own interests. Other variables include the possibility of a Customs seizure when paperwork is not in order, the prospect of a competitor who believes the other company is gaining an unfair advantage by not following the rules, a disgruntled employee or whistleblower, and investigative media reporting.

In some cases, what is perceived as a voluntary decision may actually be a mandatory duty to disclose. For example, Section 126.1(e) of the ITAR requires that "[a]ny person who knows or has reason to know of … a proposed or actual sale" of ITAR-controlled defense articles, defense services or technical data to an ITAR-proscribed country (*e.g.*, China) "must immediately inform" DDTC. In addition, the failure to disclose a prior violation may constitute a material omission on a subsequent license application or a public company securities report, or cause a false statement on a subsequent compliance certification.

Statistics and Trends

DDTC publishes on its website copies of final settlement documents for ITAR administrative enforcement cases (*i.e.*, draft charging letters, consent agreements, and orders). See <http://www.pmddtc.state.gov/compliance/consent_agreements.html>.

While it is unclear if the list of published cases is exhaustive, available documentation reflects that the State Department has settled forty-six cases since 1978 (with one additional undated case). On average, the State Department has settled approximately two cases per year, and in no year has the number of cases exceeded five. Several companies have been penalized multiple times; *e.g.*, Boeing (five times); Lockheed Martin (three times); L-3 (two times); Raytheon (two times); ITT (two times); Hughes (two times); Security Assistance International (two times).

In fiscal year 2009, DDTC reported that its database contained 9,322 registrants, which suggests the odds of a company becoming the target of an ITAR administrative enforcement action are statistically insignificant. Nevertheless, DDTC's enforcement program has had a well-recognized in terrorem effect on the defense industry, both in the United States and abroad. As noted above, DDTC has used its considerable powers aggressively over the years to make harsh examples of targeted companies.

It remains to be seen whether Ms. Aguirre's July 2010 remarks to industry signal a "kinder, gentler" enforcement posture. But in addition to explaining that fully candid voluntary disclosures generally will not trigger monetary penalties, Ms. Aguirre suggested that DDTC's focus increasingly will be on helping companies strengthen their ITAR compliance programs through greater reliance on directed remediation. She added that monetary penalties of the magnitude previously seen will likely be reserved for situations where voluntary disclosure either has not been made at all or where such disclosure is deemed inadequate, as well as where the violations involve the longstanding criteria of harm to national security/foreign policy or a challenge to DDTC's authority.

Finally, during her July 2010 remarks, Ms. Aguirre explained that DDTC will not pursue a consent agreement unless the agency is "ready to do a real charging letter with an administrative law judge in place". Whether this remark signals the possibility that cases will be adjudicated under ITAR Part 128's hearing procedures also remains to be seen, but it is reasonable to infer that the remark was meant to suggest, at a minimum, that DDTC only pursues cases in which it believes it can prevail.

Learning from ITAR Enforcement Cases

Whatever the odds that any given company will become the target of an enforcement action, a close study of DDTC cases, especially more recent examples summarized in this monograph, provides invaluable information about DDTC's priorities, concerns, and expectations. In particular, the often sharp and reproachful rhetoric in proposed and draft charging letters effectively illustrates the types of conduct that DDTC finds especially

egregious. Perhaps more importantly, as a reflection of what DDTC expects from companies to strengthen their compliance programs in the wake of settled violations, the directed remediation measures set forth in consent agreements provide a blueprint of best practices that every company should consider when benchmarking its own program.

NOTE: I attended the July 2010 conference where Ms. Aguirre spoke about DDTC enforcement trends and I took careful notes. But I want to acknowledge a very useful summary of the event published in the August 2010 issue of The Export Practitioner magazine (pp. 30-1) upon which I relied to refresh my recollection of specific quotes.

PART 2: ITAR ADMINISTRATIVE ENFORCEMENT DIGEST (2001 – 2012)

AECA: Arms Export Control Act

DDTC: State Department, Directorate of Defense Trade Controls

EAR: Export Administration Regulations, 15 C.F.R. Parts 730 - 774

ITAR: International Traffic in Arms Regulations, 22 C.F.R. Parts 120 – 130

SCO: Special/Senior Compliance Officer/Official

USML: U.S. Munitions List (ITAR Part 121)

Notes:

(1) Citations to the applicable provisions of the ITAR for similar violations sometimes are inconsistent from case to case, which is a reflection of DDTC enforcement practice.

(2) Regarding directed remediation in particular, the summaries below reflect my editorial judgment. Readers are encouraged to review the specific terms of individual consent agreements for a more exhaustive and nuanced description of compliance requirements imposed in a particular case.

United Technologies Corporation

Criminal and Civil Cases

Civil Case

Settled

June 28, 2012

Summary

United Technologies Corporation ("UTC") settled over five hundred charges in connection with alleged violations of the AECA and the ITAR, as well alleged violations by its subsidiaries Hamilton Sundstrand Corporation ("HSC"), Kidde Technologies, Inc. ("KTI"), and Pratt & Whitney Canada Corp. ("PWC"), among others, caused by the company's unauthorized export and transfer of defense articles, including technical data, and unauthorized provision of defense services to proscribed countries.

UTC's Canadian subsidiary, PWC, manufactures aircraft engines for civil aircraft and modifies the civil engines using U.S.-origin, ITAR-controlled defense articles and technical data. PWC entered into negotiations with the China Aviation Industry Corporation II of the People's Republic of China ("PRC") to develop and sell engines for Chinese helicopters. Internal PWC documents demonstrated that PWC discussed using these engines on Chinese Z-10 helicopters, which have been described as the PRC's first modern military attack helicopters. The engines developed for the civil helicopters were identical to the engines used in the military

helicopters and were therefore determined not to be ITAR-controlled. However, the Electronic Engine Control ("EEC") software that was developed to test the engines was modified to interface with military helicopters and at that point became a defense article and ITAR-controlled. PWC relied on UTC's subsidiary in the United States, HSC, to modify the EEC software. HSC exported test versions of modified EEC software to PWC eleven times between 2002 and 2003 without authorizations. PWC reexported the modified EEC software six times to the PRC during 2002-2003. In early 2004, HSC terminated work on the project because of concerns relating to export controls compliance. Later, in 2004-2005, PWC modified the EEC software without HSC's assistance and reexported it to the PRC four additional times without the appropriate authorizations.

In February 2006, two years after HSC voluntarily terminated its work on this project, UTC received an email inquiry from an institutional investor about PWC's participation in developing Chinese Z-10 combat helicopters. According to official U.S. government documents, UTC initiated an internal review in July 2006, following the investor inquiry. UTC, HSC, and PWC submitted voluntary disclosure letters to DDTC in July through September 2006 describing unauthorized reexports to the PRC. According to the U.S. government, these voluntary disclosures contained materially false statements regarding PWC's knowledge of the military nature of the Z-10 helicopters program.

In addition, KTI (UTC's U.S. subsidiary) had a history of noncompliance that had not been properly remediated. HSC submitted a voluntary disclosure to DDTC describing violations that occurred in June 2011 when two ITAR-controlled aircraft parts were exported to Singapore and then reexported to airline customers in the PRC and the Republic of Korea. HSC's voluntary disclosure included information about a previous unauthorized export of ITAR-controlled parts to Singapore in May 2009. DDTC indicated in the proposed charging letter that these violations evidenced the "systemic, corporate-wide failure to maintain effective ITAR controls" throughout UTC's operating units.

This case is notable because it appears that UTC's disclosure to DDTC was instigated by investor inquiries about the company's involvement in defense trade with the PRC. In addition this case involved close coordination among many U.S. government agencies. UTC, HSC, and PWC entered into global settlements with the DDTC and the U.S. Justice Department to resolve respective civil and criminal allegations (see criminal allegations below).

Despite the aggravating factors described above, DDTC gave mitigating consideration to the fact that: (1) UTC voluntarily disclosed the violations; and (2) UTC engaged in remedial compliance measures.

Charges

Five hundred and seventy-six violations, as follows:

(1) Thirteen charges of exporting specially modified software for use in a military attack helicopter without authorization to Canada (ITAR § 127.1(a)(1)).

(2) Eleven charges of reexporting specially modified software for use in a military attack helicopter without the appropriate authorizations to China (ITAR § 127.1(a)(1)).

(3) One charge of exporting a defense article to Canada without filing the required export information with U.S. Customs and Border Protection (ITAR § 123.22(b)).

(4) One charge of failing to notify DDTC immediately after UTC knew of the sale/transfer of a defense article to a proscribed country (ITAR § 126.1(e)).

(5) Fifty-eight charges of exporting defense articles incorrectly determined not to be ITAR- controlled to fifteen countries without the appropriate authorizations (ITAR § 127.1(a)(1)).

(6) One charge of exporting an avionics intermediate maintenance test stand to the Venezuelan Defense Ministry/Air Force without the appropriate authorization (ITAR § 127.1(a)(1)).

(7) Fifty-one charges of UTC's subsidiary, P&W U.S., exporting technical data and automation tools to an Indian company and its engineer employees without authorization (ITAR § 127.1(a)(1)).

(8) One charge of UTC's subsidiary, HSC, exporting a laptop containing technical data to the PRC without

authorization (ITAR § 127.1(a)(1)).

(9) Four hundred and thirty-seven charges of failing to abide by the terms and conditions of its Technical Assistance Agreements, Manufacturing License Agreements, and Warehouse and Distribution Agreements (ITAR §§ 127.1(a)(4), 127.2 and 124.1(c)).

(10) Two charges of UTC's subsidiary, KTI, exporting defense articles to Singapore without the appropriate authorization (ITAR § 127.1(a)(1)).

Penalty

$55 million, allocated as follows: (1) $35 million, payable in five $7 million annual installments commencing within ten days of settlement; (2) $5 million will be suspended if applied toward remedial compliance measures; and (3) $15 million will be suspended if applied to remedial compliance measures over a four-year period.

In addition, PWC was debarred from ITAR-controlled defense trade, subject to the availability of specific transaction exceptions for activities deemed to be in the national security and foreign policy interests of the United States, with eligibility to seek reinstatement after one year.

UTC, HSC, and PWC also agreed to pay approximately $20.7 million pursuant to the Deferred Prosecution Agreement with the U.S. Department of Justice, as described below.

Directed Remediation

(1) Appoint an outside SCO, (who may also serve as the independent monitor required in connection with the related criminal matter described below), subject to DDTC approval, for a minimum of two years and up to four years, unless UTC petitions for the SCO to be succeeded by an internal SCO for an additional two years, with a requirement that UTC's Senior Vice President and General Counsel will brief the board of directors or appropriate committees thereof, on findings and recommendations of the SCO and UTC's response and implementation regarding the status of AECA and ITAR compliance, at least annually.

(2) Continue to promote and publicize the availability of the company's employee reporting mechanisms for allegations of violations of the AECA and the ITAR.

(3) Strengthen compliance policies, procedures, and training within twelve months of settlement.

(4) Continue to implement a comprehensive automated export compliance system to strengthen internal controls for ensuring AECA and ITAR compliance. The system will cover the initial identification of all technical data and technical assistance and will be accessible to DDTC on request.

(5) Develop and implement policies, procedures, and training to ensure accurate identification and tracking of ITAR-controlled technical data that is transferred electronically, including by email and transfers outside of UTC's information technology networks.

(6) Conduct a study to identify feasible enterprise improvements to maximize automation of the identification and tracking of ITAR-controlled technical data and on the basis of such study, UTC will propose an implementation plan and submit the implementation plan to DDTC within one hundred twenty days of settlement.

(7) Review and verify the export control jurisdiction of all hardware (including software), and any defense services or technical data directly related to such hardware, that has been exported in the past five years and conclude such jurisdiction review no later than twenty-four months after the settlement.

(8) Conduct two external audits using an outside consultant with expertise in AECA/ITAR matters, subject to DDTC's approval of the consultant and supervised by the SCO, the first audit to be planned within six months of settlement and a written report to be submitted within twelve months after settlement, and the second audit to be planned within thirty-six months after settlement and a written report to be submitted within forty-two months of the settlement.

(9) Certify to DDTC three months prior to the four-year anniversary of the settlement whether all remedial

measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

Criminal Case

Settled

June 28, 2012

Summary

On June 28, 2012, UTC, HSC, PWC, the U.S. Department of Justice, and the U.S. Attorney's Office for the District of Connecticut (the "Office") entered into a Deferred Prosecution Agreement. PWC and the Office entered into a separate plea agreement in which PWC pled guilty to two out of three criminal charges. In the information the Office alleged that PWC knew that the PWC was developing a military attack helicopter from the start and that PWC withheld such information from UTC and HSC. The Office also alleged that PWC hid its concerns regarding defense article classification and export compliance from UTC and HSC until years later. From 2002-2003, PWC led HSC to believe that its EEC software was being used in civil non-military Chinese helicopters.

The Office agreed to request deferred prosecution for two years for UTC and HSC on Count 2 and PWC and HSC on Count 3 because of their remedial actions and their willingness to: (1) continue corrective action and undertake remedial measures; (2) acknowledge responsibility for their behavior; (3) continue their cooperation with the Office and other government regulatory agencies; (4) demonstrate their future good conduct and full compliance with export laws and regulations; and (5) consent to pay penalties. If UTC, HSC, and PWC are in compliance with all of their obligations under the deferred prosecution agreement within thirty days after the two-year deferral period, as determined by the Office, the Office will file a motion to dismiss the deferred counts.

Charges

Three counts, as follows:

(1) Against PWC Only: Willfully exporting defense articles without a license in violation of the AECA (on or between January 2002 and October 2003) (22 U.S.C. §§ 2778(b)(2) and 2778(c); 18 U.S.C. § 2; and (c); ITAR §§ 127.1(a) and 127.3). PWC pled guilty to this count.

(2) Against UTC, HSC and PWC: Making false statements to DDTC (on or between July 2006 and September 2006) (18 U.S.C. § 1001). PWC pled guilty to this count. The Office agreed to request deferred prosecution for UTC and HSC on this count for two years.

(3) Against PWC and HSC: Willfully failing to timely inform DDTC of the export of defense articles without a license to an embargoed country (on or between 2002 and July 2006 for PWC and on or between 2004 and July 2006 for HSC) (22 U.S.C. § 2778(c); ITAR §§ 126.1(a) and (e)). The Office agreed to request deferred prosecution on this count for two years.

Penalty

$20,700,800, allocated as follows: (1) $4.6 million as a criminal fine equal to twice the value of PWC's total gross gain from activities described in Count 1; (2) $800 as a special assessment on PWC's convictions ($400 per count); (3) $2.3 million as a forfeiture of proceeds equal to the estimated value of PWC's total gross profit earned on activities described in Count 1; and (4) $13,800,000 as a deferred prosecution monetary penalty. PWC agreed to pay the amounts listed in (1), (2) and (3). The U.S. Department of Justice did not allocate any penalty funds toward directed remediation.

Directed Remediation

UTC, HSC and PWC agree to:

(1) Retain an independent monitor[381] to oversee UTC, HSC and PWC's compliance with the deferred prosecution agreement, the AECA, the ITAR, the Export Administration Act, the EAR and the International Emergency Economic Powers Act.

(2) Meet annually, or more frequently if appropriate, with the Office to discuss the monitorship.

(3) Submit a Training Program proposal to the independent monitor within 120 days, which includes:

a. obligations imposed by federal export laws and regulations, including disclosure obligations;

b. proper internal controls and procedures;

c. discovering and recognizing export compliance issues; and

d. obligations assumed by, and responses expected of, employees upon learning of improper or potentially illegal acts relating to export compliance.

(4) Undertake a training program no later than ninety days after the Training Program proposal is approved.

(5) Maintain records of training programs provided, including the names and titles of individuals who received training, for at least five years.

(6) Submit an annual compliance certification to the independent monitor signed by UTC's Chairman, President & CEO, the Senior Vice President and General Counsel who serves as the empowered official, and the Associate General Counsel with oversight for export control compliance.

Alpine Aerospace Corporation / TS Trade Tech (2012)

Settled

March 28, 2012

Summary

Each of Alpine Aerospace Corporation ("Alpine") and TS Trade Tech Incorporated ("TS Trade") settled charges alleging that each company violated the AECA and ITAR with 9 violations. Each of Alpine and TS Trade allegedly: (1) participated in unauthorized exports of defense articles; (2) misrepresented and omitted materials facts on an export control document; and (3) failed to obtain required nontransfer and use certificates.

Alpine's president and the Chief Executive Officer of TS Trade, Mr. Tae Hoon Kim, participated in international sales of replacement parts produced by Alpine and TS Trade. Alpine and TS Trade are owned by the same person. Between July 1, 2005 and January 31, 2007 Mr. Tae Hoon Kim exported missile components on behalf of Alpine and TS Trade six times and, in certain cases, did so under U.S. export licenses authorizing the export of aircraft engine parts (not the missile parts that were sent).

Alpine sent these parts to the Republic of Korea Air Force in South Korea and the items exported were: (1) four flywheels; (2) thirty lever locks; (3) thirty electron tubes; (4) four spiders; and (5) two connecting links. All of these parts were classified under the USML either as Category IV(h) or XI(c). Alpine did not obtain a DSP-83 Non-Transfer and Use Certificate for its exports. Alpine violated ITAR §127.2(a) when it declared incorrectly that its exports were covered by an export license for airplane parts. On September 1, 2006, TS Trade exported twenty flanges that were classified under the USML as Category VIII(h) without the necessary authorizations. In its charging letter, DDTC indicated that neither Alpine nor TS Trade had sufficient policies and procedures regarding export compliance.

DDTC discovered the apparent violations of the ITAR after a joint investigation by DCIS and ICE uncovered illegal exports that were sent to South Korea. A criminal information was filed in federal court charging

[381] Such independent monitor may be the same as UTC's SCO so long as the independent monitor is approved by the Justice Department.

Alpine with violating 18 U.S.C. § 1001 (making false statements). On October 27, 2010, Alpine pled guilty to the allegations that Alpine included false statements on its shipper export declaration forms stating that the defense articles Alpine exported were aircraft and engine parts instead of indicating that such items were missile components. Although TS Trade was not involved in the DCIS and ICE investigation or the criminal charges, TS Trade submitted a voluntary disclosure describing its ITAR violations pursuant to ITAR §127.12.

This case is noteworthy because of the interagency work that brought the violations to the DDTC's attention and the low penalties charged to the companies for these violations.

Charges

Each of Alpine and TS Trade settled nine charges, as follows:

(1) Seven charges of violating of exporting items categorized under USML Categories IV, VIII, and XI to South Korea without the appropriate authorizations (ITAR §127.1(a)(1)).

(2) One charge for using export control documents containing misrepresentations and omissions of facts relating to exports of defense articles under USML Categories IV and XI (ITAR §127.2(a)).

(3) One charge for failing to obtain Non-Transfer and Use Certificates (Form DSP-83) for the export of Category VI or XI defense articles (ITAR §127.1).

Penalty

Alpine shall pay $30,000 which shall be applied over a two-year period to defray a portion of the costs associated with the directed remediation compliance measures.

TS Trade shall pay $20,000 which shall be applied over a two-year period to defray a portion of the costs associated with the directed remediation compliance measures.

Directed Remediation

Each of Alpine and TS Trade agreed to remedial measures, as follows:

(1) Ensure that adequate resources are dedicated to ITAR compliance.

(2) Establish policies and procedures for all Alpine and TS Trade employees outlining employees with responsibility for ITAR compliance that specifically identifies lines of authority, staffing increases, performance evaluations, career paths, promotions and compensation.

(3) Ensure effective export control oversight, infrastructure, policies, and procedures are in place for ITAR-regulated activities.

(4) Implement strengthened corporate export control procedures, within 1 year of settlement, such that: (a) all employees engaged in ITAR-regulated activities are familiar with the AECA and ITAR, and each employee is aware of the employee's and Alpine's or TS Trade's (as applicable) responsibilities to comply with such laws and regulations; (b) all persons responsible for supervising the employees are knowledgeable about the underlying policies and principles of the AECA and ITAR; and (c) there are records indicating the names of employees, trainers and level and area of training received by each.

(5) Conduct two external audits (the first within one year of settlement and the second within two years of settlement) subject to prior DDTC approval of the auditor and audit plan, and submit to DDTC a final report of findings and recommendations for each audit.

(6) For the duration of the consent agreement, incorporate the foregoing measures into any business acquisitions and notify DDTC sixty days prior to the sale of Alpine, TS Trade or any of their business units or divisions, and require the purchaser in such case to agree in writing to be bound by the terms and conditions of the settlement, including the foregoing measures.

BAE Systems plc (2011)

Settled

May 16, 2011

Summary

BAE Systems plc, United Kingdom ("BAE UK"), settled a staggering 2,591 charges for it, its businesses, units, subsidiaries, and operating divisions.[382] The charges, which span from 1998 to 2011, concerned unauthorized brokering and related activities, failure to report commissions to third parties, and recordkeeping violations. The charges related to: (1) marketing JAS-39 "Gripen" military aircraft to Brazil, Chile, the Czech Republic, Hungary, the Philippines, Poland, and South Africa; (2) exporting "Hawk" Trainer aircraft to Australia, Bahrain, Canada, India, Indonesia, and South Africa; (3) marketing or exporting EF-2000 Eurofighter "Typhoon" aircraft to Australia, Austria, the Czech Republic, Denmark, Greece, Japan, the Netherlands, Norway, Poland, Saudi Arabia, Singapore, South Korea, and Switzerland; (4) marketing three refurbished Type 23 frigates to Chile; and (5) other unspecified defense trade transactions.[383]

DDTC initiated its investigation in relation to a March 2010 plea agreement between BAE UK and the U.S. Justice Department alleging criminal conspiracy to violate U.S. federal laws, including the ITAR by failing to report commissions paid to third parties. The plea agreement capped a global criminal settlement involving both the

U.S. Justice Department and the U.K. Serious Fraud Office, which followed a long-ranging international fraud and bribery investigation against BAE UK, and which resulted in a total of nearly $450 million in criminal fines that BAE UK paid to the United States (approximately $400 million) and to the United Kingdom (approximately $47 million).

Following the U.S. plea agreement, DDTC imposed an "administrative hold" on ITAR authorizations involving BAE UK and its covered affiliates, and conducted its own civil investigation. DDTC gave mitigating consideration to the fact that BAE UK: (1) made changes to its senior management and Board of Directors; and (2) implemented remedial compliance measures, in connection with the criminal investigation.

On the other hand, DDTC considered as serious aggravating factors: (1) BAE UK's "failure to cooperate fully" throughout the fourteen month investigation; (2) its incomplete responses to requests for information; (3) its failure to maintain or produce relevant records; (4) the frequency and type of violations; (5) the complicity of former senior management in authorizing the violations; (6) the systemic, widespread, and sustained (more than ten years) nature of the violations; and (7) the fact that BAE UK only disclosed three violations itself at DDTC's direction, and not voluntarily. Citing BAE UK's lack of cooperation and inability to produce requested information (in part, in stated reliance on UK secrecy laws), DDTC noted that it was unable to complete a full review and was forced instead to make a "reasoned approximation" of the nature and type of violations by relying on collateral sources.

This case is notable because it involves the most proposed charges and the largest civil penalty for a consent agreement to date.

Charges

Two thousand five hundred ninety-one violations, as follows:

(1) Fourteen charges of failing to register as a broker while engaging brokering activities from 1998 to 2011 (ITAR § 129.3).

(2) One thousand one hundred thirty charges of en.gaging in unauthorized brokering activities from 1998 to

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[382] DDTC determined that BAE UK's U.S. subsidiary, BAE Systems, Inc. (including its subsidiaries, collectively, "BAE US"), was not involved in the activities in question and excluded BAE US from this enforcement action.

[383] The proposed charging letter reflects that certain activities related to the "Gripen" aircraft commenced as early as 1995, but the charges reflect the fact that the ITAR brokering requirements became effective in 1998.

2007 (eight charges concerning JAS-39 "Gripen" aircraft; thirteen concerning EF-2000 Eurofighter "Typhoon" aircraft; six concerning "Hawk" trainer aircraft; three concerning Type 23 frigates; one hundred (estimated) concerning unspecified instances in which BAE UK financed brokering by making payments to unidentified brokers; and one thousand (estimated) concerning unspecified instances in which Red Diamond Trading Ltd., acting on behalf of and at the direction of BAE UK, financed brokering by making payments to unidentified brokers) (ITAR § 129.6).

(3) Thirteen charges of failing to provide an annual report of brokering activities from 1998 to 2010 (ITAR § 129.9).

(4) Three hundred charges of causing unauthorized brokering from 1998 to 2007 by using unauthorized brokers (ITAR § 127.1(d)).

(5) Three charges of failing to disclose payments in respect of a sale for which a license or other approval was required (ITAR § 130.9).

(6) One thousand one hundred thirty-one charges of failing to maintain records of brokering and financing of brokering by payments to other brokers (one hundred thirty-one charges concerning BAE UK and one thousand (estimated) concerning Red Diamond Trading Ltd, acting on behalf of and at the direction of BAE UK) (ITAR § 129.4(c).

Penalty

$79 million, allocated as follows: (1) $69 million, of which $18 million is payable within ten days of settlement, and the remainder is payable in annual installments of $17 million each beginning one year from the date of settlement; (2) $10 million suspended in the following manner: (a) $3 million credited for pre-consent agreement remedial compliance measures, if determined to be eligible; and (b) $7 million applied to directed remediation over four years.

BAE UK was statutorily debarred in connection with its criminal plea and pre-settlement ITAR authorizations were placed on "administrative hold." DDTC immediately lifted the debarment in connection with the settlement, but imposed a denial policy against three BAE UK entities; namely, BAE Systems CS&S International, Red Diamond Trading Ltd., and Poseidon Trading Investments Ltd. (including their divisions, business units, and successor entities). Specific transaction exceptions to the denial policy may be granted on a case-by-case basis, when based on overriding national security and foreign policy interests. Authorizations for the denied entities that were issued prior to settlement remain valid.

Directed Remediation

(1) Nominate an external, unaffiliated SCO, to be appointed within fifteen days of DDTC concurrence, who will oversee and support ITAR compliance, for no less than the first three years of the consent agreement. If DDTC does not extend the SCO's term or extends the term for less than the four-year duration of the consent agreement, the SCO shall recommend an internal successor to serve as an internal SCO ("ISCO"). The SCO or ISCO shall be responsible for: (a) monitoring ITAR compliance policies and procedures; (b) overseeing the compliance program; and (c) reporting on compliance to DDTC at specified times.

(2) Conduct an internal review within one hundred twenty days of ITAR compliance resources directed toward the types of violations included in the proposed charging letter, to include an estimate of the current number and types of personnel engaged in brokering activities, and provide a report of the same to the SCO and DDTC.

(3) Strengthen policies, procedures, and training within twelve months of settlement, with a focus on ITAR brokering (ITAR Part 129) and financial reporting (ITAR Part 130) requirements.

(4) Review and where necessary improve current technology systems for tracking ITAR-controlled activities. Train employees regarding the same.

(5) Conduct two external audits, subject to prior DDTC approval of the auditor and audit plan, and oversight by the SCO or ISCO, and submit to DDTC a final report of findings and recommendations, the first within one year of settlement, and the second within forty-two months of settlement. Agree not to assert attorney-client

privilege over the audit results and report.

(6) Publicize internally the availability of the company's ethics helpline for reporting concerns, and include with required reports to DDTC an assessment of the hotline's effectiveness.

(7) Agree to arrange and facilitate a DDTC on-site review with minimum notice for the duration of the consent agreement.

(8) Ensure continued legal department support for ITAR compliance.

(9) For the duration of the consent agreement, incorporate the foregoing measures into any business acquisitions involving ITAR-controlled activities, and require the purchaser in any divestiture involving ITAR-controlled activities to agree to be bound by the terms of the settlement, including the foregoing measures.

Xe Services LLC (2010)

Settled

August 18, 2010

Summary

Xe Services LLC (formerly EP Investments, LLC, a.k.a. Blackwater Worldwide) settled hundreds of charges for it and its five subsidiaries: GSD Manufacturing, LLC (formerly Blackwater Target Systems, LLC); Aviation Worldwide Services, LLC; Presidential Airways, Inc.; Total Intelligence Solutions, LLC; and Paravant, LLC. The charges concerned making proposals to a proscribed country, the unauthorized exportation of technical data and defense articles (including firearms), providing defense services and access to ITAR-controlled activities to unauthorized foreign persons, failing to maintain proper records, and making false statements, misrepresentations, and omissions of material fact on several disclosures. The charges were the result of a two-and-a-half year investigation involving thirty-one disclosures, sixteen of which were directed and fifteen of which were voluntary.

DDTC gave mitigating consideration to the fact that: (1) the violations occurred while servicing U.S. government programs; (2) several disclosures were voluntary; (3) Xe Services implemented remedial compliance measures during the latter part of the investigation; (4) Xe Services cooperated with the Department during the latter part of the investigation; and (5) there was no actual harm to national security.

On the other hand, DDTC considered several aggravating factors when determining Xe Services LLC's penalty, including: (1) an "historic inability" to comply with ITAR; (2) the frequency and nature of the violations; (3) failure to cooperate during the first eighteen months of the investigation; (4) failure to maintain proper records;

(5) failure to disclose most violations until directed; (6) issuing false statements and inaccurate or incomplete disclosures; and (7) the national security implications involved.

Charges

Two hundred eighty-eight violations, as follows:

(1) Ten charges of violating the terms, conditions, or provisos of eight DSP-73 licenses involving firearms (ITAR § 127.1(a)(4)).

(2) One charge of making proposals to provide defense services to proscribed country (Sudan), and failing to notify the Department of the proposals (ITAR § 126.1(e)).

(3) Three charges of providing false statements, misrepresentations, or omissions of material facts regarding its activities (ITAR § 127.2(a)).

(4) One hundred three charges of violating provisos of technical assistance agreements involving military/security training (ITAR § 127.1(a)(4)).

(5) Seventy-seven charges of exporting technical data and defense services involving military/security training to various foreign end-users without authorization (conducted internationally) (ITAR § 127.1(a)(1)).

(6) Seventy-seven charges of exporting technical data and defense services involving military/security training to various foreign end-users without authorization (conducted domestically) (ITAR § 127.1(a)(1)).

(7) Seventeen charges of exporting defense articles without authorization, including significant military equipment, to Afghanistan, the Bahamas, Burkina Faso, and Iraq (ITAR § 127.1(a)(1)).

(8) One charge of failing to obtain a non-transfer and use certificate (Form DSP-83) for the exportation and re-exportation of significant military equipment (ITAR §§ 123.10(a) and 127.1).

(9) Nine charges of providing unauthorized defense services and access to technical data to foreign person employees and consultants (ITAR § 127.1(a)(1)).

(10) One charge of violating the administrative requirements associated with DDTC-approved agreements (ITAR §§ 124.4(a) and 123.22(b)(3)).

(11) One charge of failing to properly maintain required license records (ITAR § 122.5).

Penalty

$42 million, allocated as follows: (1) $30 million payable in annual installments over a four-year period (five $6 million payments); and (2) $12 million suspended in the following manner: (a) $6 million credited for pre-consent agreement remedial compliance measures, if determined to be eligible; and (b) $6 million applied to directed remediation over four years.

Directed Remediation

(1) Nominate an external, unaffiliated SCO, to be appointed within fifteen days of DDTC concurrence, who will oversee and support ITAR compliance, for the first three years of the consent agreement. The SCO shall nominate an internal successor to serve as an internal SCO ("ISCO") beginning on the third anniversary of the settlement. The SCO or ISCO shall be responsible for: (a) monitoring ITAR compliance policies and procedures; (b) overseeing the compliance program; and (c) reporting on compliance to DDTC at specified times.

(2) Conduct an internal review within one hundred twenty days to establish the necessary actions to ensure that sufficient resources are dedicated to compliance, including the use of additional resources for compliance cross-trained employees on a part time basis when needed. Ensure that adequate resources are dedicated to ITAR compliance and establish policies and procedures to address lines of authority, staffing, performance evaluations, career paths, promotions, and compensation for employees with ITAR compliance responsibility. Provide semi-annual ITAR compliance program enhancements and resource levels status reports to DDTC.

(3) Strengthen policies, procedures, and training within twelve months of settlement.

(4) Implement or make improvements to a comprehensive automated defense trade compliance system that will track the decision process from authorization request initiation to conclusion, cover the initial identification of all technical data to be disclosed to foreign persons, track whether exports were properly filed with the Automated Export System ("AES") and endorse with the Customs and Border Patrol ("CBP"), and be available to DDTC upon request. Develop within Xe Services LLC's e-mail system the capability to alert users to ITAR requirements on electronic transmission of technical data and display a login banner describing ITAR requirements and providing relevant contact information. Report to DDTC on the status of the system semi-annually, and train relevant employees on proper handling of electronic transfers of ITAR-controlled technical data.

(5) Conduct two external audits, subject to prior DDTC approval of the auditor and audit plan, and oversight by the SCO or ISCO, and submit to DDTC a final report of findings and recommendations, the first within one year of settlement, and the second within forty-six months of settlement. Agree Xe Services LLC will not assert attorney-client privilege over the audit results and report.

(6) Publicize internally the availability of the company's ethics hotline for reporting concerns, and include with required reports to DDTC an assessment of the hotline's effectiveness.

(7) Agree to arrange and facilitate a DDTC on-site review with minimum notice for the duration of the consent agreement.

(8) Ensure continued legal department oversight for ITAR compliance.

(9) For the duration of the consent agreement, incorporate the foregoing measures into any business acquisitions, notify DDTC as soon as practical before, but no later than fourteen days prior to, the sale of Xe Services LLC and/or any of its business units or subsidiaries, and require the purchaser in such case to agree to be bound by the terms of the settlement, including the foregoing measures.

AAR International, Inc. (2010)

Settled

July 15, 2010

Summary

AAR settled charges concerning the unauthorized exportation to several destinations of military helicopters and associated equipment, including gun mounts, as well as military communications and countermeasures equipment.

AAR assumed successor liability for the violations, which were committed by several business units that AAR acquired from Xe Services, LLC (formerly Blackwater USA), prior to the acquisition. DDTC noted that AAR did not have actual knowledge of the violations, and that AAR met with DDTC prior to purchasing the businesses in question to assist in resolving the matter.

DDTC gave mitigating consideration to the fact that: (1) the violations occurred prior to acquisition; (2) the majority of the violations took place in the context of activities undertaken in support of overseas protective service contracts on behalf of the U.S. government; (3) the predecessor companies had already begun to implement remedial compliance measures; and (4) AAR agreed to implement additional remedial measures.

Conversely, DDTC deemed as aggravating an "historic lack of sufficient ITAR oversight" on the part of the predecessor companies. This case is notable in that DDTC did not impose a monetary penalty on AAR.

Charges

Thirteen violations, as follows:

(1) Twelve charges of exporting defense articles without authorization, including significant military equipment, to Afghanistan, the Bahamas, Burkina Faso, and Iraq (ITAR § 127.1(a)(1)).

(2) One charge of failing to obtain a non-transfer and use certificate (Form DSP-83) for the exportation and reexportation of significant military equipment (ITAR § 123.10(a)).

Penalty

No monetary penalties.

Directed Remediation (applicable to acquired business operations)

(1) Nominate an internal SCO within thirty days of settlement, to be appointed within fifteen days of DDTC concurrence, who will oversee and support ITAR compliance, for the eighteen-month term of the consent agreement. The internal ISCO will be responsible for: (a) monitoring ITAR compliance policies and procedures (spelled out in heretofore unusually granular detail in the consent agreement); (b) overseeing the compliance program; and (c) reporting on compliance to DDTC and AAR management and legal officials at specified times.

(2) Conduct an internal review within one hundred twenty days to establish the necessary actions to ensure that sufficient resources are dedicated to compliance, including the use of additional resources from compliance cross-trained employees on a part time basis when needed. Ensure that adequate resources are dedicated to ITAR compliance and establish policies and procedures to address lines of authority, staffing, performance evaluations, career paths, promotions, and compensation for employees with ITAR compliance responsibility.

(3) Strengthen policies, procedures, and training within twelve months of settlement.

(4) Implement or make improvements to a comprehensive automated defense trade compliance system on a timeline to be established between AAR and DDTC; report to DDTC on the status of the system semi-annually, and train relevant employees on proper handling of electronic transfers of ITAR-controlled technical data.

(5) Conduct an external audit, subject to prior DDTC approval of the auditor and audit plan, and oversight by the internal SCO, and submit to DDTC a final report of findings and recommendations within sixteen months of settlement.

(6) Publicize internally the availability of the company's ethics hotline for reporting concerns, and include with required reports to DDTC an assessment of the hotline's effectiveness.

(7) Agree to arrange and facilitate a DDTC on-site review with minimum notice for the duration of the consent agreement.

(8) Ensure continued legal department oversight for ITAR compliance.

(9) For the duration of the consent agreement, incorporate the foregoing measures into any business acquisitions, notify DDTC sixty days prior to any contemplated sale of any division, subsidiary, or other affiliate, and require the purchaser in such case to agree to be bound by the terms of the settlement, including the foregoing measures.

Interturbine Aviation Logistics GmbH/Interturbine Aviation Logistics GmbH, LLC (2010)

Settled

January 4, 2010

Summary

Interturbine Aviation Logistics GmbH, a German company, and its Texas-based branch office, settled charges concerning the unauthorized exportation of DC 93-104 to Germany.

DC 93-104 is an ITAR-controlled ablative material and sealant manufactured by Dow Corning. It is a heat resistant protective coating that can be used, inter alia, on missiles to protect high heat areas. Because of its military capabilities, DC 93-104 is controlled by the ITAR as significant military equipment that requires enhanced end use assurances.

DDTC noted that Interturbine only disclosed the violations—which involved a business development employee of the German parent purposefully misrepresenting the export control status of DC 93-104—following a criminal investigation by federal prosecutors and U.S. Immigration and Customs Enforcement. The investigation concluded with a decision not to prosecute the company for criminal violations, but DDTC elected to impose civil penalties because of the "national security interests involved", as well as Interturbine's failure to make a voluntary disclosure prior to initiation of the criminal investigation. Nevertheless, DDTC gave significant mitigating consideration to the fact that Interturbine had cooperated and implemented remedial compliance measures.

Charges

Seven violations, as follows:

(1) One charge against Interturbine Texas of exporting defense articles constituting significant military equipment without authorization (ITAR § 127.1(a)(1)).

(2) One charge against Interturbine Texas of using an export control document containing misrepresentations and omissions of fact for the purpose of exporting a defense article (*i.e.*, filing a Shipper's Export Declaration falsely indicating that no license was required) (ITAR § 127.2(a)).

(3) Two charges against Interturbine Germany of willfully causing an unauthorized exportation for conspiring with and willfully causing and permitting Interturbine Texas to: (a) export significant military equipment without authorization; and

(b) use an export control document containing misrepresentations (ITAR §§ 127.1(a) and 127.1(d)).

(4) One charge against Interturbine Texas of exporting a defense article without being registered with the State Department (ITAR § 122.1(a)).

(5) One charge against Interturbine Texas of failing to obtain a non-transfer and use certificate (Form DSP-83) for the exportation of significant military equipment (ITAR § 123.10(a)).

(6) One charge against Interturbine Germany of retransferring significant military equipment without authorization (ITAR § 127.1(a)).

Penalty

$1 million, allocated as follows: (1) $50,000 payable within fifteen days of settlement; (2) $50,000 due within one year of settlement; and (3) $900,000 suspended in the following manner: (a) $400,000 suspended on the condition that Interturbine Texas neither commits any ITAR violations for a two-year period following settlement nor seeks reinstatement of its registration (should Interturbine Texas seek reinstatement of its registration within the two-year period, then the $400,000 would be credited toward directed remediation); and (b) $500,000 credited toward previously implemented compliance program improvements.

Directed Remediation

(1) Devote adequate resources to compliance with U.S. export controls through Interturbine's Office of Export Compliance Management, especially to ensure that no ITAR-controlled activities are undertaken for the two-year duration of the consent agreement. This includes providing legal oversight and support when necessary.

(2) Agree to arrange and facilitate a DDTC on-site review with minimum notice for the duration of the consent agreement.

(3) Conduct an external audit, subject to prior DDTC approval of the auditor and audit plan, and submit a final report of findings and recommendations within twelve months of settlement. A key objective of the audit is to ensure that no ITAR-controlled activities take place for the duration of the consent agreement.

(4) For the duration of the consent agreement, incorporate the foregoing measures into any business acquisitions, notify DDTC sixty days prior to any contemplated sale of any division, subsidiary, or other affiliate, and require the purchaser in such case to agree to be bound by the terms of the settlement, including the foregoing measures.

Air Shunt Instruments, Inc. (2009)

Settled

July 8, 2009

Summary

Air Shunt Instruments settled charges concerning the unauthorized exportation of military aircraft parts to the United Arab Emirates and to Thailand.

DDTC noted that Air Shunt Instruments did not voluntarily disclose the violations, which became known to DDTC only following notice that the company was being prosecuted in federal court for a criminal violation of the AECA in connection with the matter. Although the Department elected to impose civil penalties because of the "national security and foreign policy interests involved", DDTC gave mitigating consideration to the fact that Air Shunt Instruments had implemented remedial compliance measures at the time of the settlement.

Charges

Four violations, as follows:

(1) Three charges of exporting defense articles without authorization; two charges pertain to the exportation of military aircraft parts to the United Arab Emirates, and one charge pertains to the exportation of a military aircraft gyroscope to Thailand (ITAR § 127.1(a)(1)).

(2) One charge of misrepresenting and omitting material facts by filing a Shipper's Export Declaration falsely indicating that no license was required (ITAR § 127.2(a)).

Penalty

$100,000, of which $70,000 is suspended on the condition that it is eligible to be credited toward preexisting compliance measures, and $30,000 of which is suspended on the condition that it is to be applied over a two-year period to directed remediation.

Directed Remediation

(1) Strengthen policies, procedures, and training within twelve months of settlement.

(2) Ensure that adequate resources are devoted to ITAR compliance.

(3) Agree to arrange and facilitate a DDTC on-site review with minimum notice for the duration of the consent agreement, which is no sooner than thirty months after settlement and following a determination by DDTC that the terms of the agreement have been fulfilled.

(4) Conduct an external audit, subject to prior DDTC approval of the auditor and audit plan, and submit a final report of findings and recommendations within twelve months of settlement. Complete a follow-up audit to confirm implementation of any recommended improvements within twenty-four months of settlement.

(5) Incorporate the foregoing measures into any ITAR-affected business acquisitions, notify DDTC sixty days prior to any contemplated sale of its business or any division, and require the purchaser in such case to agree to be bound by the terms of the settlement, including the foregoing measures.

Analytical Methods, Inc.

Settled

February 18, 2009

Summary

Analytical Methods settled charges concerning the unauthorized exportation of ITAR-controlled technical data and defense services pertaining to computational dynamic fluid simulation software, which is used for design testing in a virtual environment that simulates flying through air or traveling through water.

DDTC noted that Analytical Methods voluntarily disclosed the violations and cooperated in the investigation, which the Department considered a significant mitigating factor in determining sanctions. But as noted in the proposed charging letter, DDTC elected nonetheless to impose penalties because of the "significant national security interests involved as well as the systemic and repetitive nature of the violations…."

Charges

Twenty-nine violations, as follows:

(1) Six charges of exporting technical data without authorization; five charges pertain to China and one to Turkey (ITAR § 127.1(a)(1)).

(2) Six charges of causing the unauthorized exportation of technical data to China by providing the data to a U.S. person with knowledge that it would be transferred (ITAR § 127.1(a)(3)).

(3) One charge of failing to report an exportation to a proscribed country (ITAR § 126.1(e)).

(4) Thirteen charges of providing unauthorized defense services to Turkey, Singapore, the United Kingdom, and Israel (ITAR § 127.1(a)(1)).

(5) Two charges of engaging in the unregistered manufacture and exportation of defense articles and defense services (ITAR § 127.1(a)(5)).

(6) One charge of misrepresenting and omitting material facts by filing export control documents with false statements about the classification of software (ITAR § 127.2(a)).

Penalty

$500,000, of which $100,000 is payable within fifteen days of settlement, $200,000 is eligible to be credited toward preexisting compliance measures, and $200,000 is applied over a three-year period to directed remediation.

Directed Remediation

(1) Appoint an internal SCO within thirty days of settlement, with DDTC concurrence, who will oversee and support ITAR compliance.

(2) Implement a formal ITAR compliance program that includes annual training and a compliance manual.

(3) Ensure that the SCO has appropriate legal support and oversight.

(4) Agree to arrange and facilitate a DDTC on-site review with minimum notice for the duration of the consent agreement, which is no sooner than three years after settlement and following a determination by DDTC that the terms of the agreement have been fulfilled.

(5) Conduct an external audit, subject to prior DDTC approval of the auditor and audit plan, and submit a final report of findings and recommendations within eighteen months of settlement. Complete a follow-up audit to confirm implementation of any recommended improvements before the two-and-a-half year anniversary of settlement.

(6) Certify to DDTC three months before the three-year anniversary of settlement that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate, with the understanding that the terms of the consent agreement remain in force until DDTC lifts them following certification.

Qioptiq (2008)

Settled

December 19, 2008

Summary

In a case related to the landmark ITT enforcement matter described below, Qioptiq settled numerous charges concerning the unauthorized exportation and retransfer by predecessor companies of ITAR-controlled technical data and defense articles pertaining to military optical components incorporated into night vision equipment.

DDTC noted that Qioptiq voluntarily disclosed a number of the violations and cooperated in the investigation, which the Department considered a significant mitigating factor in determining sanctions. DDTC also gave mitigating consideration to the fact that the violations took place before Qioptiq acquired the companies that actually engaged in the transgressions. But as noted in the proposed charging letter, DDTC elected nonetheless to impose penalties: (1) because "[m]any of the violations identified in [the] proposed charging letter…were not voluntarily disclosed but were uncovered based on directed questioning by the Government"; and (2) due to "the significant national security interests involved as well as the systemic and longstanding nature of the violations…."

Concerning the systemic and longstanding nature of the violations, DDTC reproduced in its proposed charging letter excerpts from internal records of Thales, the previous owner of the companies that actually engaged in the transgressions, to establish that business units involved in ITAR-regulated activities had "limited or no ITAR training and a longstanding lack of support for ITAR compliance."

Charges

One hundred sixty-three violations, as follows:

(1) Ten charges of exporting night vision-related technical data without authorization by exceeding the scope of a technical assistance agreement and exporting the data to Singapore, as well as by exporting prior to the execution of the agreement (ITAR §§ 127.1(a)(1), 127.1(a)(4), and 127.1(d)).

(2) One charge of transferring classified ITAR technical data without authorization (ITAR § 125.3(b)).

(3) One charge of misrepresenting and omitting material facts by filing export control documents containing false statements that unauthorized exports of technical data were authorized under a technical assistance agreement (ITAR § 127.2(a)).

(4) Eighty-one charges of retransferring technical data without authorization to employees and subcontractors in China, a proscribed country (ITAR §§ 127.1(a)(1) and 126.1(a)(1)).

(5) Fourteen charges of exporting defense articles without authorization to Israel, France, and Singapore (ITAR § 127.1(a)(1)).

(6) Thirteen charges of retransferring technical data (exported to Singapore with and without authorization) to third-country foreign national employees and subcontractors prohibited by proviso in Singapore without authorization (ITAR §§ 127.1(a)(1) and 127.1(a)(4)).

(7) Thirty charges of retransferring without authorization night vision components manufactured using U.S.-origin ITAR-controlled technical data to NATO countries, Israel, Egypt, and Pakistan (ITAR § 127.1(a)(1)).

(8) One charge of transferring without authorization U.S.-origin ITAR-controlled technical data, and defense articles manufactured using such technical data, to Iran, a proscribed country (ITAR §§ 127.1(a)(1) and 126.1(a)(1)).

(9) Two charges of transferring without authorization a defense article manufactured using U.S-origin ITAR-controlled technical data to Cyprus, a proscribed country (ITAR §§ 127.1(a)(1) and 126.1(a)(1)).

(10) Ten charges of retransferring technical data without authorization to subcontractors in Belgium, Germany, Hungary, the Netherlands, Russia, Singapore, Switzerland, and the United Kingdom (ITAR §§ 127.1(a)(1) and 127.1(a)(4)).

Penalty

$25 million, of which $15 million is payable within thirty days of settlement, $5 million is eligible to be credited toward preexisting compliance measures, and $5 million is applied over a three-year period toward directed remediation.

Directed Remediation

(1) Appoint within forty-five days of settlement an internal SCO, subject to DDTC's prior and continuing

approval, with a requirement that the SCO report on compliance to senior corporate and legal management, and to DDTC, at specified times for the appointment term.

(2) Conduct an internal review within one hundred twenty days to establish the necessary actions to ensure that sufficient resources are dedicated to compliance, including the use of additional resources from compliance cross-trained employees on a part time basis when needed. Ensure that adequate resources are dedicated to ITAR compliance and establish policies and procedures to address lines of authority, staffing, performance evaluations, career paths, promotions, and compensation for employees with ITAR compliance responsibility.

(3) Establish legal department oversight of trade compliance within thirty days of settlement.

(4) Agree to arrange and facilitate DDTC on-site reviews with minimum notice for the term of the consent agreement.

(5) Strengthen policies, procedures, and training within twelve months of settlement.

(6) Conduct an external audit, subject to prior DDTC approval of the auditor and audit plan, and submit a final report of findings and recommendations within eighteen months of settlement. Complete a follow-up audit to confirm implementation of any recommended improvements before the two-and-a-half year anniversary of settlement.

(7) Certify to DDTC three months before the three-year anniversary of settlement that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate, with the understanding that the terms of the consent agreement remain in force until DDTC lifts them following certification.

Lockheed Martin Corporation (2008)

Settled

August 1, 2008.

Summary

Lockheed settled charges concerning the unauthorized exportation of classified and unclassified technical data pertaining to missile systems, as well as charges concerning the failure to provided required notice to DDTC for proposals to sell significant military equipment. DDTC noted that Lockheed voluntarily disclosed the violations and implemented remedial measures, which the Department considered a significant mitigating factor in determining sanctions.

Charges

Eight violations, as follows:

(1) Three charges of failing to provide prior notice for proposals to sell significant military equipment; namely, Hellfire missiles to the United Arab Emirates (ITAR § 126.8(a)(2)).

(2) One charge of exporting technical data in the form of performance specifications for the Hellfire missile without authorization to the United Arab Emirates (ITAR § 127.1(a)(1)).

(3) One charge of exporting classified technical data in the form of performance specifications for the Hellfire missile without authorization to the United Arab Emirates (ITAR § 125.3(a)).

(4) Two charges of failing to follow proper Defense Department procedures for exporting to foreign persons classified technical data concerning, inter alia, the Joint Air-to-Surface Standoff missile (ITAR § 125.3(b)).

(5) One charge of failing to obtain a non-transfer and use certificate (Form DSP-83) for the exportation of classified technical data (ITAR § 123.10(a)).

Penalty

$4 million, of which $1 million is applied over two years to directed remediation.

Directed Remediation

(1) Establish full corporate legal department oversight of trade compliance within thirty days of settlement and continue local legal department oversight at the operating level.

(2) Appoint an internal SCO, subject to DDTC's prior and continuing approval, within sixty days of settlement for two years, with a requirement that the SCO report on compliance to senior corporate and legal management, and to DDTC, at specified times for the appointment term.

(3) Conduct an internal review of ITAR compliance resources throughout four specified business units within its Electronic Systems business segment within 120 days of settlement.

(4) Provide status reports to DDTC on compliance program improvements within six month of settlement and semi-annually thereafter.

(5) Modify procedures as necessary within thirty days of settlement to ensure compliance with ITAR notification and authorization requirements regarding proposals and presentations concerning the sale of significant military equipment to foreign persons.

(6) Agree to arrange and facilitate a DDTC on-site review with minimum notice for two years.

(7) Ensure that adequate resources are dedicated to ITAR compliance and establish policies and procedures to address lines of authority, staffing, performance evaluations, career paths, promotions, and compensation for employees with ITAR compliance responsibility.

(8) Provide external training within 120 days of settlement, with a focus on the areas of concern identified in the draft charging letter. Commission an independent evaluation of the effectiveness of the training within prescribed timelines. Maintain detailed training records.

(9) Conduct an external audit, subject to prior DDTC approval of the auditor and audit plan, and submit a final report of findings and recommendations within two years of settlement.

(10) Certify to DDTC at the conclusion of the two-year term that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

(11) Incorporate the foregoing measures into any ITAR-affected business acquisitions, notify DDTC thirty days prior to any contemplated sale of the Missiles and Fire Control business unit, and require the purchaser in such case to agree to be bound by the terms of the settlement, including the foregoing measures.

The Boeing Company (2008)

Settled

June 17, 2008

Summary

Boeing settled charges that it engaged in what DDTC characterized in its charging letter as a "serious, systemic, and longstanding" pattern of administrative violations over the course of a thirty-year period in connection with the valuation of manufacturing license agreements. DDTC noted that Boeing voluntarily disclosed the violations and implemented remedial measures, which the Department considered a significant mitigating factor in determining sanctions.

Charges

Forty violations, as follows:

(1) Twenty charges of violating license conditions by exceeding the values of DDTC-approved manufacturing license agreements (ITAR § 127.1(a)(4)).

(2) Ten charges of failing to submit required amendments DDTC-approved manufacturing license agreements (ITAR § 124.1(c)).

(3) Five charges of omitting material facts from submissions for the approval of manufacturing license agreements by understating the value of the agreements (ITAR § 127.2(a)).

(4) Five charges of failing to abide by the administrative terms and conditions associated with the approval of manufacturing license agreements (ITAR §§ 127.1(a)(4), 127.2, and 124.1(c)).

Penalty

$3 million, none of which is allocated to directed remediation.

Directed Remediation

(1) Strengthen policies, procedures, and training within twelve months of settlement, especially regarding the administration of manufacturing license agreements and technical assistance agreements. Maintain detailed training records.

(2) Continue to implement an automated export compliance system to strengthen internal controls over the administration of manufacturing license agreements and technical assistance agreements.

(3) Conduct an external audit, subject to prior DDTC approval of the auditor and audit plan, and submit a final report of findings and recommendations within eighteen months of settlement. Complete a follow-up audit to confirm implementation of any recommended improvements before the two-and-a-half year anniversary of settlement.

(4) Certify to DDTC at the conclusion of the three-year term of the consent agreement that remedial measures have been implemented pursuant to the agreement and that the compliance program is adequate.

(5) Incorporate the foregoing measures into any business acquisitions that are involved in the administration of manufacturing license agreements or technical assistance agreements within six months of acquisition.

Northrop Grumman Corporation (2008)

Settled

March 25, 2008

Summary

Northrop settled charges that, between 1994 and 2003, Northrop and its predecessor in interest, Litton Industries, Inc. (acquired in 2001), exported militarized versions of aircraft inertial navigation systems, as well as related software source code and defense services, to unauthorized end users, including in proscribed destinations. DDTC noted that Northrop voluntarily disclosed the violations and cooperated with DDTC's subsequent investigation, which the Department considered a significant mitigating factor in determining sanctions.

Charges

One hundred ten violations, as follows:

(1) One charge of exporting technical data in the form of software related to significant military equipment used for Air Force One without authorization to an end user in Russia (ITAR § 127.1(a)(1)).

(2) Twenty-seven charges of exporting defense articles constituting significant military equipment, including technical data in the form of embedded software, without authorization to ITAR-proscribed countries; namely, Angola, Indonesia, China, and Ukraine (ITAR § 126.1(e)).

(3) Twenty-seven charges of failing to report an exportation to a proscribed country (ITAR § 126.1(e)).

(4) Forty-six charges of exporting defense articles constituting significant military equipment, including technical data in the form of embedded software, without authorization to end users in Austria, Brazil, Brunei, Greece, Israel, Malaysia, Singapore, South Korea, Thailand, the United Kingdom, and Yemen (ITAR § 127.1(a)(1)).

(5) One charge of exporting defense services to end users in Brazil, Indonesia, Israel, Malaysia, Singapore, and the United Kingdom (ITAR § 127.1(a)(1)).

(6) One charge of exporting technical data constituting significant military equipment in the form of software without authorization to Canada (ITAR § 127.1(a)(1)).

(7) One charge of reexporting defense articles constituting significant military equipment, including technical data in the form of embedded software, without authorization to end users in Romania, South Korea, Indonesia, and the United Kingdom (ITAR § 127.1(a)(1)).

(8) Five charges of exporting technical data constituting significant military equipment in the form of software without authorization to the United Kingdom (ITAR § 127.1(a)(1)).

(9) One charge of failing to obtain a non-transfer and use certificate (Form DSP-83) for the exportation and reexportation of significant military equipment; namely, defense articles and technical data in the form of software (ITAR § 123.10(a)).

Penalty

$15 million, allocated as follows: (1) $10 million payable in annual installments over a three-year period (three $3 million payments and one $1 million payment); (2) $5 million suspended on the condition that $4 million be allocated toward directed remediation over three years, with $1 million credited for compliance measures implemented since 2004.

Directed Remediation

(1) Appoint an internal SCO, subject to DDTC's prior and continuing approval, within sixty days of settlement for three years, with a requirement that the SCO report on compliance to the senior management, the Compliance, Public Issues and Policy Committee of the Board of Directors ("CPIP"), the Export/Import Policy Council, and DDTC at specified times for the appointment term.

(2) Conduct an internal review of ITAR compliance resources within 120 days of settlement.

(3) Establish legal department oversight of trade compliance within thirty days of settlement.

(4) Agree to arrange and facilitate a DDTC on-site review with minimum notice for three years.

(5) Strengthen policies, procedures, and training within twelve months of settlement, including training Empowered Officials on identifying ITAR controlled items and services, and preparing commodity jurisdiction requests, within 180 days of settlement.

(6) Conduct an external audit, subject to prior DDTC approval of the auditor and audit plan, and submit a final report of findings and recommendations within eighteen months of settlement. Conduct a follow-up audit to confirm implementation of any recommended improvements at the two-and-a-half year anniversary of settlement.

(7) Continue to implement comprehensive automated export compliance systems to strengthen internal controls for ensuring ITAR compliance, and provide to DDTC semi-annual updates outlining the status of the systems commencing six months from settlement. The systems will automate processes involving jurisdiction/classification, license requests, hardware shipments, exportation of technical data and defense services, and denied party screening. Additionally, the systems will track the decision process from the initiation of a request for potential export authorization or clarification of an existing authorization to its conclusion to facilitate oversight and monitoring, as well as cover the identification, review, and approval of technical data and defense services prior to exportation.

(8) Develop a means to alert users to ITAR requirements regarding electronic transmissions of ITAR-controlled

technical data, and train all employees with electronic accounts to prevent unintentional or accidental unauthorized transmissions.

(9) Issue a reminder within thirty days of settlement of the availability of the company's ethics hotline for reporting concerns, and submit an annual report to DDTC evaluating the hotline's effectiveness.

(10) Certify to DDTC at the conclusion of the three-year term that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

(11) Incorporate the foregoing measures into any ITAR-affected business acquisitions, notify DDTC three months prior to any contemplated sale of the Electronic Systems Sector, and require the purchaser in such case to agree to be bound by the terms of the settlement, including the foregoing measures.

ITT Corporation (2007)

Civil Case

Settled

December 21, 2007

Summary

ITT settled charges that it violated the ITAR in connection with the unauthorized exportation of night vision products and technology.

Charges

Two hundred eight[384] violations, as follows:

(1) One charge of misrepresenting and omitting material facts in connection with a prior voluntary disclosure (ITAR § 127.2(a)).

(2) One hundred sixty-two charges of exporting technical data constituting significant military equipment to Singapore, Hong Kong, and Canada (ITAR § 127.1(a)(1)) .

(3) Two charges of exporting defense articles without authorization to China, an ITAR-proscribed country (ITAR §§ 127.1(a)(1) and 126.1(a)).

(4) Thirty-six charges of causing or conspiring to make the unauthorized exportation of technical data to Singapore, Israel, India, and Hong Kong (ITAR § 127.1(a)(3)).

(5) One charge of causing or conspiring to make the unauthorized exportation of technical data to China, an ITAR-proscribed country (ITAR § 127.1(d)).

(6) One charge of failing to report an exportation to a proscribed country (ITAR § 126.1(e)).

(7) One charge of misrepresenting and omitting material facts from a permanent export license application (ITAR § 127.2(a)).

(8) One charge of failing to obtain a non-transfer and use certificate (Form DSP-83) for the exportation of significant military equipment and classified technical data (ITAR § 123.10(a)).

(9) One charge of exporting classified technical data without authorization to the United Kingdom (ITAR §§ 127.1(a)(1) and 125.3).

(10) One charge of failing to file a Shippers Export Declaration in connection with an unauthorized exportation of technical data (ITAR § 123.22(b)).

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[384] The draft charging letter contains a discrepancy; *i.e.*, 208 charges are alleged but 207 charges are described in the corresponding charging paragraphs.

Penalty

$28 million, allocated as follows: (1) $20 million, payable in $4 million annual installments commencing within ten days of settlement; (2) $8 million, $3 million of which is credited from the prior 2004 settlement with DDTC described further below, and $5 million of which is applied toward directed remediation over a five-year period.

In addition, ITT Night Vision Division was debarred from ITAR-controlled defense trade for three years, with leave to petition for reinstatement after March 28, 2007. Specific transaction exceptions to the debarment may be granted on a case-by-case basis, when based on overriding national security and foreign policy interests.

DDTC lifted ITT Night Vision Division's debarment, effective February 4, 2010.

Directed Remediation

(1) Appoint an outside SCO, (who may also serve as the independent monitor required in connection with the related criminal matter described below), subject to DDTC approval, for a minimum of four years, to be succeeded by an internal SCO for an additional year, with a requirement that the SCO report on compliance to senior management, the board of directors, and DDTC every ninety days for the first six months, and semi-annually thereafter for the remainder of the term.

(2) Continue to promote and publicize the availability of the company's Ombudsman Program for reporting suspected violations without fear of retaliation, and report on the program's effectiveness semiannually.

(3) Strengthen compliance policies, procedures, and training within twelve months of settlement.

(4) Continue to implement a comprehensive automated export compliance system to strengthen internal controls for ensuring ITAR compliance. The system will cover the initial identification of all technical data and technical assistance and will be accessible to DDTC on request.

(5) Continue the internal export process review of ITT Night Vision as required under the previous 2004 settlement with DDTC, under the supervision of a process analysis expert independent from the existing export compliance function at ITT Night Vision. Provide DDTC with the status of the verification plan for the review within sixty days of settlement and a final report within 120 days of receipt of DDTC's final comments on the verification plan.

(6) Conduct an external audit using outside legal counsel, subject to prior DDTC approval of the auditor and audit plan, and submit a final report of findings and recommendations to DDTC within twenty-four months of settlement.

(7) Develop a means to alert users to ITAR requirements regarding electronic transmissions of ITAR-controlled technical data, and train all employees with electronic accounts to prevent unintentional or accidental unauthorized transmissions.

(8) Agree to arrange and facilitate a DDTC on-site review with minimum notice for three years, with the understanding that any such review may be coordinated with reviews conducted pursuant to the settlement terms of the related criminal matter described below.

(9) Certify to DDTC at the conclusion of the five-year term that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

(10) Incorporate the foregoing measures into any ITAR-affected business acquisitions within six months of acquisition, notify DDTC thirty days prior to any contemplated sale of the Night Vision or Aerospace/ Communications business divisions, and require the purchaser in such case to agree to be bound by the terms of the settlement, including the foregoing measures.

Criminal Case

Settled

March 27, 2007

Summary

On March 27, 2007, ITT and the U.S. Justice Department entered into a Deferred Prosecution Agreement under which ITT agreed to plead guilty to criminal charges filed by the Department concerning the unauthorized exportation of night vision products and technology. The Department and ITT agreed to file a "joint deferral motion" and the Department agreed to seek dismissal of one of the charges if ITT complies with all of its obligations under the Agreement at the end of the five-year deferral period. If ITT has fully and successfully implemented an agreed Remedial Action Plan under the Agreement in three years, as determined by a Justice Department review, the Department will seek an earlier dismissal of the charge in question, and the Agreement will be considered completed, except for the investments in advanced night vision technology, which will continue for the full five-year period.

Charges

Three counts, as follows:

(1) Willful exportation of defense articles without a license (on or between March 2001 and August 2001) (22 U.S.C. §§ 2778(b)(2) and (b)(3); ITAR §§ 127.1(a) and 127.3).

(2) Willful omission of statements of material fact in arms exports reports (on or between April 2000 and October 2004) (22 U.S.C. § 2778(c); 18 U.S.C. § 2).

(3) Willful exportation of defense articles without a license (on or between January 1996 and May 2006) (22 U.S.C. §§ 2778(b)(2) and (b)(3); ITAR §§ 127.1(a) and 127.3). The Department agreed to defer and seek dismissal of this charge.

Penalty

$100,000,800, allocated as follows: (1) $2,000,800 for fines and special assessments;

(2) $28,000,000 for forfeited proceeds and reimbursement of U.S. government investigative costs; (3) $50,000,000 for research and development of advanced night vision technology for the benefit of the U.S. government over a five year period (in lieu of a suspended criminal penalty); and (4) $20,000,000 civil penalty to DDTC (in connection with a consent agreement the terms of which are summarized above). In addition, DDTC debarred ITT Night Vision Division, permitting petition for reinstatement after March 28, 2007. The Justice Department did not allocate any penalty funds toward directed remediation.

Directed Remediation

(1) Retain an independent monitor selected by the United States to monitor ITT's compliance with the Remedial Action Plan for five years after the date of the order granting the joint deferral motion.

(2) Undertake a Remedial Action Plan, which includes:

a. annual compliance certifications by business unit leaders and the CEO, to be provided no later than June for each year the Agreement is in effect;

b. establishing an Executive Manager of Compliance;

c. annual training programs, the first of which is to take place within nine months of the order granting the joint deferral motion;

d. maintaining a record of all training for ten years after the order granting the joint deferral motion;

e. mandatory reporting of all ITAR/EAR violations within one week of discovery;

f. completing a classified materials disclosure and security audit within one year of the order granting the joint deferral motion;

g. performing a compliance audit within two years of the order granting the joint deferral motion, and correcting identified deficiencies within thirty months of the order.

Lockheed Martin Sippican (2006)

Settled

December 12, 2006

Summary

Lockheed settled charges that its subsidiary (then Sippican, Inc.) violated the conditions of technology transfer approvals related to a joint U.S.-Australia naval missile decoy program. Although the alleged violations predate Lockheed's acquisition of Sippican, Lockheed was charged under the theory of successor liability.

Charges

Six violations, as follows:

(1) One charge of disclosing technical data exceeding the scope of the applicable technical assistance agreement and in violation of one of the agreement's provisos (ITAR § 127.1(a)(4)).

(2) One charge of disclosing technical data following the lapse of the applicable technical assistance agreement (ITAR § 127.1(a)).

(3) One charge of disclosing technical data to unauthorized recipients (ITAR § 127.1).

(4) One charge of failing to establish a Defense Security Service approved Technology Control Plan and provide a copy of the same to DDTC, as required by the applicable technical assistance agreement (ITAR § 127.1(a)(4)).

(5) One charge of transferring unauthorized classified technical data (ITAR § 125.3).

(6) One charge of using an export control document containing a false statement or misrepresenting or omitting a material fact for failing to notify DDTC in a subsequent application for a technical assistance agreement that unauthorized technical data transfers took place outside the scope of the previous related agreement data (ITAR § 127.2(a)).

Penalty

$3 million, none of which is allocated to directed remediation.

Directed Remediation

(1) Establish legal department oversight of trade compliance within thirty days of settlement.

(2) Appoint an internal SCO, subject to DDTC approval, within sixty days of settlement for two years, with a requirement that the SCO report on compliance to the senior management and to DDTC semi-annually for the appointment term.

(3) Strengthen compliance training within 120 days of settlement, especially concerning classified information procedures and compliance with agreement provisos.

(4) Submit to DDTC for review and concurrence within 150 days of settlement a white paper proposing the establishment of a comprehensive export compliance system, accessible to DDTC, to strengthen internal controls for tracking the decision process from the initiation of a request for potential export authorization or clarification of an existing authorization to its conclusion. Implement the same within 180 days of DDTC's concurrence with the proposal.

(5) Conduct an internal audit, subject to DDTC approval of a draft verification plan to be submitted within twelve months of settlement, and submit a final report of findings and recommendations to DDTC within 210 days of DDTC's concurrence with verification plan.

(6) Agree to arrange and facilitate a DDTC audit with minimal notice for two years.

(7) Certify to DDTC at the conclusion of the two-year term that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

Security Assistance International, Inc. and Henry L. Lavery III

Settled

December 12, 2006

Summary

Defense trade consulting firm settled charges that it committed improprieties concerning the submission of an ITAR license application on behalf of a client not properly registered with DDTC and the failure to comply with ITAR administrative requirements.

Charges

Four violations, as follows:

(1) One charge of omitting material facts from a temporary export license application (ITAR § 127.2(a)).

(2) One charge of aiding and abetting an unregistered U.S. company in obtaining a temporary export license that it was ineligible to receive (ITAR § 127.1(d)).

(3) One charge of failing to maintain records as prescribed by the ITAR (ITAR §§ 127.1(d) and 122.5).

(4) One charge of violating the terms of a temporary import license by failing to provide required export documentation (ITAR § 127.1(a)(4)).

Penalty

$75,000 (suspended) and administrative debarment, with leave to apply for reinstatement after one year.

Directed Remediation

None.

L3 Communications Corporation/L3 Titan Corporation (2006)

Settled

October 18, 2006

Summary

L-3 settled charges that its subsidiary Titan failed to report commissions paid to third parties in its applications for exports of defense articles to France, Japan, and Sri Lanka, and that Titan made false statements in those applications that there were no reportable commissions. Although the alleged violations predate L-3's acquisition of Titan, L-3 was charged under the theory of successor liability.

Charges

Six violations, as follows:

(1) Three charges of making false statements on an export or temporary control document (ITAR §§ 127.1(d) and 127.2).

(2) Three charges of failing to report commissions as required by ITAR Part 130 (ITAR §§ 127.1(d), 130.9 and 130.10).

Penalty

$1.5 million, of which $500,000 is applied over three years to directed remediation.

Directed Remediation

(1) Strengthen policies, procedures, and training within six months of settlement, especially in the areas of fees and commissions (ITAR Part 130), brokering, exemptions, role of empowered official, and fines and penalties.

(2) Engage an outside advisor within thirty days of settlement to improve Part 130 compliance.

(3) Submit improved Part 130 compliance policies and procedures to DDTC within nine months of settlement.

(4) Conduct an external audit of Part 130 compliance within twelve months of settlement, and report findings and recommendations to DDTC within eighteen months of settlement.

(5) Agree to arrange and facilitate a DDTC audit with minimal notice for three years.

(6) Issue a reminder within thirty days of settlement that L-3's general counsel office provides oversight on trade compliance.

(7) Certify to DDTC on the second anniversary of settlement and at the conclusion of the three-year term that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

The Boeing Company (2006)

Settled

March 28, 2006

Summary

Boeing settled charges concerning the unauthorized exportation of the QRS-11 quartz rate sensor, a defense article controlled under Category XII of the U.S. Munitions List.

Charges

Eighty-six violations as follows:

(1) Seventeen charges of exporting defense articles without authorization after the manufacturer informed the respondent that the QRS-11 was a defense article (all instances involving China, an ITAR-proscribed country) (ITAR §§ 127.1(a)(1), 126.1(a) and 126.1(e)).

(2) Two charges of exporting defense articles without authorization after DDTC informed the respondent that the QRS-11 was a defense article (one instance involving China) (ITAR §§ 127.1(a)(1), 126.1(a) and 126.1(e)).

(3) Forty charges of exporting defense articles without authorization after DDTC's Managing Director informed the respondent that the QRS-11 was a defense article (two instances involving China) (ITAR §§ 127.1(a)(1), 126.1(a) and 126.1(e)).

(4) Eight charges of misrepresenting or omitting material facts on an export or temporary control document (ITAR § 127.2(a)).

(5) Fifteen charges of making false statements on an export or temporary control document (ITAR § 127.2(a)).

(6) Three charges of failing to file a Shipper's Export Declaration (ITAR § 123.22(b)).

(7) One charge of failing to report an exportation to a proscribed country (ITAR § 126.1(e)).

Penalty

$15 million. Noting Boeing's enforcement record (three prior settlements since 1998), DDTC did not allocate any penalty funds to directed remediation, requiring instead that Boeing pay those costs out of pocket.

Directed Remediation

(1) Create a senior management position within 120 days of settlement responsible for compliance throughout the company, with a position description to DDTC, and a requirement to provide annual compliance reports to DDTC for three years, as well as meet with the SCO on no less than a quarterly basis for three years.

(2) Appoint an outside SCO, subject to DDTC approval, for a minimum of two years, to be succeeded by an internal SCO for an additional year, with a requirement that the SCO report on compliance to senior management, the board of directors, and DDTC every ninety days for the first six months, and semi-annually thereafter for the remainder of the term.

(3) Strengthen compliance policies, procedures, and training, especially in the area of commodity classification.

(4) Conduct an external audit no later than eighteen months after settlement, subject to prior DDTC approval of audit plan, and report findings and recommendations to DDTC no later than two years after settlement.

(5) Agree to arrange and facilitate a DDTC audit with minimum notice for three years.

(6) Certify to DDTC at the conclusion of the three-year term that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

Goodrich Corporation/L3 Communications Corporation (2006)

Settled

March 28, 2006

Summary

Goodrich and L-3 Communications settled charges that a former Goodrich subsidiary acquired by L-3: (1) omitted material facts in a commodity jurisdiction determination (specifically, that the commodity in question contained the QRS-11 quartz rate sensor, a defense article controlled under Category XII of the U.S. Munitions List); and (2) exported or caused the exportation of the QRS-11 without authorization. L-3 was charged under the theory of successor liability.

Charges

Twenty-six violations, as follows:

(1) One charge of omitting material facts from an export or temporary control document (ITAR § 127.2).

(2) Twenty-five charges of exporting defense articles without authorization (ITAR §§ 127.1(a)(1) and 127.1(a)(3)).

Penalty

$7 million, of which $1.25 million is payable by Goodrich and $2 million by L-3, and $3.75 million is applied to directed remediation over three years ($1.75 million for Goodrich and $2 million for L-3).

Directed Remediation

Applicable both to Goodrich and L-3:

(1) Appoint an internal SCO, subject to DDTC approval, within fifteen days of settlement for three years, with a requirement that the SCO report on compliance to the senior management, board of directors, and DDTC every ninety days for the first six months, and semi-annually thereafter for the remainder of the term.

(2) Submit to DDTC a draft plan for a review (to be conducted by an independent consultant in L-3's case) of export classification procedures and practices spanning the previous seven years, within ninety days of settlement, and following the review report findings and recommendations to senior management and DDTC within twelve months of settlement.

(3) Submit to DDTC within sixty days of settlement a plan to strengthen compliance policies, procedures, and training within 270 days, especially in the area of commodity classification.

(4) Issue a reminder within thirty days of settlement that the company's general counsel office provides oversight on trade compliance.

(5) Submit to DDTC within 150 days of settlement a white paper proposing the establishment of an electronic export compliance system to track the classification and jurisdiction of products down to the component and part level, and implement the initial phase of the system within twelve months of settlement.

(6) Issue a reminder within thirty days of settlement (sixty for L-3) of the availability of the company's ethics hotline for reporting concerns, and submit an annual report to DDTC evaluating the hotline's effectiveness.

(7) Conduct an external audit, subject to prior DDTC approval of audit plan, to be commenced no later than two years after settlement, and report findings and recommendations to DDTC by the third anniversary.

(8) Agree to arrange and facilitate a DDTC audit with minimum notice for three years.

(9) Certify to DDTC at the conclusion of the three-year term that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

Orbit/FR Inc. (2005)

Settled

August 29, 2005

Summary

Orbit/FR settled civil charges arising from its guilty plea in 2000 to two criminal violations of the AECA related to the unauthorized exportation of a missile and military aircraft radome measurement system, and the provision of defense services related to an antenna measurement system.

Charges

Four violations, as follows:

(1) Two charges of exporting defense articles without authorization to China, an ITAR-proscribed country (ITAR §§ 127.1(a)(1) and 126.1(e)).

(2) Two charges of providing unauthorized defense services to China (ITAR §§ 127.1(a)(1) and 126.1(e)).

Penalty

$500,000, of which $200,000 is applied to directed remediation over three years, and $200,000 is suspended.

Directed Remediation

(1) Appoint an outside SCO, subject to DDTC approval, for a minimum of two years, to be succeeded by an internal SCO for an additional year, with a requirement that the SCO report on compliance to the senior management, board of directors, and DDTC every sixty days for the first six months, and every ninety days thereafter for the remainder of the term.

(2) Strengthen policies, procedures, and training within 120 days of settlement.

(3) Establish senior management and legal department oversight of trade compliance within thirty days of settlement.

(4) Issue a reminder within thirty days of settlement of the availability of the company's ethics hotline for reporting concerns, and submit a quarterly report to senior management and DDTC evaluating the hotline's effectiveness.

(5) Conduct an external audit, subject to prior DDTC approval of audit plan, to be commenced no later than twelve months after settlement, and report findings and recommendations to DDTC by the second anniversary.

(6) Agree to arrange and facilitate a DDTC audit with minimum notice for three years.

(7) Certify to DDTC at the conclusion of the three-year term that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

Additional Undertakings

(1) Respondent's Israeli corporate parent agreed that its direct and indirect foreign subsidiaries would refrain from engaging in even wholly-non-U.S. defense trade with ITAR-proscribed countries (*e.g.,* China) for three years, and agreed to provide DDTC with compliance assurances prior to the resumption of such activities.

(2) Respondent agreed that its direct and indirect foreign subsidiaries would refrain from engaging in even wholly-non-U.S. defense trade with ITAR-proscribed countries (*e.g.*, China) for six years, and agreed to provide DDTC with compliance assurances prior to the resumption of such activities.

The DirecTV Group and Hughes Network Systems Inc. (2005)

Settled

January 26, 2005

Summary

Hughes Network Systems and its parent, DirecTV Group, settled charges concerning the unauthorized exportation of satellite-related technical data, defense services, and defense articles to foreign person employees and other end users, including in ITAR-proscribed countries.

Charges

Fifty-six violations, as follows:

(1) Nineteen charges of failing to report the exportation of technical data and defense services to China and India, ITAR-proscribed countries at the time (ITAR § 126.1(e)).

(2) Nineteen charges of exporting technical data and defense services without authorization to China and India (ITAR |§ 127.1(a)(1)).

(3) Three charges of willfully causing, or aiding and abetting, ITAR violations (ITAR § 127.1(d)).

(4) Fifteen charges of exporting technical data, defense services, and defense articles without authorization to non-proscribed countries (ITAR § 127.1(a)(1)).

Penalty

$5 million, of which $1 million is applied over three years to directed remediation. In addition, DDTC debarred Hughes Network Systems (Beijing) Co. Ltd., permitting petition for reinstatement after May 14, 2005.

Directed Remediation

(1) Continue to implement directed remedial measures imposed under March 2003 consent agreement between DDTC and Hughes Electronics Corporation (now DirectTV) (see below).

(2) Participate on a "lessons learned" panel during a 2005 defense trade seminar sponsored by the Society for International Affairs

(3) Review existing compliance program and provide report of findings to DDTC within ninety days of settlement.

(4) Conduct an audit within 180 days of Hughes Network Systems (Beijing) Co. Ltd. and other foreign

subsidiaries involved in the activities at issue, and report findings and recommendations within thirty days of completing audit.

(5) Certify to DDTC at the conclusion of the three-year term that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

ITT Industries (2004)

Settled

November 1, 2004

Summary

ITT Industries settled charges concerning the unauthorized exportation of night vision products and the unauthorized exportation of space remote sensing technical data and defense services.

Charges

Ninety-five violations, as follows:

(1) Twenty-one charges of violating the terms of temporary export licenses (ITAR §§ 123.5(a) and 127.1(a)(4)).

(2) Seventy-two charges of failing to comply with license provisos when exporting defense articles (ITAR § 127.1(a)(4)).

(3) Two charges of failing to comply with technical assistance agreement provisos when exporting technical data and defense services (ITAR § 127.1(a)(4)).

Penalty

$8 million, of which $5 million is applied to directed remediation over five years.

Directed Remediation

(1) Designate a Director, International Trade and Compliance, who must report on compliance to the senior management, board of directors, and DDTC every ninety days for the first six months, and semi-annually thereafter for the remainder of the term.

(2) Strengthen policies, procedures, and training within 270 days of settlement.

(3) Submit to DDTC within 180 days of settlement a white paper proposing the establishment of an automated export compliance system, and implement the system within 180 days of DDTC's concurrence with proposal.

(4) Establish legal department oversight of trade compliance within thirty days of settlement.

(5) Publicize within sixty days of settlement the availability of the company's Ombudsman Program for reporting concerns, with a semi-annual report to senior management and DDTC evaluating the hotline's effectiveness.

(6) Conduct an independent audit of ITT Night Vision, subject to DDTC approval within 120 days of settlement of draft verification plan, and submit a final report of findings and recommendations to DDTC within 210 days of DDTC's concurrence with verification plan.

(7) Conduct a comprehensive audit of directed remedial measures within twelve months of DDTC approval of audit plan, which must be submitted to DDTC within twelve months of settlement.

(8) Agree to arrange and facilitate a DDTC audit with minimum notice for five years.

(9) Certify to DDTC at the conclusion of the five-year term that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

General Motors Corporation and General Dynamics Corporation (2004)

Settled

November 1, 2004

Summary

General Motors, and General Dynamics as successor owner of portions of General Motors' defense activities, settled charges concerning the unauthorized exportation of technical data about light armored vehicles to foreign person employees, including nationals of proscribed countries.

Charges

Two hundred forty-eight violations, as follows:

(1) Thirteen charges of failing to report the exportation of technical data to foreign person employees who were nationals of ITAR-proscribed countries; specifically, China, Syria, Iran, and Afghanistan (ITAR § 126.1(e)).

(2) Thirteen charges of exporting technical data without authorization to foreign person employees who were nationals of ITAR-proscribed countries (ITAR § 127.1(a)(1)).

(3) Thirteen charges of willfully causing, or aiding and abetting, ITAR violations (ITAR § 127.1(d)).

(4) Fifty-four charges of violating license conditions (ITAR § 127.1(a)(4)).

(5) Fifty-four charges of failing to account for the acts of employees, agents, and authorized persons (ITAR § 127.1(b)).

(6) Fifty charges of exporting technical data without authorization to employees who were foreign nationals or dual nationals (ITAR § 127.1(a)(1)).

(7) Fifty charges of exporting technical data and defense services without authorization to foreign vendors and suppliers (ITAR §§ 127.1(a)(1) and 126.5).

(8) One charge of misrepresenting or omitting material facts on an export or temporary control document (ITAR § 127.2(a)).

Penalty

$20 million, of which $10 million is payable by General Motors, and $10 million is applied to directed remediation ($5 million each to General Motors and General Dynamics) for five years.

Directed Remediation

General Dynamics

(1) Designate a Director, Trade Compliance, who must report on compliance to the senior management, board of directors, and DDTC every sixty days for the first six months, and semi-annually thereafter for the remainder of the term.

(2) Strengthen compliance training within 120 days of settlement.

(3) Submit to DDTC within ninety days of settlement a white paper proposing the establishment of a Computer Compliance Control System, and implement the system within 180 days of DDTC's concurrence with proposal.

(4) Establish legal department oversight of trade compliance within 120 days of settlement.

(5) Issue a reminder within thirty days of settlement of the availability of the company's ethics hotline for reporting concerns, with a semi-annual report to senior management and DDTC evaluating the hotline's effectiveness.

(6) Conduct a comprehensive audit of directed remedial measures within twelve months of DDTC final comments on audit plan, which must be submitted to DDTC within twelve months of settlement, and report findings and recommendations to senior management and DDTC by the second anniversary of settlement.

(7) Agree to arrange and facilitate DDTC audit with minimum notice for five years.

(8) Certify to DDTC at the conclusion of the five-year term that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

General Motors

(1) Appoint an outside SCO, subject to DDTC approval, for three years, to be succeeded by an internal SCO for two years, with a requirement that the SCO report on compliance to the senior management and DDTC every sixty days for the first six months, and semi-annually thereafter for the remainder of the term.

(2) Strengthen compliance training within 180 days of settlement.

(3) Submit to DDTC within sixty days of settlement a white paper proposing the establishment of a comprehensive computerized export tracking system, and implement the system within 120 days of DDTC's concurrence with proposal.

(4) Establish legal department oversight of trade compliance within 180 days of settlement.

(5) Establish and publish within thirty days of settlement the availability of a hotline for reporting defense trade concerns, and submit a quarterly report to senior management and DDTC evaluating the hotline's effectiveness.

(6) Conduct a comprehensive audit of directed remedial measures within twelve months of DDTC final comments on audit plan, which must be submitted to DDTC within twelve months of settlement, and report findings and recommendations to senior management and DDTC.

(7) Agree to arrange and facilitate a DDTC audit with minimum notice for five years.

(8) Certify to DDTC at the conclusion of the five-year term that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

EDO Corporation (2003)

Settled

November 24, 2003

Summary

EDO Corporation, as successor to Condor Systems, Inc., settled civil charges arising from Condor's 2003 guilty plea to federal criminal charges regarding the unlawful exportation of a signal processing system to Sweden.

Charges

Forty-seven violations as follows:

(1) Four charges of exporting classified technical data without authorization (ITAR § 127.1(a)(1)).

(2) Eleven charges of exporting unclassified technical data without authorization (ITAR § 127.1(a)(1)).

(3) Four charges of exporting defense services without authorization (ITAR § 127.1(a)(1)).

(4) Twelve charges of violating license conditions (ITAR § 127.1(a)(4)).

(5) Three charges of making false statements on an export or temporary control document (ITAR § 127.2).

(6) Thirteen charges of omitting material facts from an export or temporary control document (ITAR § 127.2).

Penalty

$2.5 million, of which $575,000 is applied to directed remediation over three years, and $175,000 is credited for existing remedial measures.

Directed Remediation

(1) Appoint an outside SCO, subject to DDTC approval, for one year, to be succeeded by an internal SCO for two years, with a requirement that the SCO report on compliance to the senior management, board of directors, and DDTC every sixty days for the first six months, and every ninety days thereafter for the remainder of the term.

(2) Strengthen policies, procedures, and training within 120 days of settlement, especially in the area of acquisition due diligence.

(3) Establish legal department oversight of trade compliance within thirty days of settlement.

(4) Issue a reminder within thirty days of settlement of the availability of the company's ethics hotline for reporting concerns, and submit a quarterly report to senior management and DDTC evaluating the hotline's effectiveness.

(5) Conduct an external audit, subject to prior DDTC approval of audit plan, to be completed within 120 days of settlement, and report findings and recommendations to DDTC.

(6) Agree to arrange and facilitate a DDTC audit with minimum notice for three years.

(7) Certify to DDTC at the conclusion of the three-year term that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

Multigen-Paradigm Inc. (2003)

Settled

September 25, 2003

Summary

Multigen-Paradigm Inc. ("MPI") settled charges that it exported ITAR-controlled visual sensor simulation software, associated technical data, and defense services without authorization to numerous countries, including China. Computer Associates International Inc. ("CA") acquired MPI in 2000 and voluntarily disclosed the violations, which predated the acquisition. Although not named as a respondent, CA was specifically identified in the draft charging letter as being ultimately responsible for MPI's compliance both before and after the acquisition.

Charges

Twenty-four charges of exporting defense articles, technical data, and defense services without authorization to numerous countries, including China, an ITAR-proscribed country (ITAR §§ 127.1(a)1, 126.1(a) and 126.1(e)).

Penalty

$2 million, of which $250,000 is applied to directed remediation for three years, and $1.5 million is credited for existing remedial measures.

Directed Remediation

(1) Strengthen compliance training within 120 days of settlement.

(2) Establish legal department oversight of trade compliance within 120 days of settlement.

(3) Submit to DDTC within 120 days of settlement a report outlining an electronic tracking system that will enable the U.S. government to monitor the respondent's technical data and proposed technical assistance.

(4) Conduct a comprehensive audit of directed remedial measures within eighteen months of settlement, subject to DDTC's prior review of the audit plan, and report findings and recommendations to DDTC by the second anniversary of settlement.

(5) Agree to arrange and facilitate a DDTC audit with minimum notice for three years.

(6) Certify to DDTC at the conclusion of the three-year term that remedial measures have been implemented pursuant to the consent agreement and that the compliance program is adequate.

Agilent Technologies Inc. (2003)

Settled

August 20, 2003

Summary

Agilent settled charges that SAFCO Technologies Inc., which it acquired in 2000, exported ITAR-controlled signal processing equipment to Israel and Singapore without authorization, prior to Agilent's acquisition of SAFCO.

Charges

Three charges of exporting defense articles without authorization (ITAR § 127.1(a)(1).

Penalty

$225,000.

Directed Remediation

None.

Hughes Electronics Corporation & Boeing Satellite Systems (2003)

Settled

March 4, 2003

Summary

Hughes Electronics Corporation and Boeing Satellite Systems ("BSS") settled charges concerning the unauthorized exportation of satellite technology to China. The Boeing Company acquired BSS (formerly Hughes Space and Communications) in 2000, and BSS was charged under a theory of successor liability.

Charges

One hundred twenty-three violations as follows:

(1) One hundred thirteen charges of exporting technical data and defense services without authorization to China, an ITAR-proscribed country (ITAR §127.1(a)(1)).

(2) Five charges of proposing the exportation of defense services, or failing to report the exportation of technical data and defense services, to China, an ITAR-proscribed country (ITAR § 126.1(e)).

(3) One charge of conspiring or causing the unauthorized exportation of defense services (ITAR §127.1(a)(3)).

(4) Two charges of willfully causing, aiding, abetting, counseling, demanding, inducing, procuring, or permitting ITAR violations (ITAR § 127.1(d)).

(5) One charge of misrepresenting or omitting material facts on an export or temporary control document

(ITAR § 127.2).

(6) One charge of failing to report commissions as required by ITAR Part 130 (ITAR § 130.9).

Penalty

$32 million, of which $8 million is applied to directed remediation over seven years ($6 million to BSS and $2 million to Hughes), and $4 million is credited to existing remedial measures ($2 million to each respondent).

Directed Remediation

Applicable both to Hughes and BSS:

(1) Appoint an outside SCO, subject to DDTC approval, for three years, to be succeeded by an internal SCO for two years, with a requirement that the SCO report on compliance to the senior management, board of directors, and DDTC every sixty days for the first six months, and semi-annually thereafter for the remainder of the term.

(2) Strengthen compliance training within 120 days of settlement.

(3) Hughes to institute a comprehensive computerized document control system within 120 days of settlement that will enable the U.S. government to monitor the respondent's technical data and proposed technical assistance. BSS to provide DDTC with access to existing "Space Link System" within sixty days.

(4) Establish legal department oversight of trade compliance within 120 days of settlement.

(5) Establish a hotline for reporting defense trade concerns within 120 days of settlement (thirty days for BSS), and submit a quarterly report to in-house counsel and DDTC evaluating the hotline's effectiveness.

(6) Conduct a comprehensive audit of directed remedial measures within eighteen months of settlement, subject to DDTC's prior review of the audit plan, and report findings and recommendations to DDTC by the second anniversary of settlement.

(7) Agree to arrange and facilitate a DDTC audit with minimum notice for seven years.

Raytheon Company (2003)

Settled

February 27, 2003

Summary

Raytheon Company settled civil charges with the Justice Department concerning the unauthorized exportation of defense articles, technical data, and defense services to Canada and to Pakistan, and the unauthorized retransfer of defense articles through Canada to Pakistan, concerning the AN/TRC-170 troposcatter system.

Charges

Twenty-six violations, as follows:

(1) Fifteen charges of exporting defense articles and technical data without authorization (ITAR §127.1(a)(1)).

(2) Six charges of conspiring or causing the unauthorized exportation of defense articles or defense services (ITAR §127.1(a)(3)).

(3) Four charges of omitting material facts or making false statements on an export or temporary control document (ITAR § 127.2).

(4) One charge of willfully inducing, or aiding and abetting, ITAR violations (ITAR § 127.1(d)).

Penalty

$25 million, of which $20 million is payable to U.S. Customs in lieu of forfeiture, $3 million is payable as a

civil penalty, and $2 million is applied to directed remediation.

Directed Remediation

(1) Appoint an outside SCO, subject to DDTC approval, for one year, to be succeeded by an internal SCO for two years (which DDTC in its discretion may waive if satisfied by remedial measures within the first year), with a requirement that the SCO report on compliance to the senior management, board of directors, and DDTC quarterly for the first six months, and semiannually thereafter for the remainder of the term.

(2) Agree to arrange and facilitate a DDTC audit with minimum notice for the settlement term.

Dr. Wah Lim (2002)

Settled

January 10, 2002

Summary

Dr. Lim settled charges arising from his conduct related to the Space Systems/Loral case described immediately below.

Penalty

$100,000, of which $50,000 is suspended. In addition, Dr. Lim was debarred for three years, with debarment suspended after the first year on the condition that he comply with the ITAR.

Directed Remediation

None.

Space Systems/Loral Inc. (2002)

Settled

January 9, 2002

Summary

Space Systems/Loral Inc. settled charges that it violated the express terms and conditions of munitions licenses, and committed other violations, related to the unauthorized exportation of satellite technology to China.

Charges

Sixty-four violations as follows:

(1) Sixty charges of violating the express terms and conditions of munitions licenses by exporting technical data and defense services without authorization (ITAR § 127.1)

(2) One charge of transferring or proposing to transfer defense services to China, an ITAR-proscribed country (ITAR § 126.1(e)).

(3) Three charges of misrepresenting or omitting material facts on an export or temporary control document (ITAR § 127.2).

Penalty

$20 million, of which $6 million is applied to directed remediation over seven years.

Directed Remediation

(1) Appoint an outside SCO, subject to DDTC approval, for two years, to be succeeded by an internal SCO for

two years, with a requirement that the SCO report on compliance to the senior management, board of directors, and DDTC every sixty days for the first six months, and semi-annually thereafter for the remainder of the term.

(2) Strengthen compliance training within 120 days of settlement.

(3) Institute a comprehensive computerized document control system within 120 days of settlement that will enable the U.S. government to monitor the respondent's technical data and proposed technical assistance.

(4) Establish legal department oversight of trade compliance within 120 days of settlement.

(5) Establish a hotline for reporting defense trade concerns within 120 days of settlement, and submit a quarterly report to in-house counsel and DDTC evaluating the hotline's effectiveness.

(6) Conduct a comprehensive audit of directed remedial measures within eighteen months of settlement, subject to DDTC's prior review of the audit plan, and report findings and recommendations to DDTC by the second anniversary of settlement.

(7) Agree to arrange and facilitate a DDTC audit with minimum notice for four years.

Motorola Corporation (2001)

Settled

May 3, 2001

Summary

Motorola settled charges that it exported satellite technology to Germany and Russia in violation of the express terms and conditions of munitions licenses.

Charges

Twenty-five charges of violating the express terms and conditions of munitions licenses by exporting technical data and defense services without authorization (ITAR § 127.1)

Penalty

$750,000, of which $150,000 is applied within three years to directed remediation.

Directed Remediation

(1) Establish legal department oversight of defense trade compliance.

(2) Institute computerized document control system that will enable the U.S. government to monitor the respondent's technical data and proposed technical assistance.

(3) Attest that corrective measures have been implemented in accordance with representations to DDTC.

(4) Conduct a comprehensive audit of directed remedial measures and report findings and recommendations to DDTC within 180 days of settlement.

(5) Provide an account of compliance expenditures on the first anniversary of settlement.

(6) Agree to arrange and facilitate a DDTC audit with minimum notice for three years.

The Boeing Company (2001)

Settled

March 30, 2001

Summary

The Boeing Company settled charges concerning the unauthorized exportation between 1979 and 1999 of airborne early warning system technology to Australia, Italy, Malaysia, Singapore, Spain, and Turkey.

Charges

One hundred ten violations, as follows:

(1) One hundred seven charges of exporting defense articles, technical data, and defense services without authorization, mostly in violation of the express terms and conditions of munitions licenses (ITAR § 127.1).

(2) Three charges of omitting material facts from an export or temporary control document (ITAR § 127.2).

Penalty

$4.2 million, of which $400,000 is applied toward directed remediation for a three-year period.

Directed Remediation

(1) Appoint an internal Special Officer for three years to ensure defense trade compliance, with a requirement that he report his finding and recommendations to senior management and DDTC every sixty days for the first six months, and semi-annually thereafter for the remainder of the term.

(2) Agree to arrange and facilitate a DDTC audit with minimum notice for three years.

[Editor's Note: The full version of John Pisa-Relli's above monograph also contains a "Part 3 -- ITAR Administrative Enforcement Case Table (2001 – 2012)," which is omitted from this reprint, but can be obtained from Mr. Pisa-Relli (john.pisa-relli@friedfrank.com) upon request.]

APPENDIX E — GOVERNMENT AGENCY GUIDANCE

State/DDTC: Getting Started with Defense Trade — The Directorate of Defense Trade Controls (DDTC) and the Defense Trade Function

DDTC website: http://www.pmddtc.state.gov/documents/ddtc_getting_started.pdf (undated) (last viewed Sept. 1, 2012).

Registration

DDTC website: http://www.pmddtc.state.gov/registration/index.html (Sept. 12, 2011) (last viewed Sept. 1, 2012).

DTAS-Online

DDTC website: https://dtas-online.pmddtc.state.gov/ (Undated, Ver. 1.1) (last viewed Sept. 1, 2012).

DTrade Information Center

DDTC website: http://www.pmddtc.state.gov/DTRADE/index.html (June 7, 2012) (last viewed Sept. 1, 2012).

Licensing

DDTC website: http://www.pmddtc.state.gov/licensing/index.html (Oct. 24, 2011) (last viewed Sept. 1, 2012).

Electronic Agreement Submissions

DDTC website:
http://www.pmddtc.state.gov/licensing/documents/WebNotice_ElectronicAgreements.pdf
(Undated) (last viewed Sept. 1, 2012).

Guidelines for Electronic Agreement Submissions

GUIDELINES FOR PREPARING ELECTRONIC AGREEMENTS (Rev. 3.0; Aug. 17, 2011), DDTC website:
http://www.pmddtc.state.gov/licensing/documents/Guidelines%20for%20Preparing%20Electronic%20Agreements%20Revision%203%20%282%29.pdf (last viewed Sept. 1, 2012).

Compliance

DDTC website: http://www.pmddtc.state.gov/compliance/index.html (Sept. 28, 2011) (last viewed Sept. 1, 2012).

Commodity Jurisdiction: Using the DS-4076 Commodity Jurisdiction (CJ) Request Form

DDTC website: http://pmddtc.state.gov/commodity_jurisdiction/index.html (June 26, 2012) (last viewed Sept. 1, 2012)

DDTC Response Team

DDTC website: http://www.pmddtc.state.gov/response_team/index.html (Mar. 26, 2011) (last viewed Sept. 1, 2012).

The Defense Trade Advisory Group (DTAG)

DDTC website: http://www.pmddtc.state.gov/DTAG/index.html (Aug. 10, 2012) (last viewed Sept. 1, 2012).

DHS/CBP Port of Chicago Guidance on CBP Requirements for Shipments of Defense Articles

(Source: CBP PORT OF CHICAGO, Pipeline 10-08A of Nov. 5, 2010)
From: Carl Ambroson, Area Port Director, Port of Chicago
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 of 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), 22 CFR Parts 120-130. The DOS/DDTC is the controlling and ultimate authority for international movement of United States Munitions Lists (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 facsimile 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 are not complying with the provisions of the ITAR are subject to seizure action described in 22 CFR 127. 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 the 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 consolidation shipments, the statement can be 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 the 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 flied 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 a 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 items(s) including quantity and U.S. dollar value, to the Export Control Desk for manual decrementation.

Authorization to export under DSP-94 are also reported tin 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 present 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 the 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.

Licensing of Foreign Persons Employed by a U.S. Person – UPDATED July 18, 2012

(Source: http://pmddtc.state.gov/licensing/documents/WebNotice_LicensingForeign2.pdf)

The Directorate of Defense Trade Controls (DDTC) has a long-standing policy to authorize the access to technical data by a foreign person employee of a U.S. person on a DSP-5 through an exception to the requirement for a technical assistance agreement (TAA) in accordance with 22 CFR 124.1(a). In certain instances, DDTC required a TAA in addition to the DSP-5 to authorize the U.S. person to transfer certain levels of technical data and defense services. After close review, DDTC has determined this "double" licensing to be redundant. Therefore, all requests for the licensing of a foreign person employed by a U.S. person must be made through the use of a DSP-5 to cover all levels of requested technical data and defense services.

The DSP-5 authorizes the U.S. person to transfer technical data and perform defense services to the employee(s) on their products. The DSP-5 authorizes the foreign person to perform defense services on behalf of the employing U.S. person. The foreign

person employed by a U.S. person does not have to reside in the U.S. to be considered an employee but may reside and perform the job responsibilities outside the U.S. If the foreign person is a regular employee (i.e., paid, insured, hired/fired and/or promoted exclusively by the U.S. person) and not seconded, the foreign person is considered to be "employed" by the U.S. person. The employing U.S. person is liable to ensure the employee's compliance with U.S. export laws regardless of where the employee currently resides. DDTC recommends that only one DSP-5 be obtained for each foreign person employee to cover all activities.

A foreign person employee access authorization must be obtained for all foreign persons who require access to ITAR-controlled defense articles and/or technical data in the performance of their job responsibilities.[385] If a foreign person employee does not require access to ITAR-controlled defense articles and/or technical data, the employing company must ensure internal controls are in place to prevent unauthorized access. If a foreign person has access to ITAR-controlled defense articles and/or technical data without DDTC authorization, that is a violation and must be reported in accordance with 22 CFR 127.12.

Use of the DSP-5 permits DDTC to identify all requests for access, determine technical areas in which the individual is employed, standardize application documentation, and, to the extent possible, standardize conditions of approval. In addition, standardization should assist industry in monitoring its foreign person employees.

For situations involving the transfer of classified technical data, a DSP-85 must be obtained in lieu of the DSP-5 and requires the same documentation. As required for the transfer of classified, a DSP-83 must be executed by the applicant and the foreign person employee. DDTC may require the foreign government to execute the DSP-83 on a case-by-case basis. The executed DSP-83 does not have to accompany the license application. For foreign person employment authorizations, the Managing Director is exercising the authority under 22 CFR 126.3 to waive the requirement for the executed DSP-83 to be submitted prior to license issuance (22 CFR 123.10). Once executed, the applicant must maintain the original DSP-83 pursuant to 22 CFR 122.5.

The foreign person employee must execute a Non-Disclosure Agreement (NDA) in the attached format. The DDTC case number must be entered on the NDA prior to execution. The executed NDA must be maintained by the applicant pursuant to 22 CFR 122.5 and is not required for submission with the foreign person employment application.

The applicant must have in place internal company procedures to control the release of technical data to foreign persons and mechanisms in accordance with the conditions of approval and to prevent unauthorized access to defense articles and/or technical data. This document must be maintained by the applicant pursuant to 22 CFR 122.5 and is

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[385] The ITAR imposes a license requirement for the export of U.S. defense articles and defense services to foreign persons. The ITAR does not, however, impose requirements on U.S. companies concerning the recruitment, selection, employment, promotion or retention of a foreign person. Federal law prohibits discrimination in hiring, firing, or recruitment/referral for a fee based on an individual's citizenship status or national origin. See Section 274B of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b. Unless otherwise required to comply with law, regulation, executive order, government contract, or determination by the Attorney General of the United States, discrimination based on an individual's citizenship status is unlawful. The Office of Special Counsel for Immigration-Related Unfair Employment Practices (Office of Special Counsel) in the Civil Rights Division of the United States Department of Justice enforces Section 274B of the INA. The Office of Special Counsel, located in Washington, D.C., has issued public guidance relating to non-discriminatory practices when complying with ITAR. For additional guidance, please contact the Office of Special Counsel at osccrt@usdoj.gov, its employer hotline at 1-800-255-8155, or visit its website at www.justice.gov/crt/about/osc.

not required for submission with the foreign person employment application.
Requests for a foreign person employee involving the transfer of manufacturing know-how related to a Significant Military Equipment (SME) defense article will require the execution of a DSP-83 by the foreign person and the U.S. applicant. The executed DSP-83 does not have to accompany the license application. The applicant must maintain the executed DSP-83 per 22 CFR 122.5. The executed NDA is not an acceptable substitute for a DSP-83 when required. For foreign person employment authorizations, the Managing Director is exercising the authority under 22 CFR 126.3 to waive the requirement for the executed DSP-83 to be submitted prior to license issuance (22 CFR 123.10).
The foreign person, once authorized by a DSP-5/DSP-85, no longer requires additional authorization to work in the scope of the approved DSP-5/DSP-85 and as such, the foreign person employee may have contact with other entities, U.S. or foreign, so long as the presence of the foreign person employee is identified to the other party. In all situations, it is the responsibility of the employing company to notify the other entities of the foreign person's participation.
(1) If the foreign person employee will have direct interaction with and receive technical data from another U.S. person, the responsibility for obtaining all required authorizations may be taken by either the employing party or another U.S. person, as follows.
a. The employing party may take responsibility for obtaining all required permissions from the other U.S. party for the transfer of the other U.S. party's technical data to, and have direct interaction with, the foreign employee. The employing company must certify that the technical data received is within the scope of the employing authorization regardless of source.
b. The other U.S. party may accept responsibility for obtaining all required authorizations in order to transfer their technical data to, and have direct interaction with the foreign person employee.
(2) When the employing company and the other U.S. person are both signatories to the same ITAR 124 agreement no further authorization is required so long as the foreign person employee's participation is identified in the agreement. The foreign person employee must not be called out as a separate signatory or identified by name.
(3) If the foreign person employee will have direct interaction with another foreign person, the foreign person employee's country/countries of nationality must be identified in the agreement the employing U.S. person has with the foreign party; they do not have to be a signatory to the agreement.
A DSP-5/DSP-85 approved for foreign person employee access will be valid only for a period of four years or until expiration of their authorized stay from Department of Homeland Security, U.S. Citizenship and Immigration Services, whichever is shorter. This license will remain valid if the foreign person's work authorization has been renewed, or has been submitted for renewal, and there is no lapse in authorization. If the foreign person employee resides outside the U.S., the license will be valid for the standard validity of a license or upon termination of the foreign person's employment, whichever is shorter.

In instances when the authorized stay is longer than four years, there has been a lapse in authorization, or the employee's employment continues beyond the approved validity, the applicant must apply for a renewal of the license no later than 60 days prior to expiration of this license.

Instructions for Completing a DSP-5/DSP-85 License Application

When completing a DSP-5/DSP-85 license application for foreign person employee access, particular attention should be paid to satisfactory completion of the following blocks. Failure to provide complete and sufficient information in these blocks, or to explain adequately why the information is not available, may result in the request being Returned Without Action. Guidance for completion of these blocks in license applications for employment of foreign persons follows:

Block 3/4. Country of Ultimate Destination. State in this block the foreign person's country/countries of nationality. The country/countries should match the individual's passport used to secure the U.S. work authorization, if required.

Block 10/11. Commodity. Describe the specific details of the USML technical data that will be provided by the applicant to the foreign person employee.

Block 14/17. Foreign End-User. State the complete address in the country that was entered in Block 3 where the individual maintains a residence or intends to return. If the address of the country in this block does not match the country identified in Block 3, an explanation should be provided. Also, the address should be complete; DDTC is unable to accept post office boxes or other general/imprecise addresses without explanation or justification.

Block 18/19. Name and Address of Foreign Intermediate/Foreign Consignee. If the individual is a national of any country other than that stated in Block 3, identify in this block the country/countries and, if the individual maintains residency in the country or intends to return to that country, provide a complete address. DDTC is unable to accept post office boxes or other general/imprecise addresses without explanation or justification. If, at the time of this submission, the foreign national has not yet entered the United States, please so indicate.

Block 20/21. Specific Purpose for Which the Material is Required, Including Specific Program/End Use. State in this block: "For access by a foreign person employee who will require access to technical data related to [name of program/commodity]."

Block 21/20. Name and Address of Consignor in the United States. If the foreign person has already entered the U.S., state in this block the complete address of the U.S. residence. DDTC is unable to accept post office boxes or other general/imprecise addresses. If, at the time of this submission, the foreign person has not yet entered the U.S., please so indicate in the letter of explanation.

Supporting Documentation Required for Applications

All applications for the access by a foreign person employee must include the following required documentation:

1) Proposed DSP-5/DSP-85 license application
2) Cover letter explaining the requirement and scope of access
3) Copy of the individual's passport and work authorization Department of

Homeland Security, U.S. Citizenship and Immigration Services, (when residing in the U.S.)
4) Resume
5) Job Description
6) Detailed description of technical data to be released and copies of technical data as necessary

Attachments:
Required Non-Disclosure Agreement (NDA) – Access to ITAR-Controlled Defense Articles by Foreign Person Employees

REQUIRED – Non-Disclosure Agreement (NDA)
Below is the NDA that is required to be signed by all foreign person employees. This NDA is intended to address ITAR requirements only. Any intellectual property or business arrangements required by the employing U.S. person must be the subject of a separate NDA.

Non-Disclosure Agreement – Access to ITAR-Controlled Defense Articles by Foreign Person Employees

I, [name of foreign person], acknowledge and understand that any technical data related to a defense article covered by the U.S. Munitions List to which I have access per authorization by the U.S. Department of State, Directorate of Defense Trade Controls (DDTC) under **[state relevant export license/authorization number**]** and disclosed to me in my employment by **[name of U.S. person]** is subject to the export controls of the International Traffic in Arms Regulations (ITAR) (Title 22, Code of Federal Regulations, Parts 120-130), particularly the 22 CFR 124.8 clauses.

1. This authorization shall not enter into force, and shall not be amended or extended, without the prior written approval of the Department of State of the U.S. Government.

2. This authorization is subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations.

3. The parties to this authorization agree that the obligations contained in this authorization shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government.

4. No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement or privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this authorization.

5. The technical data or defense services exported from the United States in

furtherance of this authorization and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a person in a third country or to a national of a third country except as specifically authorized in this authorization unless the prior written approval of the Department of State has been obtained.

6. All provisions in this authorization which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the authorization.

During my employment with **[name of U.S. person],** I am authorized to interact and participate in discussions with other U.S. and foreign person, and disclose technical data as necessary, while performing my job duties covered under DDTC **[case number]**. It will be the responsibility of my employer, **[name of U.S. person],** to notify other U.S. and foreign persons of my status as a foreign national employee prior to my interaction. I also acknowledge and understand that should I inadvertently receive technical data or defense articles for which I have not been granted access authorization by DDTC, or if I inadvertently export technical data or defense articles received during my employment to an unauthorized recipient, I will report such unauthorized transfer and acknowledge the transfer to be a violation of U.S. Government regulations.
In furtherance of the above, I hereby certify that all defense articles, including related technical data, to which I have access will not be used for any purpose other than that authorized by DDTC and will not be further exported, transferred, disclosed via any means (e.g., oral disclosure, electronic, visual access, facsimile message, telephone) whether in its original form, modified, or incorporated in any other form, to any other foreign person or any foreign country without the prior written approval of DDTC.

_____ _____
Signature – Foreign Person (Employee) Date

_____ _____
Signature – U.S Person (Employer) Date
Please leave sufficient space to enter the DDTC case number once approval is received.

Frequently Asked Questions about Defense Trade Cooperation Treaties & Resources
(Source: http://pmddtc.state.gov/faqs/treaties.html (Apr. 13, 2012)

Q. How does the UK exemption work?

The Defense Trade Cooperation Treaty between the U.S. and UK is implemented through the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR). Specifically, the Treaty is the basis for a new exemption to the ITAR (in §126.17- the UK Exemption). The Treaty, as implemented through the exemption, seeks to simplify the movement of equipment and information between and within the U.S. and the UK by creating an Approved Community of government and private sector entities and facilities. Approved Community Members may receive certain defense articles (including technical data) and defense services solely for an end-use that is within the Treaty scope (combined operations identified on the DDTC website, http://www.pmddtc.state.gov, cooperative government programs identified on the DDTC website, U.S. government contracts or solicitations that specifically identify Treaty eligibility, or HMG Projects listed

on the DDTC website), without the need for ITAR export licenses or other written authorizations so long as all of the requirements outlined in the ITAR are followed. Similarly, the UK has created a corresponding Open General Export License (OGEL), so there is no need to receive an individual export license from the UK Government, if the transaction falls under the terms of the ITAR/OGEL.

The U.S. Community consists of departments and agencies of the U.S. Government and non-governmental U.S. persons registered with DDTC and not ineligible to export, according to the requirements and prohibitions of the Arms Export Control Act, the ITAR, and other provisions of U.S. law. This is the same as the community of U.S. exporters that can export pursuant to any ITAR exemption now.

The UK Community's (UKC) membership comprises certain U.K Government entities and facilities, as well as non-governmental facilities that have been vetted and approved by both Treaty partners. All UKC members will be assigned an Approved Community Identification Number (ACID) once in the community. Each private sector facility in the UK will have its own ACID; membership is granted a particular private sector entity at a specified address, not to a company writ large. U.K Governmental entities are provided one ACID for all facilities that fall within their purview and are in the territory of the United Kingdom. U.S. exporters will need to ask for the ACID from their UK trading partner (for both private sector and governmental entities). U.S. exporters will be able to confirm UKC membership prior to export by searching the ACID in the Treaty Reference System (TRS) currently available under the Treaty tab on DDTC's website. The Approved Community is subject to change; from the U.S. exporter's perspective, UKC members can be added or removed from the community at any time, therefore, we encourage you to check the status of an entity prior to making a shipment.

For UK industry, specific facilities, not companies, can join the UKC. This is a voluntary decision. The criteria against which a facility's application will be considered is outlined in the Treaty Implementing Arrangement (IA) and includes undergoing clearance to "List X" status; review of foreign ownership control or influence; review of previous convictions or indictments under UK or U.S. export laws and regulations; review of U.S. export licensing history of the entity or facility; and review of any potential national security issues (e.g., contact with proscribed countries). To qualify for UKC membership, UK facilities must have approval for inclusion from both the U.S. and UK governments.

Under the UK exemption, it will be possible for movement of defense articles within the Approved Community as long as the transactions are in support of pre-approved:

- combined military and counter-terrorism operations;
- cooperative security and defense research, development, production, and support programs;
- security and defense projects where the end-user is the Government of the United Kingdom; or
- U.S. Government end-use.

The U.S. and the UK governments will agree jointly on which projects, programs and operations qualify for processing under the terms of the UK exemption. A list of those programs is available on DDTC's website. The UK exemption is not for commercial sales or transfers to third parties not in the Approved Community.

UK retransfer or re-export of items originally exported under the UK exemption to a person or facility outside of the Approved Community will require U.S. approval and UK authorization.

The UK exemption does not apply to transfers, exports, re-transfers, and re-exports to Australia, which has a similar treaty with the United States. Movements of Defense Articles originally exported in accordance with the UK exemption from the UK to Australia (or any other third country) are bound by normal UK export rules and the standard re-export provisions under the ITAR.

U.S. entities will also still be subject to licensing requirements related to permanent exports and all other requirements not explicitly removed by the language of the UK exemption.

Q. Can a company decide unilaterally to use the UK exemption for a particular project or component?

A company may self-determine whether a particular transaction is UK exemption-eligible. To do so, a

company must determine whether:

the transaction is in support of a UK exemption eligible end-use (combined operations identified on the DDTC website, cooperative government programs identified on the DDTC website, U.S. government contracts or solicitations that specifically identify Treaty eligibility, or HMG Projects listed on the DDTC website);

the defense article (including technical data) or defense service to be exported is eligible for export under the UK exemption (i.e., review of Supplement No. 1 to Part 126); and

the facility to which the company is shipping is a member of the Approved Community.

Q. I have a key supplier outside the UK and U.S. May I use the UK exemption?

Transactions with suppliers outside the UK and U.S. Approved Communities are not covered by the UK exemption. Transactions involving non-Approved Community members will require an ITAR license or other approval.

Q. I am in a cooperative program with UK/U.S. and a third party; can I use the UK exemption?

Transactions with partners outside the UK and U.S. Approved Communities are not covered by the UK exemption. However, the UK exemption maybe utilized in the context of a multilateral program when the Treaty eligible elements are defined and managed separately, and are covered by a separate U.S.-UK agreement, MoU or other arrangement. Section 2(2)(c) of the Implementing Arrangement sets out the criteria for Treaty eligible programs.

Q. How will UK exemption articles be protected when in the UK?

All U.S. defense articles, including technical data, and defense services provided under the UK exemption are required to have protective markings and be managed in accordance with the terms of the UK exemption, Implementing Arrangement, UK security regulations, and the UK Official Secrets Act.

Q. What are the marking requirements under the UK exemption?

For defense articles, including technical data, and defense services classified for reasons other than solely the UK exemption (e.g., items unclassified in the U.S.), the standard marking or identification will read CLASSIFICATION LEVEL USML//REL USA and GBR Treaty Community//. For all other defense articles, including technical data, and defense services, the standard marking or identification will read RESTRICTED USML //REL USA and GBR Treaty Community// and will be handled while in the UK as "UK RESTRICTED" items.

Defense articles (other than technical data) shall be individually labeled with the appropriate identification detailed above; or, where such labeling is impracticable (e.g., propellants or chemicals), shall be accompanied by documentation (such as contracts or invoices) clearly associating the defense articles with the appropriate markings.

Technical data (including data packages, technical papers, manuals, presentations, specifications, guides and reports), regardless of media or means of transmission (physical, oral, or electronic), shall be individually labeled with the appropriate identification detailed above; or, where such labeling is impracticable shall be accompanied by documentation (such as contracts or invoices) or verbal notification clearly associating the technical data with the appropriate markings.

Defense services shall be accompanied by documentation (contracts, invoices, shipping bills, or bills of lading) clearly labeled with the appropriate identification detailed above.

Marking requirements are further outlined in §126.17(j) of the ITAR.

Q. Will there be less paperwork associated with the UK exemption than existing ITAR licenses?

The UK exemption removes the requirement for submission of an export authorization request to the U.S. Department of State. You will not have to prepare, submit and wait for your authorization; however, the exemption does not remove requirements for maintaining records on the movement of defense articles. In most

cases, record-keeping is the same as under the other parts of the ITAR. The UK exemption requires entities using the UK exemption to export, transfer, re-transfer, re-export, or receive defense articles maintain detailed records of all such movements. The detailed record keeping requirements are in ITAR §126.17(l).

Q. Why don't we wait for export control reform to go into effect instead of using the UK exemption?

The UK Treaty predates President Obama's reform initiative, but the UK exemption is consistent with it while reflecting the close and enduring relationship the U.S. shares with one of its closest allies. The UK exemption streamlines trade exclusively with the UK, while the President's proposed export control reform effort will make broader changes across the entire system. The UK exemption is available for use today and will be available in the future for eligible items that are on the USML. The UK exemption simplifies export controls for the movement of defense articles and services in support of coalition operations, cooperative defense programs, and U.S. and partner defense procurements from each other.

Q. Given the improvements in export licensing timelines, how will the UK exemption make any difference?

Companies choosing to utilize the UK exemption will see a decrease in the time burden of preparing a license application, submitting it and waiting for its adjudication. Through procedural mechanisms such as an "Approved Community" of exporters and importers and identified projects and programs the UK exemption removes the need for individual licenses and the associated administrative burden of preparing them, as well as the uncertainty of when a license may be issued.

Q. Will there be changes to UK laws?

Amendments to UK laws are not required to implement the Treaty although changes have been made to UK security and export regulations to reflect the Treaty's requirements.

Q. What criteria will be used as the basis for U.S. decisions on what Defense Articles to exempt from the scope of the UK exemption?

If a specific technology meets any one of the following criteria, it is included on the Exempted Technologies List and identified in Supplement No. 1 to part 126 of the ITAR. The technologies are those that:

- Are controlled according to U.S. Presidential Directive;

- Are controlled subject to applicable international agreements or arrangements (e.g., the MTCR, or Chemical or Biological Warfare regimes);

- Are not controlled for export as defense articles by the UK; and/or,

- Are targeted, sensitive technologies that should not be freely Transferred within an "Approved Community," but only to specifically identified recipients pursuant to an export license.

No defense articles controlled for compliance with the Nuclear Suppliers Group (NSG), or the Missile Technology Control Regime may be exported under the UK exemption, and are included in Supplement No. 1 to part 126 of the ITAR, which supplement also includes "Defense Articles listed in the Missile Technology Control Regime (MTCR) Annex, the Chemical Weapons Convention (CWC) Annex on Chemicals, the Convention on Biological and Toxin Weapons, and the Australia Group (AG) Common Control Lists (CCL)."

These items are identified in Supplement No. 1 to Part 126 of the ITAR.

Q. How do I export or obtain U.S. classified defense articles under the UK exemption?

You must obtain a written request, directive or contract from the U.S. Department of Defense prior to the initial export from the United States. After that, U.S. classified materiel (Confidential and above) eligible for transfer under the Treaty will be moved in accordance with the Treaty's detailed arrangements and other applicable security requirements.

Q. How do I submit a request for authorization to retransfer, reexport, change end-use, or transition of an item exported under the UK exemption?

You must submit a General Correspondence (GC) request to DDTC and request such authorization. Requests for authorization to retransfer, reexport, or change the end-use of an item exported under the UK exemption to one outside the scope of the exemption should be made pursuant to current practices under §123.9 (See §126.17(h)). Requests to transition from a current export license or other authorization following the initial export to UK exemption coverage should also be made via a GC to DDTC. The requirements for making such a request are outlined in §126.17(i).

Q. I am unclear about the meaning, and the impact, of "marketing purposes" in §126.17(g)(1) and A1 of the List of Defense Articles Exempted from Treaty Coverage.

Item A1 of the List of Defense Articles Exempted from Treaty Coverage (reference Article 3(2) of the U.S./UK Defense Trade Cooperation Treaty) was developed to preclude marketing of items for which no prior USG determination has been made regarding export policy. Section 126.17(g)(1) reiterates the requirements of A1. The impact should be rather limited, because articles (including responses to solicitations) exported based strictly on compliance with the documented requirements, specifications and descriptions associated with the approved operation, joint program, or project would not be considered marketing.

Q. What is the impact of C1 of the List of Defense Articles Exempted from Treaty Coverage exempting developmental systems which have not obtained written Milestone B approval from the Department of Defense?

C1 of the List of Defense Articles Exempted from Treaty Coverage requires an export license for the export of developmental U.S. technologies that have not previously been approved for an export license or have not received Milestone B approval from the Department of Defense. Section 126.17(g)(4) of the ITAR reiterates the requirements of C1. However, an export will be permitted under the UK exemption if that export is made pursuant to a written solicitation or contract issued by the DoD and if the developmental system export is consistent with parts A and B of the U.S. exempted technologies list (i.e., not otherwise exempted from UK exemption coverage by the exempted technologies list (Supplement No. 1 to part 126)). It is U.S. policy that export of systems prior to Milestone B requires case-by-case review and the UK exemption does not reverse this policy.

Q. What criteria were used by the UK to decide which technologies would be exempt from the scope of the UK exemption?

The exempt technologies are drawn from the UK's Strategic Exports Control List which includes items controlled by both the UK Government and the European Union. Technologies will be generally exempt if they:

Are controlled subject to applicable international agreements or arrangements (e.g., the MTCR, or Chemical or Biological Warfare regimes);

Are items which could be used for internal repression or violations of human rights;

Are targeted, sensitive technologies that should not be freely transferred within an "Approved Community," but only to specifically identified recipients pursuant to an export license;

Are EU dual use items (as the EU has competence over this area of UK export control); or

Certain categories of goods covered by the U.S. Munitions List but which the UK does not control (as there is no mechanism to control re-export).

These items are identified in Supplement No. 1 to Part 126 of the ITAR.

Q. How will the exempted technologies lists be maintained?

The U.S. and UK exempted technologies lists will be updated on an as-needed basis. The U.S. and the UK will work together on any future additions or removals to the exempted technologies lists. Any resulting updates to Supplement No. 1 to Part 126 of the ITAR will be made and published in a Federal Register Notice.

Q. What is the intent of Section 2(2)(e) of the Implementing Arrangements?

The intent of this paragraph is to provide the U.S. and UK flexibility in designating a cooperative program as UK exemption eligible. For example, if a cooperative program involves a system consisting of components that are both exempt and non-exempt, this paragraph allows the U.S. and UK to agree to use the UK exemption for transactions involving the non-exempt technologies. This paragraph is supported by the U.S. Senate's Resolution of Advice and Consent to Ratification of the Treaty, which provides in Section 3(3) "Cooperative programs with exempt and non-exempt defense articles. It is the understanding of the United States that if a cooperative program is mutually determined, consistent with Section 2(2)(e) of the Implementing Arrangements, to be within the Scope of the Treaty pursuant to Article 3(1)(b) of the Treaty despite involving Defense Articles that are exempt from the Scope of the Treaty pursuant to Article 3(2) of the Treaty, the exempt Defense Articles shall remain exempt from the Scope of the Treaty and the Treaty shall apply only to non-exempt Defense Articles required for the program."

Q. If I incorporate UK exemption defense articles into a non-UK exemption article, will the "conjoined" item be subject to two regimes?

Determining UK exemption eligibility is done on a transaction-by-transaction basis. If an article exported under the UK exemption is incorporated into an article that is not UK exemption eligible (e.g., is identified in Supplement No. 1 to part 126 or is for an end-use not approved under the UK exemption), this would be considered a change in end-use of the article and would require authorization from DDTC. Upon receiving authorization for such change in end-use, the new "conjoined" item would be subject to the authorization under which the non-UK exemption article was received.

Q. If I incorporate items not eligible for the UK exemption into a UK exemption eligible item, does that incorporated article become subject to the UK exemption?

No. Pursuant to §126.17(g), the exporter must obtain a license or other authorization from DDTC for the export of such embedded defense articles (for example, USML Category XI (a)(3) includes that electronically scanned array radar systems that are exempt from this section that are incorporated in an aircraft that is eligible to ship under this section continue to require separate authorization from the Directorate of Defense Trade Controls for their export, transfer, reexport, or retransfer).

Q. How will the authorized end-uses be identified?

DDTC will post on its website lists of eligible combined military operations and exercises, combined counter-terrorism operations, cooperative programs, and HMG projects. These lists will be mutually determined by the UK MOD and the U.S. DOD, subject to mutual approval by the Department of State and the UK MOD. The U.S. and UK will work together to keep these lists current.

Eligible U.S. government end-uses will be identified in the solicitation or contract. The DFARS describes the conditions under which the contracting officer should include provisions in solicitations to offerors and include clauses in contracts requiring contractors to comply with the provisions of the treaty as implemented in the ITAR and DFARS. The DFARS also requires contractors to flow down these requirements in their contracts with sub-contractors at any tier. The DFARS also requires the offeror to sign a representation that export(s) or transfer(s) of qualifying defense complied with the requirements of this provision.

Q. What about FMS? Will Defense Articles exported under the FMS Program be eligible for license-free Transfers to Approved Community members pursuant to the UK exemption?

Under the Arms Export Control Act, sales of defense articles and defense services to foreign countries under the Foreign Military Sales (FMS) program are made by the U.S. Government and executed by the Department of Defense. All FMS sales require the approval of the U.S. Secretary of State but do not otherwise require licenses that the AECA requires for exports for direct commercial sales where U.S. companies export defense articles or defense services to foreign countries.

Generally, the FMS process will remain unchanged. However, transfers following the initial sale, that is when the items have been delivered, may come within the UK exemption's scope if all the exemption requirements are met for eligibility. The intent is to allow the transfer of defense articles and defense services, without the need for individual approvals from the Department of State, or from the Armed Forces of the UK to Approved

Community members to achieve certain purposes, such as for maintenance, overhaul, or repair.

Terms of the FMS LOA unrelated to the provisions of the UK exemption will continue to apply.

The UK government will maintain a register of items that are transitioned to UK exemption eligibility. This will create a documented record that is available to the U.S. government for review or tracking of any FMS item transitioned to UK exemption coverage that is transferred within the Approved Community. The United States does not require a notification of each movement; however, records must to be kept and made available for review upon request.

Q. What are the "cooperative program legislative authorities" referenced in Section 2(2)(a) of the Implementing Arrangements?

The legislative authorities referenced in Section 2(2)(a) are the following:10 USC 2350a, 10 USC 2350b, 10 USC 2350f, 10 USC 2350i, 10 USC 2350l, 10 USC 2358, 22 USC 2767 (Section 27 of the AECA), and 22 USC 2796d (Section 65 of the AECA). A "valid cooperative program international agreement or arrangement" is an agreement or arrangement which is based on the legal authorities cited in the answer to the question above, where the agreement or arrangement (1) has entered into force or effect; and (2) has not expired or been terminated.

Q. What are the criteria for UK Community (UKC) membership? How does a facility join the UKC?

To be in the UKC, a nongovernmental facility must be within UK territory, must undergo clearance to "List X" status and will be considered against the following criteria: foreign ownership control or influence, previous convictions or indictments under UK or US export laws and regulations, the U.S. export licensing history of the entity or facility and national security issues such as contact with proscribed countries. Application should be made through the UK. The UK element will be managed by DE&S Infrastructure Security which runs the "List X" process. Following the UK review and approval, U.S. Government approval is required for the facility to join the UKC.

Once a facility is granted membership into the UKC, it will be assigned an Approved Community Identification Number (ACID). Each facility that is a member of the UKC will have its own unique ACID. Both UK governmental entities with facilities and non-governmental facilities will be assigned an ACID. U.S. exporters will need to request the ACID from their UK trading partners. U.S. exporters will be able to confirm UKC membership through a search function available in the DDTC Treaty Reference System (TRS), which will be available on the Treaty Tab on DDTC's website.

Q. Articles 4 and 5 of the Treaty use the phrase "security accreditation and a need-to-know" in reference to personnel and employees. Does "security accreditation" mean the same thing as "security clearance"?

Typically, the UK uses the term, "security accreditation" to refer to the facility security and information technology system vetting process, and the term "security clearance" when referring to the personnel security vetting process. For the purposes of the Treaty, the term "security accreditation" may be used interchangeably when discussing the vetting process for both personnel and Approved Community facilities. As with current security practices, the "need to know" requirement will generally be managed by Approved Community members rather than centrally managed or controlled by the respective government.

Q. How will the U.S. Government vet all eligible UK facilities for inclusion in the UK Community (UKC)? Which U.S. agencies will participate in such vetting?

The UK government will review and vet requests by entities seeking membership in the UK Community, and then submit them to DDTC for review and vetting. In making its determination, DDTC will consult with the Department of Defense and evaluate each non-governmental entity proposed for the UKC on an individual basis, assessing for national security and foreign policy concerns.

Q. Is access to Defense Articles exported pursuant to the UK exemption limited to nationals of the United States and the UK? Will some third-country nationals also have such access, by virtue of having a UK security clearances and a need to know?

A limited number of third country nationals may have access to Defense Articles exported pursuant to the UK exemption. Serving members of Her Majesty's Armed Forces may have access to Defense Articles Exported under the Treaty, and some of those individuals may be third country nationals. The provisions of §126.18 may apply, provided all elements of the exemption are met.

Q. Will the UK Community (UKC) include any distributors of parts and components, or only end-users of parts and components?

The UK exemption does not preclude distributors from being members of the UKC. However, it is unlikely that this would happen as such distributors would have to be cleared to handle classified information or material by the UK government.

Q. What are the criteria for eligibility for the U.S. Community?

Eligibility is a key element of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR). As with other ITAR exemptions, registration with DDTC is the first step, but an exporter must also not be ineligible as outlined in § 120.1(c) of the ITAR, or they cannot utilize the UK exemption.

Q. What are the security accreditation requirements for employees in the U.S. Community?

Security accreditation will not be required of employees in the U.S. Community who do not handle classified exports or transfers. For the UK exemption, only those U.S. persons having access to exports or transfers classified at the CONFIDENTIAL level or higher will be required to obtain "security accreditation and a need-to-know." The basis on which accreditation and need-to know decisions are made are based on E.O. 13526, "Classified National Security Information;" E.O. 12968, "Access to Classified Information;" and E.O. 12829, "National Industrial Security Program." U.S. Community members are responsible for determining access based on a favorable adjudication of an appropriate investigation of the employee and resulting security clearance, and a determination of a need-to-know based on a lawful government purpose. Within the Department of Defense, the Defense Office of Hearings and Appeals handles hearings and appeals on negative security accreditation decisions. E.O. 12968 sets forth similar hearings and appeals proceedings for all other departments and agencies in the Executive Branch.

Q. What Congressional notifications will occur?

Notifications will be made on exports that meet or exceed the notification thresholds of AECA Sec. 36(c) and (d). This information must be provided to DDTC 15 days prior to export. Congress will also be notified of any request to re-transfer or re-export to a person or entity outside of the UK Community a defense article or defense service where the value of such transaction meets or exceeds the thresholds identified in Section 3(d) of the AECA.

Q. What impact, if any, will the UK exemption have on the operations and actions of various U.S. companies that are operating under consent agreements from past arms export cases?

U.S. companies or persons under Consent Agreements that have not been statutorily or administratively debarred by the Department may be members of the U.S. Community so long as they are otherwise eligible.

Q. Does the UK exemption have any impact on the permanent import licensing requirements promulgated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE)?

No. The UK exemption has no effect on permanent import license requirements. Importers must continue to seek a permanent import license from BATFE if the article being permanently imported is on the U.S. Munitions Import List and requires an import license.

Q. Will §123.4 be amended for repair/return?

No. There is no need to update or amend §123.4. The UK exemption provides for the movement of qualifying defense articles between the U.S. and the UK. Therefore, §126.17 can be used for items exported under the section that are shipped back to the U.S. for repair/return.

Q. Will §121.16 Missile Technology Control Regime Annex (MTCR) be updated?

Section 121.16 will not be updated at this time. However, the MTCR Annex exclusions in the exemption are intended to reference the current MTCR. The current MTCR Annex is available at: http://www.mtcr.info/english/annex.html.

Q. How do you use the UK exemption in the Automated Export System (AES)?

As outlined in §126.17(l)(2), all exporters of defense articles under the UK exemption must electronically file Electronic Export Information (EEI) using the AES citing one of the four referenced codes (126.17(e)(1); 126.17(e)(2); 126.17(e)(3); or 126.17(e)(4)) in the appropriate field in the EEI for each shipment. These codes refer to each of the approved end-uses under the UK exemption. These new codes will be added to the existing AES drop-down menu. Exporters will also be requested to enter the ACID of the intended end-user.

APPENDIX F — "Tiny Little Cheat-Sheets"

Handy Cut-Out and Fold Reference Cards for Wallet or Badge Protector
for ITAR 126.1 Presumed Denial Countries and ITAR Exemptions (Next Page)

(Use "File/Print Preview" to view)

ITAR Presumed Denial Countries
1. Afghanistan 126.1(g) +
2. Belarus 126.1(a)
3. Burma 126.1(a)
4. China 126.1(a)
5. Congo (DRC) 126.1(c), (i)
6. Cote d'Ivoire (Ivory Coast) 126.1(c), (q); 129.5(d)
7. **CUBA** 126.1(a), (d)*
8. Cyprus 126.1(r) #+
9. Eritrea 126.1(a), (c)(3)+
10. Fiji 126.1(p)#
11. Haiti 126.1(j)
12. **IRAN** 126.1(a), (c), (d)
13. Iraq 126.1(c), (f)
14. Lebanon, 126.1(c), (t)
15. Liberia 126.1(c), (o)
16. Libya 126.1(c), (k)
17. Macau #
18. N. Korea 126.1(a),(c),(d)
19. Palestine/Hamas #
20. Somalia 126.1(c), (m)
21. Sri Lanka 126.1(n)
22. **SUDAN** 126.1(a), (c), (d), (v)
23. **SYRIA** 126.1(a), (d)
24. Venezuela 126.1(a)
25. Vietnam 126.1(l)
26. Zimbabwe 126.1(s) #

Bold: State Sponsors of Terror
#: 126.1(a) footnote
*: OFAC embargo also applies to foreign subsidiaries of US.
(Revised 3 July 2012)

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The 72 ITAR Exemptions by Section Number

- 122.1(b): Registration
- 123.4(a)(1): Import for overhaul, service, repair
- 123.4(a)(2): Import for enhancement or upgrade
- 123.4(a)(3): Import for exhib or marketing
- 123.4(a)(4): Articles rejected for permanent import
- 123.4(a)(5): Import under FMS
- 123.4(b): Import for incorp into other articles
- 123.6: FTZ & U.S. Customs bonded warehouses
- 123.9(a): SED rules
- 123.9(e): Re-export to NATO, Aus, Jap
- 123.11(b): Ships/planes to outside U.S.
- 123.12: Shipment between U.S. possessions
- 123.13: Domestic aircraft ship via foreign country
- 123.15(c): Congressional cert
- 123.16(a): Proscribed dest, MTCR, SME, SED
- 123.16(b)(1): Unclass hardw for agreements
- 123.16(b)(2): Parts under $500, split orders
- 123.16(b)(3): Packing cases
- 123.16(b)(4): Unclass models & mockups
- 123.16(b)(5): Public trade shows
- 123.16(b)(9): Unclas hardw to U.S. subs overseas
- 123.16(b)(10): Universities
- 123.17(a): Firearm parts under $100
- 123.17(b): Antique firearms
- 123.17(c): Temp export of firearms
- 123.17(d): Export by FPs of firearm lawfully imported
- 123.17(e): Ammunition for firearms
- 123.17(f),(g): Body armor
- 123.18(a)(1):Firearms to servicemen's clubs
- 123.18(a)(2):Firearms for personal use of military member or DOD employee
- 123.18(a)(3): Firearm for US empl personal use
- 123.18(b): Ammo for exempt firearms
- 123.19: From Can or Mex transiting USA
- 123.23: Monetary value of shipments (10%)
- *123.26: (Recordkeeping for exemptions)*
- 124.2(a): Training in O&M of items auth for export to same recipient
- 124.2(b): US draftees in foreign military
- 124.2(c): Unclass maint, training, data, for NATO, Aus, Jap, Swe
- 124.3(a): Unclass data for appvd MLA/TAA
- 124.3(b): Class data for appvd MLA/TAA
- 124.16: 124.16: Retransfer tech data & services to NATO, EU, Aus, Japan, NZ, Switz
- 125.2(b): Data for patent application
- 125.4(b)(1): Data per request from DOD
- 125.4(b)(2): Data for appvd MLA/TAA
- 125.4(b)(3): Data for contract w USG.
- 125.4(b)(4): Copies of data previously auth for export to same recipient
- 125.4(b)(5): Basic O&M&T re article auth for export to same recipient
- 125.4(b)(6): Data re firearms under .50 cal.
- 125.4(b)(7): Data returned to source
- 125.4(b)(8): Data related to clas2s previously auth for export to same recipient
- 125.4(b)(9): Data fm US company to local employee temporarily overseas
- 125.4(b)(10): Data by US college to employees
- 125.4(b)(11): Data per exemption fm DDTC, DOD, DOE, or NASA
- 125.4(b)(12): Data exempt under 126
- 125.4(b)(13): Data appvd for release
- 125.4(c): Services & unclass data to NATO, Aus, Jap, Swe to respond to DOD request for B or P
- 125.5(a): Unclass data during appvd class visit
- 125.5(b): Class data during appvd class visit
- 125.5(c): Unclass data during appvd visit
- 126.2: Temp suspension or mod of any reg
- 126.3: Exceptions (undue hardship)
- 126.4(a): Temp import/export by or for USG, or for program auth by Pres, or by USG BOL
- 126.4(c): Urgent temp import or temp/perm export of articles, data, or service for USG
- 126.5(a): Temp import & return unclass fm Canada
- 126.5(b): Permanent & temp export to Canada for Canadian Gov't or C.R. Person
- 126.5(c): Services/data to Can for Gov't or Canadian Registered Person
- 126.6(a): Article/data sale/loan by DOD, deliv USA
- 126.6(b): Entry/depart of foreign mil ships & planes
- 126.6(c): FMS
- 126.16: Dual/3rd nationals
- 126.18 Dual/3rd nationals
- 129.3(b): Broker Registration
- 129.6(b) Broker License/Approval

APPENDIX G — GLOSSARY

(See Index entries for items found in the ITAR. This list includes many items not found in the ITAR.)

ABI: Automated Broker Interface (CBP)
ACE: Automated Commercial Environment (CBP)
ACH: Automated Clearing House
ACS: Automated Commercial Systems (CBP)
ACT: Assessment Compliance Testing (CBP)
ACN: Application Control Number
AECA: Arms Export Control Act
AES: Automated Export System
AESTIR: Automated Export System Trade Interface Requirements
ALJ: Administrative Law Judge
ATF: Treasury Dept. Bureau of Alcohol, Tobacco, Firearms, and Explosives (sometimes BATFE)
ATF-4522: International Import Certificate
BATFE: Justice Dept. Bureau of Alcohol, Tobacco, Firearms, and Explosives (sometimes ATF)
BIS: Commerce Dept. Bureau of Industry & Security
BIS-645P: International Import Certificate
BIS-711 Statement by Ultimate Consignee and Purchaser
BIS-748P: EAR Multipurpose Application
BL: Bill of Lading
Blue Lantern: DDTC end use monitoring program
BXA: (Obsolete. See BIS)
CA: Comprehensive Authorizations
CBP: U.S. Customs & Border Protection
CBP Form 28: Request for Information
CBP Form 214: Application for Foreign-Trade Zone Admission and/or Status Designation
CBP Form 3229: Certificate of Origin
CBP Form 3299: Declaration for Free Entry of Unaccompanied Articles
CBP Form 3311: Declaration for Free Entry of Returned American Products
CBP Form 3461: Entry/Immediate Delivery
CBP Form 4457: Certificate of Registration for Personal Effects Taken Abroad
CBP Form 7501: Entry Summary
CBP Form 7512: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit
CBP Form 7523: Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release
CBP Form 7553: Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback
CCATS: Commodity Classification Automated Tracking System (EAR)
CCL: Commerce Control List
CFIUS: Committee on Foreign Investment in the United States
CEP: Circle of Equal Probability
CFR: Code of Federal Regulations
CJ: Commodity Jurisdiction
COCOM: Coordinating Committee for Multilateral Export Controls
COO: Country of Origin
CPIP: Compliance, Public Issues and Policy Committee of the Board of Directors
CTP: Composite Theoretical Performance . A measure of computational performance given in millions of theoretical operations per second (Mtops).
C-TPAT: Customs-Trade Partnership Against Terrorism
CUI: Controlled Unclassified Information
CWC: Chemical Weapons Convention
DCS: Destination Control Statement.

DD-1513: (Obsolete) DSAA Letter of Offer and Acceptance
DDTC: Directorate of Defense Trade Controls
DE&C: DepAsstSecArmy for Defense Exports & Cooperation
DFOISR: Directorate for Freedom of Information and Security Review (Obsolete. See OFOISR)
DHS: Dept. of Homeland Security
DIS: Defense Investigative Service (Obsolete. See Defense Security Service)
DOC: Dept. of Commerce
DOD: Dept. of Defense
DOJ: Dept. of Justice
DOS: Dept. of State
DPL: Denied Person List
DPS: Denied Party Screening
DS-: Permanent internal forms used by the State Department and the Foreign Service
DS-2032: Statement of Registration
DS-4048: Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act[386]
DS-4071: Export Declaration of Defense Technical Data or Services
DS-4142, Annual Brokering Report, OMB No. 1405-0141
DS-4143, Brokering Prior Approval (License), OMB No. 1405-0142
DS-6001, Request for an Advisory Opinion
DS-6002, Prior Notification
DS-6003, Request for Reconsideration of Unclassified Provisos
DS-6004, Request To Change End User, End Use and/or Destination of Hardware
DSAA: Defense Security Assistance Agency
DSCA: Defense Security Cooperation Agency
DSP-: Older public-use State Department form designation
DSP-5: Application/License for Permanent Export of Unclassified Defense Articles and Related Technical Data
DSP-6: Application for Amendment to a DSP-5 License
DSP-9: (Obsolete. See DS-2032)
DSP-53: International Import Certificate [obsolete as of Apr. 17, 2012]
DSP-61: Application/License for Temporary Import of Unclassified Defense Articles
DSP-73: Application/License for Temporary Export of Unclassified Defense Articles
DSP-83: Non-transfer and use certificate
DSP-85: Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data
DSP-94: Authority to Export Defense Articles and Defense Services sold under the Foreign Military Sales program
DSP-119: Amendment to License for Export or Import of Defense Articles
DSS: Defense Security Service
DTAG: Defense Trade Advisory Group
DTCL: Defense Trade Controls Licensing
DTCP: Defense Trade Controls Policy
D-Trade: DDTC Electronic License Submission
DTSA: Defense Technology Security Administration
DUNS: Dun & Bradstreet Number
EAA: Export Administration Act
EAR: Export Administration Regulations
EAR 99: (ECCN for No License Required)

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[386] See link to U.S. Department of State Instructions for Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act (Form DS-4048 - "Javits Report" Form, Sept. 20, 2011) at http://www.pmddtc.state.gov/reports/javits_report.html (last viewed Sept. 1, 2012).

EARB: Export Administration Review Board (BIS)
ECCN: Export Control Classification Number
EEI: Electronic Export Information (replaced the term SED in Foreign Trade Regulations (FTR))
EI: Encryption Items. A reason for control on the Commerce Control List (EAR)
ELA: Encryption Licensing Agreement or Arrangement
ELAIN - Export License Application and Information Network (BIS)
ELISA: Export License Status Advisor (DOD)
Ellie Net: DDTC Electronic License Submission
EMI: Electromagnetic interference
EMP: electromagnetic pulse
EMS: Export Management System
ENDP: Exception to National Disclosure Policy
EO: Empowered Official
EPCI: Enhanced Proliferation Control Initiative
EPCI: DDTC Eligible Party Certification Indicator (EEI data element)
EPLS: Excluded Parties List System
ERIC: Electronic Request for Item Classification (BIS)
ESAR: ACE Entry Summary, Accounts, Revenue
Extrancheck: BIS end use monitoring program
FADEC: Full Authority Digital Engine Controls
FCPA: Foreign Corrupt Practices Act
FedWire: Federal Reserve Wire Network
FEM: Fatal Error Message
FMF/FMFP: Foreign Military Financing/FMF Program
FMS: Foreign Military Sales
FOCI: Foreign Ownership, Control, or Influence (DoD)
FPPI: Foreign Principal Party in Interest
FTR: Foreign Trade Regulations (to replace FTSR)
FTSR: Foreign Trade Statistics Regulations
FTZ: Foreign Trade Zone
GBL: Government Bill of Lading
GC: General Correspondence
Golden Sentry: DoD end use monitoring program
GPA: Global Project Authorization
GPS: Global Positioning System
GSN: General Software Note
HTSA: the CBP abbreviation of HTSUSA
HTSUSA: Harmonized Tariff Schedule of the United States
HWA: Hold Without Action (BIS)
ICE: U.S. Immigration & Customs Enforcement
IC/DV: Import Certificate/Delivery Verification
ICP: Internal Control Program
IEEPA: International Emergency Economic Powers Act
IIN: Importer Identification Number
IPT: Integrated Product Team
ISCO: Internal Special Compliance Officer
ISO: International Standards Organization
ITAR: International Traffic in Arms Regulation
ITN: Internal Transaction Number
JCS: Joint Chiefs of Staff
JF-: Joint forms originated and used by two or more U.S. Government agencies
LO: Licensing Officer

LOA: Letter of Offer and Acceptance
LO/CLO: Low Observation/Counter Low Observable
LOI: Letter of Intent; Letter of Instruction
MCTL: Militarily Critical Technologies List
MDA: Missile Defense Agency
MDE: Major Defense Equipment
MILSPEC: Military Specification
MLA: Manufacturing license agreement
MOA: Memorandum of Agreement
MONUC: United Nations Organization Mission in the Democratic Republic of the Congo
MOU: Memorandum of Understanding
MPA: Major Project Authorizations
MTCR: Missile Technology Control Regime
MTEC: Missile Technology Export Control Group
NAMSA: NATO Maintenance and Supply Agency (Obsolete. See NSPA)
NASA: National Aeronautical and Space Administration
NATO: North Atlantic Treaty Organization
NDA: Non-Disclosure Agreement
N.E.S.: Not elsewhere specified (EAR)
NDP: National Disclosure Policy
NIPO: Navy International Program Office
NISPOM: National Industrial Security Program Operating Manual
NLR: No License Required
NMFTA: National Motor Freight Traffic Association
NRC: Nuclear Regulatory Commission
NSA: National Security Agency
NSPA: NATO Support Agency
ODTC: Office of Defense Trade Controls (Obsolete. See DDTC)
OEF: Operation Enduring Freedom
OFAC: Office of Foreign Assets Control
OFOISR: Office of Freedom of Information and Security Review (Obsolete. See OSR)
OIF: Operation Iraqi Freedom
OSR: Office of Security Review
OPA: Offshore Procurement Agreement
OSD: Office of the Secretary of Defense
OUSD/P: Office Under Secretary of Defense for Policy
PD: Prior disclosure (CBP)
PEA: Post Entry Amendment (CBP)
PM/DTC: Bureau of Political – Military Affairs, Defense Trade Controls
PM/RSAT: Bureau of Political - Military Affairs, Regional Security Arms
PSA: Post Summary Adjustment (CBP)
RET: Routed Export Transaction
RFI: Representative of a Foreign Interest (FOCI)
RFI: Request for Information/Customs CF-28
RFP: Request for Proposal
RFQ: Request for Quote/Quotation
RPL: Restricted Parties List
RIN: Regulation Identification Number
RWA: Return Without Action
SAF/IAD: Secretary of the Air Force, International Affairs Division
SAMM: Security Assistance Management Manual
SBU: Sensitive but Unclassified (obsolete; replaced by CUI)

SCO: Special Compliance Officer
SIL: Supplemental Information Letter (CBP)
SED: Shipper's Export Declaration (Obsolete. See EEI)
SF-: Standard forms that originate in a U.S. Gov't agency and are approved through GSA.
SCO: Special Compliance Officer
SME: Significant Military Equipment
SOW: Statement of Work
SRN: Shipment Reference Number
SVI: Status Verification Interface (C-TPAT)
SWIFT: Society for Worldwide Interbank Financial Telecommunications
TAA: Technical Assistance Agreement
TCP: Technology Control Plan
TD: Treasury Decision
TSA: Technology Safeguards Agreement
TTCP: Technology Transfer Control Plan
TRN: Transportation Reference Number
US&FCS: U.S. & Foreign Commercial Service
USC: U.S. Code
USG: U.S. Government
USML: U.S. Munitions List
USPPI: U.S. Principal Party in Interest
USTR: U.S. Trade Representative
VD: Voluntary Disclosure (ITAR)
VEU: Validated End-Users (EAR)
VSD: Voluntary Self-Disclosure (EAR)
WDA: Warehouse Distribution Agreement
WMD: Weapons of Mass Destruction
WTO: World Trade Organization
XTN: External Transaction Number (obsolete)

INDEX

7525-V Form, Shipper's Export Declaration (SED): (Obsolete term, replaced by Electronic Export Information (EEI) on July 2, 2008)
Ablative materials: 121.1 Cat IV(f)
Accelerometers: 121.1 Cat XII(d); 121.16 Item 9-Cat II(c)
Accessories:
Defined: 121.8(c)
Acoustic signatures: 121.16 Item 17 Cat II
Acquisition, technical data supporting: 126.14(a)(4)
Active and passive: 121.1 Cat XI(a)
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Distribution Agreement: 124.14
Exports to: 124.14
Outside U.S.: 123.7; 124.14
Required statements: 124.14(c)
Transmittal letters: 124.14(e)
XTN: See External Transaction Number
Yemen: 126.1(u) footnote
Zimbabwe:
Prohibited exports and sales: 126.1(s)