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When trade compliance mistakes happen, regulators like BIS and OFAC evaluate what steps you took to prevent them. With the Trade Compliance Academy, you can demonstrate reasonable care - helping to mitigate the risk of fines, penalties, or enforcement actions.



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Our Core Training Areas

The Trade Compliance Academy curriculum is built around five essential pillars of compliance. Each area offers in-depth, role-specific training to help your team meet regulatory requirements and reduce risk.

Import

Tariffs rise. Rules shift. Penalties loom. Importing into the U.S. and other global markets has never been more complex - or more high-risk. Our tailored import compliance training helps your team navigate shifting requirements, avoid costly mistakes, and stay audit-ready in the face of continual change and trade unpredictability.

Export

Export mistakes aren't just costly - they're legally risky. From misclassifying goods to failing to screen recipients properly, small errors can lead to major fines, shipment delays, reputational damage, denial of export privileges, and even imprisonment. Our expert-led, training helps your teams get it right, stay compliant, and keep goods moving.

Sanctions & Embargos

Sanctions change fast. One day a deal is legal - the next, it's a violation. Whether your business deals with goods, services, finance, or data, sanctions and embargoes pose a serious risk. Our training helps your team spot red flags, follow the latest rules, and protect your business from major fines or reputational fallout.

Security

Your business manages sensitive data, critical IP, and classified information. One misstep in handling Controlled Unclassified Information or failing to follow security protocols can lead to contract loss, regulatory violations, or even national security breaches. Our U.S. security training helps teams protect data and stay compliant.

Anti-Corruption

Bribes, kickbacks, and forced labor don't always look obvious - but getting it wrong can cost millions. In today's complex global supply chains, anti-corruption training isn't just a legal checkbox - it's a business necessity. Our training helps teams recognize hidden risks, follow the law, and build a culture of integrity that regulators and stakeholders can trust.

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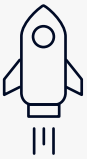
Reduce Business Risk
Ensure business compliance with up-to-date regulatory information, avoiding hefty fines, potential delays and reputational damage.



Demonstrate Reasonable Care
Show regulators that due diligence has been taken to avoid violations in trade compliance, with credible 3rd party training.



Build Internal Expertise
Develop in-house trade compliance knowledge across multiple functions, reducing over-reliance on external consultants.



Respond Quickly to Change
Get real-time regulatory updates aligned to each individual's job, geography and industry, ensuring learners are always up to date.



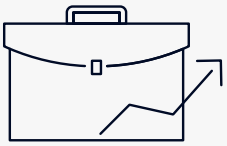
Empower and Motivate Teams
Give employees the confidence and skills to handle complex compliance challenges, fostering a culture of accountability, growth, and continuous learning.



Meet Global Standards
Gain internationally recognized certifications, aligned to global regulations, and build credibility with regulators, customers, and partners worldwide.



Improve Collaboration
Equip teams across supply chain, procurement, logistics, and legal with a shared understanding of trade compliance, improving coordination and communication.



Support Business Growth
Explore new markets and expand global operations with the assurance that teams understand and can navigate complex trade regulations from the start.

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PART 120—PURPOSE AND DEFINITIONS

Authority:22 U.S.C. 2651a, 2752, 2753, 2776, 2778, 2779, 2779a, 2785, 2794, 2797; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.
Source:87 FR 16411, Mar. 23, 2022, unless otherwise noted.

Subpart A—General Information

120.1 General authorities.

(a) ***Authority and delegation.*** 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 is delegated to the Secretary of State by Executive Order 13637. This subchapter implements that authority, as well as other relevant authorities in the Arms Export Control Act (22 U.S.C. 2751 *et seq.*). The Secretary of State delegates the authority to administer the regulations in this subchapter to the Deputy Assistant Secretary of State for Defense Trade Controls, Bureau of Political-Military Affairs.

(b) ***Authorized officials.***

(1) All authorities administered by the Deputy Assistant Secretary of State for Defense Trade Controls pursuant to 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.

(2) The Deputy Assistant Secretary of State for Defense Trade Controls supervises the Directorate of Defense Trade Controls, which is comprised of the following offices:

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

(ii) The Office of Defense Trade Controls Compliance and the Director, Office of Defense Trade Controls Compliance, which have responsibilities related to violations of law or regulation and compliance therewith, including references contained in parts 122, 126, 127, 128, and 130 of this subchapter, and those portions under this part and part 129 of this subchapter pertaining to registration.

(iii) 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 and part 126 of this subchapter, and the commodity jurisdiction procedure under this part.

120.2 Designation of defense articles and defense services.

The Arms Export Control Act (22 U.S.C. 2778(a) and 2794(7)) provides that the President shall designate the articles and services deemed to be defense articles and defense services for purposes of import or export controls. The President has delegated to the Secretary of State the authority to control the export and temporary import of defense articles and services. The items designated by the Secretary of State for purposes of export and temporary import control constitute the U.S. Munitions List (USML) specified in part 121 of this subchapter. Defense articles on the USML specified in part 121 of this subchapter that are also subject to permanent import control by the Attorney General on the U.S. Munitions Import List enumerated in 27 CFR part 447 are subject to temporary import controls administered by the Secretary of State. Designations of defense articles and defense services on the USML in part 121 of this subchapter are made by the Department of State with the concurrence of the Department of Defense. The scope of the USML shall be changed only by amendments made pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778). For a designation or determination on whether a particular item is enumerated on the USML, *see* § 120.4.

120.3 Policy on designating or determining defense articles and services on the U.S. Munitions List.

(a) For purposes of this subchapter, a specific article or service may be designated a defense article (see § 120.31) or defense service (see § 120.32) if it:

(1) Meets the criteria of a defense article or defense service on the U.S. Munitions List (USML) (part 121 of this subchapter); or

(2) Provides the equivalent performance capabilities of a defense article on the USML.

(b) For purposes of this subchapter, a specific article or service shall be determined in the future as a defense article or defense service if it provides a critical military or intelligence advantage such that it warrants control under this subchapter.

Note 1 to paragraphs (a) and (b):

An article or service determined in the future pursuant to this subchapter as a defense article or defense service, but not currently on the USML, will be placed in Category XXI of § 121.1 of this subchapter until the appropriate category of the USML has been amended to provide the necessary entry.

(c) A specific article or service is not a defense article or defense service for purposes of this subchapter if it:

(1) Is determined to be under the jurisdiction of another department or agency of the U.S. Government (see § 120.5) pursuant to a commodity jurisdiction determination (see § 120.4) unless superseded by changes to the USML or by a subsequent commodity jurisdiction determination; or

(2) Meets one of the criteria of § 120.41(b) when the article is used in or with a defense article and specially designed is used as a control criteria.

Note 2 to § 120.3:

The intended use of the article or service after its export (*i.e.,* for a military or civilian purpose), by itself, is not a factor in determining whether the article or service is subject to the controls of this subchapter.

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 (USML). It may also be used for consideration of a redesignation of an article or service currently covered by the USML. The Department must provide notice to Congress at least 30 days before any item is removed from the USML.

(b) The procedure for submitting a Commodity Jurisdiction Determination Request to the Directorate of Defense Trade Controls is set forth in § 120.12.

120.5 Relation to regulations of other agencies.

(a) ***The Department of Justice, the U.S. Munitions Import List (USMIL), and permanent imports.*** Defense articles and defense services covered by the U.S. Munitions List set forth in this subchapter are regulated by the Department of State (see also § 120.2) for purposes of export, reexport, retransfer, and temporary import. The President has delegated the authority to control the permanent import of defense articles and services to the Attorney General. The defense articles and services controlled by the Secretary of State and the Attorney General collectively comprise the U.S. Munitions List under the Arms Export Control Act. As the Attorney General exercises independent delegated authority to designate defense articles and services for purposes of permanent import controls, the permanent import control list

administered by the Department of Justice has been separately labeled the U.S. Munitions Import List (27 CFR part 447) to distinguish it from the list set out in this subchapter. In carrying out the functions delegated to the Attorney General pursuant to the Arms Export Control Act, 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.

(b) ***The Department of Commerce and the Export Administration Regulations*** —

(1) ***Export of items subject to the Export Administration Regulations by authority of the Department of Commerce.*** The Department of Commerce regulates the export, reexport, and in-country transfer of items on the Commerce Control List and other items subject to its jurisdiction, as well as certain activities performed by U.S. persons, including those that may contribute to the proliferation of weapons of mass destruction, under the Export Administration Regulations (EAR) (15 CFR parts 730 through 774).

(2) ***Export of items subject to the EAR by authority of the Department of State.*** A license or other approval (*see* § 120.57) from the Department of State granted in accordance with this subchapter may also authorize the export of items subject to the EAR (*see* § 120.58). An exemption (*see* § 120.57 and parts 123, 124, 125, and 126 of this subchapter) may only be used to export an item subject to the EAR that is for use in or with a defense article and is included in the same shipment as any defense article. Separate approval from the Department of Commerce is not required for these items. No exemption under this subchapter may be utilized to export an item subject to the EAR if not accompanied by a defense article. Those items subject to the EAR exported pursuant to a Department of State license or other approval would remain under the jurisdiction of the Department of Commerce for any subsequent transactions. The inclusion of items subject to the EAR on a Department of State license or other approval does not change the licensing jurisdiction of the items.

(c) ***Nuclear related controls; Department of Energy and the Nuclear Regulatory Commission.***

(1) The provisions of this subchapter do not apply to articles, technical data, or services in Category VI, Category XV, Category XVI, and Category XX of § 121.1 of this subchapter to the extent that exports of such articles, technical data, or services are controlled by the Department of Energy or the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954 (AEA), as amended, and the Nuclear Non-Proliferation Act of 1978, as amended, or are government transfers authorized pursuant to these Acts. For Department of Commerce controls, see 15 CFR 742.3 and 744.2, administered pursuant to Section 309(c) of the Nuclear Nonproliferation Act of 1978, as amended (42 U.S.C. 2139a(c)), and 15 CFR 744.5, which are not subject to this subchapter.

(2) 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 AEA. The transfer of Restricted Data or such assistance is prohibited except as authorized by the AEA. 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.

(3) A license for the export of a defense article, technical data, or the furnishing of a defense service relating to defense articles referred to in Category VI(e) or Category XX(b)(1) of § 121.1 of this subchapter will not be granted unless the defense article, technical data, or defense service comes within the scope of an existing Agreement for Cooperation for Mutual Defense Purposes concluded pursuant to the AEA with the government of the country to which the defense article, technical data, or defense service is to be exported. Licenses may be granted in the absence of such an agreement only:

(i) If the proposed export involves an article which is identical to that in use in an unclassified civilian nuclear power plant;

(ii) If the proposed export has no relationship to naval nuclear propulsion; and

(iii) If it is not for use in a naval propulsion plant.

120.6 U.S. criminal statutes.

For purposes of this subchapter, the phrase *U.S. criminal statutes* comprises the following:

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

(b) Section 1760 of the Export Control Reform Act of 2018 (50 U.S.C. 4819) or section 11 of the Export Administration Act of 1979 (50 U.S.C. 4610);

(c) Section 793, 794, or 798 of title 18, United States Code (relating to espionage involving defense or classified information) or section 2332d, 2339A, 2339B, 2339C, or 2339D of such title (relating to financial transactions with the government of a country designated as a country supporting international terrorism, providing material support to terrorists or terrorist organizations, financing of terrorism, or receiving military-type training from a foreign terrorist organization);

(d) Section 16 of the Trading with the Enemy Act (50 U.S.C. 4315);

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

(f) 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 or 78dd-3);

(g) Chapter 105 of title 18, United States Code (relating to sabotage);

(h) Section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(a));

(i) Sections 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);

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

(k) Section 371 of title 18, United States Code (when it involves conspiracy to violate any of the statutes listed in this section);

(l) Sections 3, 4, 5, and 6 of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458sections 6903-6906, relating to missile systems designed to destroy aircraft (18 U.S.C. 2332g), prohibitions governing atomic weapons (42 U.S.C. 2122), radiological dispersal services (18 U.S.C. 2332h), and variola virus (18 U.S.C. 175c);

(m) Sections 2779 and 2780 of title 22, United States Code (relating to fees of military sales agents and other payments, and transactions with countries supporting acts of international terrorism);

(n) Section 542 of title 18, United States Code (relating to the entry of goods by means of false statements), where the underlying offense involves a defense article, including technical data, or violations related to the Arms Export Control Act (AECA) or International Traffic in Arms Regulations (ITAR) in this subchapter;

(o) Section 545 of title 18, United States Code (relating to smuggling goods into the United States), where the underlying offense involves a defense article, including technical data, or violations related to the AECA or ITAR;

(p) Section 554 of title 18, United States Code (relating to smuggling goods from the United States), where the underlying offense involves a defense article, including technical data, or violations related to the AECA or ITAR; and

(q) Section 1001 of title 18, United States Code (relating to false statements or entries generally), Section 1831 of title 18, United States Code (relating to economic espionage), and Section 1832 of title 18, United States Code (relating to theft of trade

secrets) where the underlying offense involves a defense article, including technical data, or violations related to the AECA or ITAR.

120.7 Relations to other provisions of law.

(a) 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.

(b) 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.

120.8-120.9 [Reserved]

Subpart B—General Policies and Processes

120.10 Introduction to the U.S. Munitions List.

(a) ***The U.S. Munitions List.*** The articles, services, and related technical data designated as defense articles or defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act appear in part 121 of this subchapter and constitute the U.S. Munitions List (USML). Changes in designations are published in the Federal Register. Paragraphs (b) through (d) of this section describe or explain the elements of a USML category.

(b) ***Composition of U.S. Munitions List categories.*** USML categories are organized by paragraphs and subparagraphs identified alphanumerically. They usually start by enumerating or otherwise describing end-items, followed by major systems and equipment; parts, components, accessories, and attachments; and technical data and defense services directly related to the defense articles of that USML category.

(c) ***Significant Military Equipment paragraphs in the USML.*** All items described within a USML paragraph or subordinate paragraph that is preceded by an asterisk (*) are designated Significant Military Equipment (SME). Note that technical data directly

related to the manufacture or production of a defense article designated as SME is also designated as SME.

(d) ***Missile Technology Control Regime (MTCR) designation.*** Annotation with the parenthetical (MT) at the end of a USML entry indicates those defense articles that are on the MTCR Annex.

120.11 Order of review.

(a) ***Control.*** Articles are controlled on the U.S. Munitions List (USML) because they are either:

(1) Enumerated in a category; or

(2) Described in a catch-all paragraph that incorporates specially designed as a control parameter. In order to classify an item on the USML, begin with a review of the general characteristics of the item. This should guide you to the appropriate category, whereupon you should attempt to match the particular characteristics and functions of the article to a specific entry within that category.

(b) ***Specially designed.***

(1) If the entry includes the term specially designed, refer to § 120.41 to determine if the article qualifies for one or more of the exclusions articulated in § 120.41(b).

(2) An item described in multiple entries should be categorized according to an enumerated entry rather than a specially designed catch-all paragraph.

(c) ***Integration of controlled items.*** Defense articles described on the USML are controlled and remain subject to this subchapter following incorporation or integration into any item not described on the USML, unless specifically provided otherwise in this subchapter.

(d) ***Other controls.*** In all cases, articles not controlled on the USML may be subject to another U.S. Government regulatory agency (see § 120.5, and Supplement No. 4 to part 774 of the Export Administration Regulations (EAR) in title 15 of the CFR for guidance on classifying an item subject to the EAR).

120.12 Commodity jurisdiction determination requests.

(a) Upon electronic submission of a Commodity Jurisdiction Determination Form (Form DS-4076), the Directorate of Defense Trade Controls (DDTC) shall provide a determination of whether a particular article or service is covered by the U.S. Munitions List in part 121 of this subchapter. 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. State, Defense, and Commerce will resolve commodity jurisdiction determination disputes in accordance with established procedures. State shall notify Defense and Commerce, and other U.S. Government agencies as appropriate, of the initiation and conclusion of each case.

(b) A determination that an article or service meets the criteria of a defense article or defense service, or provides the equivalent performance capabilities of a defense article on the U.S. Munitions List, is made on a case-by-case basis, taking into account:

(1) The form and fit of the article;

(2) The function and performance capability of the article; and

(3) Other applicant-provided information, to include a history of the product's design, development, and use, as well as specifications and any other relevant data as described in brochures and other related documents.

(c) A determination that an article or service has a critical military or intelligence advantage such that it warrants control under Category XXI of § 121.1 of this subchapter is made, on a case-by-case basis, taking into account:

(1) The function and performance capability of the article; and

(2) The nature of controls imposed by other nations on such items (including the Wassenaar Arrangement and other multilateral controls).

(d) DDTC will provide a preliminary response within 10 working days of receipt of a complete request for commodity jurisdiction determination. If after 45 days DDTC 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.

(e) A person may appeal a commodity jurisdiction determination by submitting a written request for reconsideration to the Deputy Assistant Secretary of State for Defense Trade Controls. The Deputy Assistant Secretary's determination of the appeal will be provided, in writing, within 30 days of receipt of the appeal. If desired, an appeal of the Deputy Assistant Secretary's decision can then be made to the Assistant Secretary of State for Political-Military Affairs.

(f) Registration with DDTC as described in part 122 of this subchapter is not required prior to submission of a commodity jurisdiction determination request.

120.13 Registration.

(a) Any person who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles, or furnishing defense services, is required to register with the Directorate of Defense Trade Controls as set forth in part 122 of this subchapter. For the purpose of this subchapter, engaging in such a business requires only one occasion of manufacturing or exporting or temporarily importing a defense article or furnishing a defense service. A manufacturer who does not engage in exporting must nevertheless register.

(b) Any U.S. person; foreign person located in the United States; or foreign person located outside the United States that is owned or controlled by a U.S. person, who engages in brokering activities is required to register with the Directorate of Defense Trade Controls as set forth in part 129 of this subchapter.

(c) The registration requirements as set forth in parts 122 and 129 of this subchapter include limited exemptions.

[87 FR 16411, Mar. 23, 2022, as amended at 88 FR 12213, Jan. 27, 2023]

120.14 Licenses and related authorizations.

(a) ***Export, reexport, retransfer, or temporary import, of defense articles.*** The approval of the Directorate of Defense Trade Controls (DDTC) must be requested and obtained before the export, reexport, retransfer, or temporary import of a defense article, unless an exemption under the provisions of this subchapter is applicable.

(b) ***Furnishing defense services.*** The approval of DDTC must be requested and obtained before a defense service may be furnished, unless an exemption under the provisions of this subchapter is applicable.

(c) ***Brokering activities.*** The approval of DDTC must be requested and obtained before engaging in the business of brokering activities for the defense articles described in § 129.4(a) of this subchapter by a person who is required to register as a broker under part 129 of this subchapter, unless an exemption under the provisions of part 129 is applicable.

120.15 Exemptions.

(a) Persons otherwise required to register with the Directorate of Defense Trade Controls in accordance with this subchapter must do so prior to utilization of an exemption.

(b) Exemptions provided in this subchapter may not be utilized for transactions in which the exporter, any party to the export, any source or manufacturer, broker or other participant in the brokering activities, is generally ineligible as set forth in §

120.16, unless prior written authorization has been granted by the Directorate of Defense Trade Controls.

(c) Exemptions provided in this subchapter do not apply with respect to defense articles or defense services originating in or for export to any proscribed countries, areas, or persons identified in § 126.1 of this subchapter, except as provided in § 126.1.

(d) Each exemption provided in this subchapter is subject to limitation as described in the section or paragraph of this subchapter in which the exemption is prescribed.

(e) 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).

(f) To claim an exemption for the export of technical data under the provisions of this subchapter (e.g., §§ 125.4 and 125.5 of this subchapter), the exporter must certify that the proposed export is covered by a relevant section of this subchapter, to include the paragraph and applicable subordinate paragraph. 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. For exports that are oral, visual, or electronic the exporter must also complete a written certification and retain it for a period of 5 years.

120.16 Eligibility for approvals.

(a) 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:

(1) A foreign governmental entity in the U.S. may receive a license or other approval;

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

(3) A foreign person may receive an approval for brokering activities.

(b) A request for a license or other approval by a U.S. person or by a person referred to in paragraphs (a)(1) and (3) 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.

(c) Persons who have been convicted of violating the U.S. criminal statutes enumerated in § 120.6, who have been debarred pursuant to part 127 or 128 of this subchapter, who are subject to indictment or are otherwise charged (e.g., charged by criminal information in lieu of indictment) with violating the U.S. criminal statutes enumerated in § 120.6, 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 publicly announced Department of State policy of denial, suspension, or revocation under § 120.18(a), are generally ineligible to be involved in activities regulated under this subchapter.

120.17 End-use monitoring.

(a) Pursuant to section 40A of the Arms Export Control Act (22 U.S.C. 2785) and related delegations of authority, the Department of State is required to establish a monitoring program in order to improve accountability with respect to defense articles and defense services, sold, leased, or exported under Department of State licenses or other approvals under section 38 of the Arms Export Control Act and this subchapter.

(b) All exports of defense articles, technical data, services, and brokering activities made pursuant to this subchapter are subject to end-use monitoring by the Department of State through the Blue Lantern program.

120.18 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. 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 Regulations in 15 CFR parts 730through 774) 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 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 § 120.6; or

(4) An applicant or any party to the export or the agreement has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.6; 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 an order denying export privileges issued by the Department of Commerce under 15 CFR part 766 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. 102-484)); or

(9) Any person involved in the transaction has been the subject of an unfavorable finding of an end-use monitoring check as described in § 120.17.

(b) ***Notification.*** The Directorate of Defense Trade Controls will notify applicants or licensees or other appropriate U.S. 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 30 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.

120.19 Violations and penalties.

(a) Part 127 of this subchapter specifies conduct that constitutes a violation of the Arms Export Control Act (AECA) and/or the International Traffic in Arms Regulations in this subchapter and the sanctions that may be imposed for such violations.

(b) The Department strongly encourages the disclosure of information to the Directorate of Defense Trade Controls by persons that believe they may have violated any export control provision of the AECA, or any regulation in this subchapter, order, license, or other authorization issued under the authority of the AECA.

120.20 Administrative procedures.

The Arms Export Control Act (AECA) 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. Pursuant to delegated authorities, the Secretary of State is authorized to make decisions on whether license applications or other written requests for approval shall be granted, or whether exemptions may be used. The Secretary of State is also authorized to revoke, suspend, or amend licenses or other written approvals whenever such action is deemed to be advisable. The administration of the AECA 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 AECA, is highly discretionary, it is excluded from review under the Administrative Procedure Act.

120.21 Disclosure of information.

(a) ***Freedom of information.*** Subchapter R of this title 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 (AECA) (22 U.S.C. 2778(e)) provides that information obtained for the purpose of consideration of, or concerning, license applications shall be withheld from public disclosure unless the release of such information is determined by the Secretary of State to be in the national interest. Section 38(e) of the AECA further provides that the names of countries and types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless certain determinations are made that the release of such information would be contrary to the national interest. Such determinations required by section 38(e) shall be made by the Assistant Secretary of State for Political-Military Affairs.

(c) ***Information required under part 130 of this subchapter.*** Part 130 contains specific provisions on the disclosure of information described in that part.

(d) ***National interest determinations.*** In accordance with section 38(e) of the AECA, 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).

120.22 Advisory opinions and related authorizations.

(a) ***Preliminary authorization determinations.*** A person may request information from the Directorate of Defense Trade Controls (DDTC) as to whether it would likely grant a license or other approval for a particular defense article or defense service to a particular country. Such information from DDTC is issued on a case-by-case basis and applies only to the particular matters presented to DDTC. 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.

(b) ***Related authorizations.*** DDTC 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.

(c) ***Interpretations of the International Traffic in Arms Regulations in this subchapter.*** Any person may request an interpretation of the requirements set forth in this subchapter in the form of an advisory opinion. A request for an advisory opinion must be made in writing. Any response to an advisory opinion provided by DDTC pursuant to this paragraph (c) shall not be an authorization to export and shall not bind the Department to grant or deny any such authorization.

120.23 Organizations and arrangements.

(a) ***North Atlantic Treaty Organization.*** North Atlantic Treaty Organization (NATO) refers to the organization of member states that are parties to the North Atlantic Treaty, which members include: Albania, Belgium, Bulgaria, Canada, Croatia, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey, the United Kingdom, the United States, and any state not included here that has deposited an instrument of accession in accordance with Article 10 of the North Atlantic Treaty.

(b) ***Major non-NATO ally.***

(1) Major non-NATO ally, as defined in section 644(q) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(q)), means a country that is designated in accordance with section 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. 2151 *et seq.* and 22 U.S.C. 2751 *et seq.*).

(2) The following countries have been designated as major non-NATO allies: Argentina, Australia, Bahrain, Brazil, Colombia, Egypt, Israel, Japan, Jordan, Kenya, Kuwait, Morocco, New Zealand, Pakistan, the Philippines, Qatar, the Republic of Korea, Thailand, and Tunisia. Taiwan shall be treated as though it were designated a major non-NATO ally.

(c) ***Wassenaar Arrangement.***

(1) The Wassenaar Arrangement refers to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies among the United States, Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, Romania, the Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, and the United Kingdom, established on 12 July 1996, to promote transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies.

(2) The term Wassenaar Munitions List (WAML) refers to the list of military items for which all participants have agreed to maintain national export controls.

(d) ***Missile Technology Control Regime*** —

(1) ***Regime.*** Missile Technology Control Regime (MTCR) refers to the policy statement among 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.

(2) ***MTCR Annex.*** The term MTCR Annex refers to the MTCR Guidelines and the Equipment, Software and Technology Annex of the MTCR, and any amendments thereto.

(3) ***List of all items on the MTCR Annex.*** MTCR Annex items specified in the U.S. Munitions List shall be annotated by the parenthetical (MT) at the end of each applicable paragraph.

(e) ***Defense Trade Cooperation Treaty between the United States and Australia.*** Defense Trade Cooperation Treaty between the United States and Australia refers to the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Sydney, September 5, 2007. For additional information on making exports pursuant to this treaty, see § 126.16 of this subchapter.

(f) ***Australia Implementing Arrangement.*** Australia Implementing Arrangement refers to the Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Washington, March 14, 2008, as it may be amended.

(g) ***Defense Trade Cooperation Treaty between the United States and the United Kingdom.*** Defense Trade Cooperation Treaty between the United States and the United Kingdom refers 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 and London, June 21 and 26, 2007. For additional information on making exports pursuant to this treaty, see § 126.17 of this subchapter.

(h) ***United Kingdom Implementing Arrangement.*** United Kingdom Implementing Arrangement refers to 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, February 14, 2008, as it may be amended.

[87 FR 16411, Mar. 23, 2022, as amended at 90 FR 29722, July 7, 2025]

120.24-120.29 [Reserved]

Subpart C—Definitions

120.30 Directorate of Defense Trade Controls.

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

120.31 Defense article.

(a) ***Defense article*** means any item or technical data designated in § 121.1 of this subchapter and includes:

(1) 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; and

(2) Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as defense articles.

(b) It does not include basic marketing information on function or purpose or general system descriptions.

(c) The policy described in § 120.3 is applicable to designations of additional items.

120.32 Defense service.

(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;

(2) The furnishing to foreign persons of any technical data controlled under this subchapter, 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.

(b) [Reserved]

120.33 Technical data.

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

(1) Information, other than software as defined in § 120.40(g), 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 on the U.S. Munitions List and 600-series items controlled by the Commerce Control List;

(3) Information covered by an invention secrecy order; or

(4) Software (see § 120.40(g)) directly related to defense articles.

(b) The definition in paragraph (a) of this section 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 § 120.34 or telemetry data as defined in note 3 to Category XV(f) of § 121.1 of this subchapter. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

120.34 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 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 (see also § 125.4(b)(13) of this subchapter); or

(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 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]

120.35 [Reserved]

120.36 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 that are preceded by an asterisk; and

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

120.37 Major defense equipment.

Major defense equipment, pursuant to section 47(6) of the Arms Export Control Act (22 U.S.C. 2794(6)), means any item of significant military equipment 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.

120.38 Classified.

Classified means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or international organization.

120.39 Foreign defense article or defense service.

Foreign defense article or defense service means any article or service described on the U.S. Munitions List of non-U.S. origin. Unless otherwise provided in this subchapter, the terms defense article and defense service refer to both U.S. and foreign origin defense articles and defense services described on the U.S. Munitions List. A defense article or defense service is determined exclusively in accordance with the Arms Export Control Act and this subchapter, regardless of any designation (either affirming or contrary) that may be attributed to the same article or service by any foreign government or international organization.

120.40 Compositional terms.

(a) ***Commodity*** means any article, material, or supply, except technology/technical data or software.

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

(c) A *component* is an item that is useful only when used in conjunction with an end-item:

(1) A *major component* includes any assembled element that forms a portion of an end-item without which the end-item is inoperable; and

(2) A *minor component* includes any assembled element of a major component.

(d) ***Accessories and attachments*** are associated articles for any component, equipment, system, or end-item, and which are not necessary for its operation, but which enhance its usefulness or effectiveness.

(e) 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 designed use.

(f) ***Firmware*** and any related unique support tools (such as computers, linkers, editors, test case generators, diagnostic checkers, library of functions, and system test diagnostics) directly related to 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.

(g) ***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 only software should, unless it is specifically enumerated in § 121.1 of this subchapter (e.g., USML Category XIII(b)), apply for a license pursuant to part 125 of this subchapter.

(h) A *system* is a combination of parts, components, accessories, attachments, firmware, software, equipment, or end-items that operate together to perform a function.

Note 1 to paragraph (h):

The industrial standards established by the International Council on Systems Engineering (INCOSE), National Aeronautics and Space Administration (NASA), and International Organization for Standardization (ISO) provide examples for when commodities and software operate together to perform a function as a system.

(i) ***Equipment*** is a combination of parts, components, accessories, attachments, firmware, or software that operate together to perform a function of, as, or for an end-item or system. Equipment may be a subset of an end-item based on the characteristics of the equipment. Equipment that meets the definition of an end-item in paragraph (b) of this section is an end-item. Equipment that does not meet the definition of an end-item is a component, accessory, attachment, firmware, or software.

[87 FR 16411, Mar. 23, 2022, as amended at 88 FR 12213, Feb. 27, 2023]

120.41 Specially designed.

(a) Except for commodities or software described in paragraph (b) of this section, a commodity or software is specially designed if it:

(1) As a result of development, has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions described in the relevant U.S. Munitions List (USML) paragraph in § 121.1 of this subchapter; or

Note 1 to paragraph (a)(1):

An example of a commodity that as a result of development has properties peculiarly responsible for achieving or exceeding the controlled performance levels, functions, or

characteristics in a USML category would be a swimmer delivery vehicle specially designed to dock with a submarine to provide submerged transport for swimmers or divers from submarines.

(2) Is a part, component, accessory, attachment, or software for use in or with a defense article.

(b) For purposes of this subchapter, a part, component, accessory, attachment, or software is not specially designed if it:

(1) Is subject to the EAR pursuant to a commodity jurisdiction determination;

(2) Is, regardless of form or fit, a fastener (e.g., screws, bolts, nuts, nut plates, studs, inserts, clips, rivets, pins), washer, spacer, insulator, grommet, bushing, spring, wire, or solder;

(3) Has the same function, performance capabilities, and the same or equivalent form and fit as a commodity or software used in or with a commodity that:

(i) Is or was in production (*i.e.,* not in development); and

(ii) Is not enumerated on the USML;

(4) Was or is being developed with knowledge that it is or would be for use in or with both defense articles enumerated on the USML and also commodities not on the USML; or

(5) Was or is being developed as a general purpose commodity or software, *i.e.,* with no knowledge for use in or with a particular commodity (e.g., a F/A-18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool).

Note 2 to paragraph (b):

For a defense article not to be specially designed on the basis of paragraph (b)(4) or (5) of this section, documents contemporaneous with its development, in their totality, must establish the elements of paragraph (b)(4) or (5). Such documents may include concept design information, marketing plans, declarations in patent applications, or contracts. Absent such documents, the commodity may not be excluded from being specially designed by either paragraph (b)(4) or (5).

Note 3 to paragraph (b):

For the purpose of paragraphs (b)(4) and (5) of this section, “knowledge” includes not only the positive knowledge a circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such

awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts.

20.42 Form, fit, function, performance capability, equivalent, enumerated, and catch-all control.

(a) ***Form.*** The form of a commodity is defined by its configuration (including the geometrically measured configuration), material, and material properties that uniquely characterize it. For software, the form means the design, logic flow, and algorithms.

(b) ***Fit.*** The fit of a commodity is defined by its ability to physically interface or connect with or become an integral part of another commodity. For software, the fit is defined by its ability to interface or connect with a defense article.

(c) ***Function.*** The function of a commodity is the action or actions it is designed to perform. For software, the function means the action or actions the software performs directly related to a defense article or as a standalone application.

(d) ***Performance capability.*** Performance capability is the measure of a commodity's effectiveness to perform a designated function in a given environment (e.g., measured in terms of speed, durability, reliability, pressure, accuracy, efficiency). For software, performance capability means the measure of the software's effectiveness to perform a designated function.

(e) ***Equivalent.*** With respect to a commodity, equivalent means its form has been modified solely for fit purposes.

(f) ***Enumerated.*** Enumerated refers to any item designated on the U.S. Munitions List or item on the Commerce Control List and not in a catch-all control.

(g) ***Catch-all control.*** A catch-all control is one that does not refer to specific types of parts, components, accessories, or attachments, but rather controls unspecified parts, components, accessories, or attachments only if they were specially designed for an enumerated item.

120.43 Development, production, and related terms; Basic and applied research.

(a) ***Development*** is related to all stages prior to serial production, such as design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, and layouts. Development includes modification of an existing design.

(b)

(1) ***Production*** means all production stages, such as product engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance. This includes serial production where commodities have passed production readiness testing (*i.e.,* an approved, standardized design ready for large scale production) and have been or are being produced on an assembly line for multiple commodities using the approved, standardized design.

(2) Commodities in production that are subsequently subject to development activities, such as those that would result in enhancements or improvements only in the reliability or maintainability of the commodity (e.g., an increased mean time between failure), including those pertaining to quality improvements, cost reductions, or feature enhancements, remain in production. However, any new models or versions of such commodities developed from such efforts that change the basic performance or capability of the commodity are in development until and unless they enter into production.

(c) ***Design methodology*** includes the underlying engineering methods and design philosophy utilized (*i.e.,* information that explains the rationale for a 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. (Final analytical results and the initial conditions and parameters may be provided.)

(d) ***Engineering analysis*** includes the 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. (Final analytical results and the initial conditions and parameters may be provided.)

(e) ***Manufacturing know-how*** includes 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.)

(f) ***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 (e.g., acceptance criteria, object code software for numerically controlled machines) 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. Build-to-print does not include the release of any information which discloses design methodology, engineering analysis, detailed process information or manufacturing know-how. 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.

(g) ***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.

(h) ***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) ***Applied research*** means 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.

120.44 [Reserved]

120.45 Maintenance levels.

(a) ***Organizational-level maintenance*** (or basic-level maintenance) is the first level of maintenance that can be performed on-equipment (directly on the defense article or support equipment) without specialized training. It consists of repairing, inspecting, servicing, calibrating, lubricating, or adjusting equipment, as well as replacing minor parts, components, assemblies, and line-replaceable spares or units. This includes modifications, enhancements, or upgrades that would result in improving only the reliability or maintainability of the commodity (e.g., an increased mean time between failure) and does not enhance the basic performance or capability of the defense article.

(b) ***Intermediate-level maintenance*** is second-level maintenance performed off-equipment (on removed parts, components, or equipment) at or by designated maintenance shops or centers, tenders, or field teams. It may consist of calibrating, repairing, testing, or replacing damaged or unserviceable parts, components, or assemblies. This includes modifications, enhancements, or upgrades that would result in improving only the reliability or maintainability of the commodity (e.g., an increased

mean time between failure) and does not enhance the basic performance or capability of the defense article.

(c) ***Depot-level maintenance*** is third-level maintenance performed on- or off-equipment at or by a major repair facility, shipyard, or field team, each with necessary equipment and personnel of requisite technical skill. It consists of providing evaluation or repair beyond unit or organization capability. This maintenance consists of inspecting, testing, calibrating, repairing, overhauling, refurbishing, reconditioning, and one-to-one replacing of any defective parts, components, or assemblies. This includes modifications, enhancements, or upgrades that would result in improving only the reliability or maintainability of the commodity (e.g., an increased mean time between failure) and does not enhance the basic performance or capability of the defense article.

120.46-120.49 [Reserved]

120.50 Export.

(a) ***Export,*** except as set forth in § 120.54 or § 126.16 or § 126.17 of this subchapter, means:

(1) An actual shipment or transmission out of the United States, including the sending or taking of a defense article out of the United States in any manner;

(2) Releasing or otherwise transferring technical data to a foreign person in the United States (a deemed export);

(3) Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to this subchapter by a U.S. person to a foreign person;

(4) Releasing or otherwise transferring a defense article to an embassy or to any of its agencies or subdivisions, such as a diplomatic mission or consulate, in the United States;

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

(6) The release of previously encrypted technical data as described in § 120.56(a)(3) and (4).

(b) Any release in the United States of technical data to a foreign person is deemed to be an export to all countries in which the foreign person has held or holds citizenship or holds permanent residency.

120.51 Reexport.

(a) ***Reexport,*** except as set forth in § 120.54 or § 126.16 or § 126.17 of this subchapter, means:

(1) An actual shipment or transmission of a defense article from one foreign country to another foreign country, including the sending or taking of a defense article to or from such countries in any manner;

(2) Releasing or otherwise transferring technical data to a foreign person who is a citizen or permanent resident of a country other than the foreign country where the release or transfer takes place (a deemed reexport); or

(3) Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to this subchapter between foreign persons.

(b) Any release outside the United States of technical data to a foreign person is deemed to be a reexport to all countries in which the foreign person has held or holds citizenship or holds permanent residency.

120.52 Retransfer.

(a) ***Retransfer,*** except as set forth in § 120.54 or § 126.16 or § 126.17 of this subchapter, means:

(1) A change in end-use or end-user, or a temporary transfer to a third party, of a defense article within the same foreign country; or

(2) A release of technical data to a foreign person who is a citizen or permanent resident of the country where the release or transfer takes place.

(b) [Reserved]

120.53 Temporary import.

(a) ***Temporary import,*** except as set forth in § 120.54, means bringing into the United States from a foreign country any defense article that is:

(1) To be returned to the country from which it was shipped or taken; or

(2) Any defense article that is in transit to another foreign destination.

(b) 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.

(c) 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).

120.54 Activities that are not exports, reexports, retransfers, or temporary imports.

(a) The following activities are not exports, reexports, retransfers, or temporary imports:

(1) Launching a spacecraft, launch vehicle, payload, or other item into space;

(2) Transmitting or otherwise transferring technical data to a U.S. person in the United States from a person in the United States;

(3) Transmitting or otherwise transferring within the same foreign country technical data between or among only U.S. persons, so long as the transmission or transfer does not result in a release to a foreign person or transfer to a person prohibited from receiving the technical data;

(4) Shipping, moving, or transferring defense articles between or among the United States as defined in § 120.60;

(5) Sending, taking, or storing technical data that is:

(i) Unclassified;

(ii) Secured using end-to-end encryption;

(iii) Secured using cryptographic modules (hardware or software) compliant with the Federal Information Processing Standards Publication 140-2 (FIPS 140-2) or its successors, supplemented by software implementation, cryptographic key management and other procedures and controls that are in accordance with guidance provided in current U.S. National Institute for Standards and Technology (NIST) publications, or by other cryptographic means that provide security strength that is at least comparable to the minimum 128 bits of security strength achieved by the Advanced Encryption Standard (AES-128); and

(iv) Not intentionally sent to a person in or stored in a country proscribed in § 126.1 of this subchapter; and

Note 1 to paragraph (a)(5)(iv):

Data in-transit via the internet is not deemed to be stored in a country it transits.

(v) Not sent from a country proscribed in § 126.1 of this subchapter;

(6) The taking of a defense article subject to the reexport or retransfer requirements of this subchapter on a deployment or training exercise outside a previously approved country, provided:

(i) There is no change in end-use or end-user with respect to the defense article;

(ii) The defense article is transported by and remains in the possession of the previously authorized armed forces of a foreign government or United Nations military personnel; and

(iii) The defense article is not being exported from or temporarily imported into the United States; and

(7) The transfer of a foreign defense article previously imported into the United States that has since been exported from the United States pursuant to a license or other approval under this subchapter, provided:

(i) The foreign defense article was not modified, enhanced, upgraded, or otherwise altered or improved in a manner that changed the basic performance of the item prior to its return to the country from which it was imported or a third country;

(ii) A U.S.-origin defense article was not incorporated into the foreign defense article; and

(iii) The defense article is not being exported from or temporarily imported into the United States.

(b)

(1) For purposes of this section, end-to-end encryption is defined as:

(i) The provision of cryptographic protection of data, such that the data is not in an unencrypted form, between an originator (or the originator's in-country security boundary) and an intended recipient (or the recipient's in-country security boundary); and

(ii) The means of decryption are not provided to any third party.

(2) The originator and the intended recipient may be the same person. The intended recipient must be the originator, a U.S. person in the United States, or a person otherwise authorized to receive the technical data, such as by a license or other approval pursuant to this subchapter.

(c) The ability to access technical data in encrypted form that satisfies the criteria set forth in paragraph (a)(5) of this section does not constitute the release or export of such technical data.

[87 FR 16411, Mar. 23, 2022, as amended at 89 FR 66214, Aug. 15, 2024; 90 FR 29723, July 7, 2025]

120.55 Access information.

Access information is information that allows access to encrypted technical data subject to this subchapter in an unencrypted form. Examples include decryption keys, network access codes, and passwords.

120.56 Release.

(a) ***Release.*** Technical data is released through:

(1) Visual or other inspection by foreign persons of a defense article that reveals technical data to a foreign person;

(2) Oral or written exchanges with foreign persons of technical data in the United States or abroad;

(3) The use of access information to cause or enable a foreign person, including yourself, to access, view, or possess unencrypted technical data; or

(4) The use of access information to cause technical data outside of the United States to be in unencrypted form.

(b) ***Provision of access information.*** Authorization for a release of technical data to a foreign person is required to provide access information to that foreign person, if that access information can cause or enable access, viewing, or possession of the unencrypted technical data.

120.57 Authorization types.

(a) ***License*** means a document bearing the word “license” issued by the Deputy Assistant Secretary of State for Defense Trade Controls, or authorized designee, that permits the export, reexport, retransfer, temporary import, or brokering of a specific defense article or defense service controlled by this subchapter.

(b) ***Other approval*** means a document, other than a license, issued by the Deputy Assistant Secretary of State for Defense Trade Controls, or authorized designee, that approves an activity regulated by this subchapter (e.g., approvals for brokering

activities or retransfer authorizations), or the use of an exemption to the license requirements as described in this subchapter.

(c) ***Exemption*** means a provision of this subchapter that authorizes the export, reexport, retransfer, temporary import, or brokering of a specific defense article or defense service without a license or other written authorization.

(d) ***Manufacturing license agreement*** means an agreement (e.g., contract), approved by the Directorate of Defense Trade Controls (DDTC), whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates:

(1) The export of technical data or defense articles or the performance of a defense service; or

(2) The use by the foreign person of technical data or defense articles previously exported by the U.S. person.

(e) ***Technical assistance agreement*** means an agreement (e.g., contract), approved by DDTC, 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, paragraph (d) of this section is applicable.

(f) ***Distribution agreement*** means an agreement (e.g., a contract), approved by DDTC, 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.

120.58 Subject to the Export Administration Regulations (EAR).

Items *subject to the EAR* are those items listed on the Commerce Control List in part 774 of the Export Administration Regulations (EAR) and all other items that meet the definition of that term in accordance with § 734.3 of the EAR. The EAR is found at 15 CFR parts 730 through 774.

120.59 [Reserved]

120.60 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.

120.61 Person.

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. If a provision in this subchapter does not refer exclusively to a foreign person or U.S. person, then it refers to both.

120.62 U.S. person.

U.S. person means a person who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). 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 § 120.63.

120.63 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).

120.64 Regular employee.

(a) ***Regular employee*** means:

(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).

(b) [Reserved]

120.65 Foreign ownership and foreign control.

(a) ***Foreign ownership*** means more than 50 percent of the outstanding voting securities of the firm are owned by one or more foreign persons.

(b) ***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.

120.66 Affiliate.

(a) ***Affiliate*** (of a registrant) means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such registrant.

(b) For purposes of this section, “control” means having the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Control is rebuttably presumed to exist where there is ownership of 25 percent or more of the outstanding voting securities if no other person controls an equal or larger percentage.

120.67 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 in this subchapter; and

(4) Has the independent authority to:

(i) Inquire into any aspect of a proposed export, temporary import, or brokering activity by the applicant;

(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) For the purposes of a broker who is a foreign person, the empowered official may be a foreign person who otherwise meets the criteria for an empowered official in paragraph (a) of this section.

120.68 Party to the export.

(a) ***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.

(b) [Reserved]

120.69 Port Directors.

Port Directors 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).

PART 121—THE UNITED STATES MUNITIONS LIST

Authority:22 U.S.C. 2752, 2778, 2797; 22 U.S.C. 2651a; Sec. 1514, Pub. L. 105-261, 112 Stat. 2175; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.
Source:58 FR 39287, July 22, 1993, unless otherwise noted.
Enumeration of Articles

121.0 United States Munitions List description and definitions.

Cross Reference
Link to an amendment published at 90 FR 5601, Jan. 17, 2025.

(a) For a description of the U.S. Munitions List and its designations, including the use of asterisks and the parenthetical "(MT)", see § 120.10 of this subchapter.

(b) As used in this part, *EAR* means Export Administration Regulations in 15 CFR parts 730 through 774.

[87 FR 16422, Mar. 23, 2022]

121.1 The United States Munitions List.

Cross Reference
Link to an amendment published at 86 FR 48022, Aug. 27, 2021.
Cross Reference
Link to an amendment published at 90 FR 5601, Jan. 17, 2025.

(a)-(b) [Reserved]

Category I—Firearms and Related Articles

* (a) Firearms using caseless ammunition.

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

* (c) Firearms specially designed to integrate fire control, automatic tracking, or automatic firing (e.g., Precision Guided Firearms).

Note 1 to paragraph (c):

Integration does not include only attaching to the firearm or rail.

* (d) Fully automatic shotguns regardless of gauge.

* (e) Silencers, mufflers, and sound suppressors.

(f) [Reserved]

(g) Barrels, receivers (frames), bolts, bolt carriers, slides, or sears specially designed for the articles in paragraphs (a), (b), and (d) of this category.

(h) Parts, components, accessories, and attachments, as follows:

(1) Drum and other magazines for firearms to .50 caliber (12.7 mm) inclusive with a capacity greater than 50 rounds, regardless of jurisdiction of the firearm, and specially designed parts and components therefor;

(2) Parts and components specially designed for conversion of a semi-automatic firearm to a fully automatic firearm;

(3) Parts and components specially designed for defense articles described in paragraphs (c) and (e) of this category; or

(4) Accessories or attachments specially designed to automatically stabilize aim (other than gun rests) or for automatic targeting, and specially designed parts and components therefor.

(i) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in this category and classified technical data directly related to items controlled in ECCNs 0A501, 0B501, 0D501, and 0E501 and defense services using the classified technical data. (See § 125.4 of this subchapterfor exemptions.)

(j)-(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR used in or with defense articles.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

Note 1 to Category I:

The following interpretations explain and amplify the terms used in this category:

(1) A firearm is a weapon not over .50 caliber (12.7 mm) which is designed to expel a projectile by the deflagration of propellant;

(2) A fully automatic firearm or shotgun is any firearm or shotgun that shoots, is designed to shoot, or can readily be restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger; and

(3) Caseless ammunition is firearm ammunition without a cartridge case that holds the primer, propellant, and projectile together as a unit.

Category II—Guns and Armament

(a) Guns and armament greater than .50 caliber (12.7 mm), as follows:

* (1) Guns, howitzers, artillery, and cannons;

* (2) Mortars;

* (3) Recoilless rifles;

* (4) Grenade launchers; or

(5) Developmental guns and armament greater than .50 caliber (12.7 mm) funded by the Department of Defense and specially designed parts and components therefor.

Note 1 to paragraph (a)(5):

This paragraph does not control guns and armament greater than .50 caliber (12.7 mm):

(a) in production;

(b) determined to be subject to the EAR via a commodity jurisdiction determination; or

(c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (a)(5):

Note 1 to paragraph (a)(5) does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (a)(5):

This provision is applicable to those contracts or other funding authorizations that are dated January 23, 2021, or later.

Note 1 to paragraph (a):

This paragraph does not include: Non-automatic and non-semi-automatic rifles, carbines, and pistols between .50 (12.7 mm) and .72 caliber (18.288 mm) that are controlled on the CCL under ECCN 0A501; shotguns controlled on the CCL under ECCN 0A502; black powder guns and armaments manufactured between 1890 and 1919 controlled on the CCL under ECCN 0A602; or black powder guns and armaments manufactured earlier than 1890.

Note 2 to paragraph (a):

Guns and armament when integrated into their carrier (e.g., surface vessels, ground vehicles, or aircraft) are controlled in the category associated with the carrier. Self-propelled guns and armament are controlled in USML Category VII. Towed guns and armament and stand-alone guns and armament are controlled under this category.

(b) Flamethrowers with an effective range greater than or equal to 20 meters.

(c) [Reserved]

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

Note 1 to paragraph (d):

Kinetic energy weapons systems include but are not limited to 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, light gas, or chemical. This does not include launch systems and subsystems used for research and testing facilities subject to the EAR, which are controlled on the CCL under ECCN 2B232.

(e) Signature reduction devices specially designed for the guns and armament controlled in paragraphs (a), (b), and (d) of this category (e.g., muzzle flash suppression devices).

(f)-(i) [Reserved]

(j) Parts, components, accessories, and attachments, as follows:

(1) Gun barrels, rails, tubes, and receivers specially designed for the weapons controlled in paragraphs (a) and (d) of this category;

(2) Sights specially designed to orient indirect fire weapons;

(3) Breech blocks for the weapons controlled in paragraphs (a) and (d) of this category;

(4) Firing mechanisms for the weapons controlled in paragraphs (a) and (d) of this category and specially designed parts and components therefor;

(5) Systems for firing superposed or stacked ammunition and specially designed parts and components therefor;

(6) Servo-electronic and hydraulic elevation adjustment mechanisms;

(7) Muzzle brakes;

(8) Bore evacuators;

(9) Independent ammunition handling systems for the guns and armament controlled in paragraphs (a), (b), and (d) of this category;

(10) Components for independently powered ammunition handling systems and platform interface, as follows:

(i) Mounts;

(ii) Carriages;

(iii) Gun pallets;

(iv) Hydro-pneumatic equilibration cylinders; or

(v) Hydro-pneumatic systems capable of scavenging recoil energy to power howitzer functions;

Note 1 to paragraph (j)(10):

For weapons mounts specially designed for surface vessels and special naval equipment, see Category VI. For weapons mounts specially designed for ground vehicles, see Category VII.

(11) Ammunition containers/drums, ammunition chutes, ammunition conveyor elements, ammunition feeder systems, and ammunition container/drum entrance and exit units, specially designed for the guns and armament controlled in paragraphs (a), (b), and (d) of this category;

(12) Systems and equipment for the guns and armament controlled in paragraphs (a) and (d) of this category for use in programming ammunition, and specially designed parts and components therefor;

(13) Aircraft/gun interface units to support gun systems with a designed rate of fire greater than 100 rounds per minute and specially designed parts and components therefor;

(14) Recoil systems specially designed to mitigate the shock associated with the firing process of guns integrated into air platforms and specially designed parts and components therefor;

(15) Prime power generation, energy storage, thermal management, conditioning, switching, and fuel-handling equipment, and the electrical interfaces between the gun power supply and other turret electric drive components specially designed for kinetic weapons controlled in paragraph (d) of this category;

(16) Kinetic energy weapon target acquisition, tracking fire control, and damage assessment systems and specially designed parts and components therefor; or

* (17) Any part, component, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software; or

(iii) Is being developed using classified information.

(k) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in paragraphs (a), (b), (d), (e), and (j) of this category and classified technical data directly related to items controlled in ECCNs 0A602, 0B602, 0D602, and 0E602 and defense services using the classified technical data. (See § 125.4 of this subchapter for exemptions.)

(l)-(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR used in or with defense articles.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

Category III—Ammunition and Ordnance

(a) Ammunition, as follows:

* (1) Ammunition that incorporates a projectile controlled in paragraph (d)(1) or (3) of this category;

* (2) Ammunition preassembled into links or belts;

* (3) Shotgun ammunition that incorporates a projectile controlled in paragraph (d)(2) of this category;

* (4) Caseless ammunition manufactured with smokeless powder;

Note 1 to paragraph (a)(4):

Caseless ammunition is ammunition without a cartridge case that holds the primer, propellant, and projectile together as a unit.

* (5) Ammunition, except shotgun ammunition, based on non-metallic cases, or non-metallic cases that have only a metallic base, which result in a total cartridge mass 80% or less than the mass of a brass- or steel-cased cartridge that provides comparable ballistic performance;

* (6) Ammunition employing pyrotechnic material in the projectile base or any ammunition employing a projectile that incorporates tracer materials of any type having peak radiance above 710 nm and designed to be observed primarily with night vision optical systems;

* (7) Ammunition for fully automatic firearms that fire superposed or stacked projectiles or for guns that fire superposed or stacked projectiles;

* (8) Electromagnetic armament projectiles or billets for weapons with a design muzzle energy exceeding 5 MJ;

* (9) Ammunition, not specified above, for the guns and armaments controlled in Category II; or

(10) Developmental ammunition funded by the Department of Defense and specially designed parts and components therefor.

Note 1 to paragraph (a)(10):

This paragraph does not control ammunition:

(a) in production;

(b) determined to be subject to the EAR via a commodity jurisdiction determination; or

(c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (a)(10):

Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (a)(10):

This provision is applicable to those contracts or other funding authorizations that are dated January 23, 2021, or later.

(b) Ammunition/ordnance handling equipment specially designed for the articles controlled in this category, as follows:

(1) Belting, linking, and de-linking equipment; or

(2) Fuze setting devices.

(c) [Reserved]

(d) Parts and components for the articles in this category, as follows:

(1) Projectiles that use pyrotechnic tracer materials that incorporate any material having peak radiance above 710 nm or are incendiary or explosive;

(2) Shotgun projectiles that are flechettes, incendiary, tracer, or explosive;

Note 1 to paragraph (d)(2):

This paragraph does not include explosive projectiles specially designed to produce noise for scaring birds or other pests (e.g., bird bombs, whistlers, crackers).

(3) Projectiles of any caliber produced from depleted uranium;

(4) Projectiles not specified above, guided or unguided, for the items controlled in USML Category II, and specially designed parts and components therefor (e.g., fuzes, rotating bands, cases, liners, fins, boosters);

(5) Canisters or sub-munitions (e.g., bomblets or minelets), and specially designed parts and components therefor, for the guns or armament controlled in USML Category II;

(6) Projectiles that employ tips (e.g., M855A1 Enhanced Performance Round (EPR)) or cores regardless of caliber, produced from one or a combination of the following: Tungsten, steel, or beryllium copper alloy;

(7) Cartridge cases, powder bags, or combustible cases specially designed for the items controlled in USML Category II;

(8) Non-metallic cases, including cases that have only a metallic base, for the ammunition controlled in paragraph (a)(5) of this category;

(9) Cartridge links and belts for fully automatic firearms and guns controlled in USML Categories I or II;

(10) Primers other than Boxer, Berdan, or shotshell types;

Note 1 to paragraph (d)(10):

This paragraph does not control caps or primers of any type in use prior to 1890.

(11) Safing, arming, and fuzing components (to include target detection and proximity sensing devices) for the ammunition in this category and specially designed parts therefor;

(12) Guidance and control components for the ammunition in this category and specially designed parts therefor;

(13) Terminal seeker assemblies for the ammunition in this category and specially designed parts and components therefor;

(14) Illuminating flares or target practice projectiles for the ammunition controlled in paragraph (a)(9) of this category; or

* (15) Any part, component, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software; or

(iii) Is being developed using classified information.

(e) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles enumerated in paragraphs (a), (b), and (d) of this category and classified technical data directly related to items controlled in ECCNs 0A505, 0B505, 0D505, and 0E505 and defense services using the classified technical data. (See § 125.4 of this subchapter for exemptions.)

(f)-(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR used in or with defense articles.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

Note 1 to Category III:

This category does not control ammunition crimped without a projectile (blank star) and dummy ammunition with a pierced powder chamber.

Note 2 to Category III:

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.

Note 3 to Category III:

Grenades containing non-lethal or less lethal projectiles are under the jurisdiction of the Department of Commerce.

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

* (a) Rockets, space launch vehicles (SLVs), missiles, bombs, torpedoes, depth charges, mines, and grenades, as follows:

(1) Rockets, SLVs, and missiles capable of delivering at least a 500-kg payload to a range of at least 300 km (MT);

(2) Rockets, SLVs, and missiles capable of delivering less than a 500-kg payload to a range of at least 300 km (MT);

(3) Man-portable air defense systems (MANPADS);

(4) Anti-tank missiles and rockets;

(5) Rockets, SLVs, and missiles not meeting the criteria of paragraphs (a)(1) through (a)(4) of this category;

(6) Bombs;

(7) Torpedoes;

(8) Depth charges;

(9) Anti-personnel, anti-vehicle, or anti-armor land mines (e.g., area denial devices);

(10) Anti-helicopter mines;

(11) Naval mines; or

(12) Fragmentation and high explosive hand grenades.

Note 1 to paragraph (a):

“Range” is the maximum distance that the specified rocket system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining range. The range for rocket systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links, or other external constraints. For rocket systems, the range will be determined using the trajectory that maximizes range, assuming International Civil Aviation Organization (ICAO) standard atmosphere with zero wind.

Note 2 to paragraph (a):

“Payload” is the total mass that can be carried or delivered by the specified rocket, SLV, or missile that is not used to maintain flight.

Note 3 to paragraph (a):

This paragraph does not control model and high power rockets (as defined in National Fire Protection Association Code 1122) and kits thereof made of paper, wood, fiberglass, or plastic containing no substantial metal parts and designed to be flown with hobby rocket motors that are certified for consumer use. Such rockets must not contain active controls (e.g., RF, GPS).

Note 4 to paragraph (a):

”Mine” means a munition placed under, on, or near the ground or other surface area and designed to be exploded by the presence, proximity, or contact of a person or vehicle.

* (b) Launchers for rockets, SLVs, and missiles, as follows:

(1) Fixed launch sites and mobile launcher mechanisms for any system enumerated in paragraphs (a)(1) and (a)(2) of this category (MT); or

(2) Fixed launch sites and mobile launcher mechanisms for any system enumerated in paragraphs (a)(3) through (a)(5) of this category (e.g., launch tables, TOW missile, MANPADS).

Note 1 to paragraph (b):

For controls on non-SLV launcher mechanisms for use on aircraft, see USML Category VIII(h).

Note 2 to paragraph (b):

For controls on launcher mechanisms that are integrated onto a vessel or ground vehicle, see USML Categories VI and VII, respectively.

Note 3 to paragraph (b):

This paragraph does not control parts and accessories (e.g., igniters, launch stands) specially designed for consumer use with model and high power rockets (as defined in National Fire Protection Association Code 1122) and kits thereof made of paper, wood, fiberglass, or plastic containing no substantial metal parts and designed to be flown with hobby rocket motors that are certified for consumer use.

(c) Apparatus and devices specially designed for the handling, control, activation, monitoring, detection, protection, discharge, or detonation of the articles enumerated in paragraphs (a) and (b) of this category (MT for those systems enumerated in paragraphs (a)(1), (a)(2), and (b)(1) of this category).

Note 1 to paragraph (c):

This paragraph includes specialized handling equipment (transporters, cranes, and lifts) specially designed to handle articles enumerated in paragraphs (a) and (b) of this category for preparation and launch from fixed and mobile sites. The equipment in this paragraph also includes specially designed robots, robot controllers, and robot end-effectors, and liquid propellant tanks specially designed for the storage or handling of the propellants controlled in USML Category V, CCL ECCNs 1C011, 1C111, and 1C608, or other liquid propellants used in the systems enumerated in paragraphs (a)(1), (a)(2), or (a)(5) of this category.

Note 2 to paragraph (c):

Aircraft Missile Protection Systems (AMPS) are controlled in USML Category XI.

* (d) Rocket, SLV, and missile power plants, as follows:

(1) Except as enumerated in paragraph (d)(2) or (d)(3) of this category, individual rocket stages for the articles enumerated in paragraph (a)(1), (a)(2), or (a)(5) of this category (MT for those stages usable in systems enumerated in paragraphs (a)(1) and (a)(2) of this category);

(2) Solid propellant rocket motors, hybrid or gel rocket motors, or liquid propellant rocket engines having a total impulse capacity equal to or greater than 1.1×10^6 N·s (MT);

(3) Solid propellant rocket motors, hybrid or gel rocket motors, or liquid propellant rocket engines having a total impulse capacity equal to or greater than 8.41×10^5 N·s, but less than 1.1×10^6 N·s (MT);

(4) Combined cycle, pulsejet, ramjet, or scramjet engines (MT);

(5) Air-breathing engines that operate above Mach 4 not enumerated in paragraph (d)(4) of this category;

(6) Pressure gain combustion-based propulsion systems not enumerated in paragraphs (d)(4) and (d)(5) of this category; or

(7) Rocket, SLV, and missile engines and motors, not otherwise enumerated in paragraphs (d)(1) through (d)(6) of this category or USML Category XIX.

Note 1 to paragraph (d):

This paragraph does not control model and high power rocket motors, containing no more than 5 pounds of propellant, that are certified for U.S. consumer use as described in National Fire Protection Association Code 1125.

Note 2 to paragraph (d):

This paragraph does not control thrusters for spacecraft.

(e)-(f) [Reserved]

* (g) Non-nuclear warheads for rockets, bombs, and missiles (e.g., explosive, kinetic, EMP, thermobaric, shape charge, and fuel air explosive (FAE)).

(h) Systems, subsystems, parts, components, accessories, attachments, or associated equipment, as follows:

(1) Flight control and guidance systems (including guidance sets) specially designed for articles enumerated in paragraph (a) of this category (MT for those articles enumerated in paragraphs (a)(1) and (a)(2) of this category);

Note to paragraph (h)(1):

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.

(2) Seeker systems specially designed for articles enumerated in paragraph (a) of this category (e.g., radiofrequency, infrared) (MT for articles enumerated in paragraphs (a)(1) and (a)(2) of this category);

(3) Kinetic kill vehicles and specially designed parts and components therefor;

(4) Missile or rocket thrust vector control systems (MT for those thrust vector control systems usable in articles enumerated in paragraph (a)(1) of this category);

(5) MANPADS grip stocks and specially designed parts and components therefor;

(6) Rocket or missile nozzles and nozzle throats, and specially designed parts and components therefor (MT for those nozzles and nozzle throats usable in systems enumerated in paragraphs (a)(1) and (a)(2) of this category);

(7) Rocket or missile nose tips, nose fairings, or aerospikes, and specially designed parts and components therefor (MT for those articles enumerated in paragraphs (a)(1) and (a)(2) of this category);

(8) Re-entry vehicle or warhead heat shields (MT for those re-entry vehicles and heat shields usable in systems enumerated in paragraph (a)(1) of this category);

(9) Missile and rocket safing, arming, fuzing, and firing (SAFF) components (to include target detection and proximity sensing devices), and specially designed parts therefor (MT for those SAFF components usable in systems enumerated in paragraph (a)(1) of this category);

(10) Self-destruct systems specially designed for articles enumerated in paragraph (a) of this category (MT for those articles enumerated in paragraphs (a)(1) and (a)(2) of this category);

(11) Separation mechanisms, staging mechanisms, and interstages useable for articles enumerated in paragraph (a) of this category, and specially designed parts and components therefor (MT for those separation mechanisms, staging mechanisms, and interstages usable in systems enumerated in paragraph (a)(1) of this category);

(12) Post-boost vehicles (PBV) (MT);

(13) Engine or motor mounts specially designed for articles enumerated in paragraphs (a) and (b) of this category (MT for those articles enumerated in paragraphs (a)(1), (a)(2), and (b)(1) of this category);

(14) Combustion chambers specially designed for articles enumerated in paragraphs (a) and (d) of this category and specially designed parts and components therefor (MT for those articles enumerated in paragraphs (a)(1), (a)(2), (b)(1), and (d)(1) through (d)(5) of this category);

(15) Injectors specially designed for articles controlled in this category (MT for those injectors specially designed which are usable in systems enumerated in paragraph (a)(1) of this category);

(16) Solid rocket motor or liquid engine igniters;

(17) Re-entry vehicles and specially designed parts and components therefor not elsewhere specified in this category (MT);

Note to paragraph (h)(17):

This paragraph does not control spacecraft. For controls on spacecraft, see USML Category XV and, if not described therein, then CCL ECCN 9A515.

(18) Specially designed parts and components for articles controlled in paragraph (g) not elsewhere specified in this category;

(19) Penetration aids and specially designed parts and components therefor (e.g., physical or electronic countermeasure suites, re-entry vehicle replicas or decoys, or submunitions);

(20) Rocket motor cases and specially designed parts and components therefor (e.g., flanges, flange seals, end domes) (MT for those rocket motor cases usable in systems enumerated in paragraphs (a)(1) and (a)(2) of this category and for specially designed parts and components for hybrid rocket motors enumerated in paragraphs (d)(2) and (d)(3) of this category);

(21) Solid rocket motor liners and rocket motor insulation (MT for those solid rocket motor liners usable in systems enumerated in paragraph (a)(1) of this category or specially designed for systems enumerated in paragraph (a)(2) of this category; and rocket motor insulation usable in systems enumerated in paragraphs (a)(1) and (a)(2) of this category);

(22) Radomes, sensor windows, and antenna windows specially designed for articles enumerated in paragraph (a) of this category (MT for those radomes usable in systems

enumerated in paragraph (a)(1) of this category and for any radomes, sensor windows, or antenna windows manufactured as composite structures or laminates specially designed for use in the systems and components enumerated in paragraph (a)(1), (a)(2), (d)(1), (h)(8), (h)(9), (h)(17), or (h)(25) of this category);

(23) Rocket or missile payload fairings;

(24) Rocket or missile launch canisters (MT for those rocket or missile launch canisters designed or modified for systems enumerated in paragraphs (a)(1) and (a)(2) of this category);

(25) Fuzes specially designed for articles enumerated in paragraph (a) of this category (e.g., proximity, contact, electronic, dispenser proximity, airburst, variable time delay, or multi-option) (MT for those fuzes usable in systems enumerated in paragraph (a)(1) of this category);

(26) Rocket or missile liquid propellant tanks (MT for those rocket or missile liquid propellant tanks usable in systems enumerated in paragraph (a)(1) of this category);

(27) Rocket or missile altimeters specially designed for use in articles enumerated in paragraph (a)(1) of this category (MT);

(28) Pneumatic, hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire systems) and attitude control equipment specially designed for use in the rockets or missiles enumerated in paragraph (a)(1) of this category (MT for these systems which have been designed or modified for those enumerated in paragraph (a)(1) of this category);

(29) Umbilical and interstage electrical connectors specially designed for use in the rockets or missiles enumerated in paragraph (a)(1) or (a)(2) of this category (MT); or

Note to paragraph (h)(29):

This paragraph also includes electrical connectors installed between the systems specified in paragraph (a)(1) or (a)(2) of this category and their payload.

* (30) Any part, component, accessory, attachment, equipment, or system that (MT for those articles designated as such):

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information.

(i) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in paragraphs (a) through (h) of this category and classified technical data directly related to items controlled in ECCNs 0A604, 0B604, 0D604, 9A604, 9B604, or 9D604 and defense services using the classified technical data. Defense services include the furnishing of assistance (including training) to a foreign person in the integration of a satellite or spacecraft to a launch vehicle, including both planning and onsite support, regardless of the jurisdiction, ownership, or origin of the satellite or spacecraft, or whether technical data is used. It also includes the furnishing of assistance (including training) to a foreign person in the launch failure analysis of a launch vehicle, regardless of the jurisdiction, ownership, or origin of the launch vehicle, or whether technical data is used. (See § 125.4 of this subchapter for exemptions, and § 124.15 of this subchapter for special export controls for spacecraft and spacecraft launches.) (MT for technical data and defense services related to articles designated as such.)

(j)-(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR used in or with defense articles.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technical data subject to the EAR (see § 123.1(b) of this subchapter).

Note to Category IV:

If a Missile Technology Control Regime Category I item is included in a system, that system will also be considered as a Category I item, except when the incorporated item cannot be separated, removed, or duplicated.

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

* (a) Explosives, and mixtures thereof, as follows:

(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 (diaminodinitrobenzofuroxan or 5,7-diamino-4,6-dinitrobenzofurazane-1-oxide) (CAS 117907-74-1);

(4) CL-20 (HNIW or Hexanitrohexaazaisowurtzitane) (CAS 135285-90-4); clathrates of CL-20 (MT for CL-20);

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

(6) DADE (1,1-diamino-2,2-dinitroethylene, FOX-7) (CAS 145250-81-3);

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

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

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

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

(11) DNAN (2,4-Dinitroanisole) (CAS 119-27-7);

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

(13) Furazans, as follows:

(i) DAAOF (DAAF, DAAFox, or diaminoazoxyfurazan);

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

(iii) ANF (Furazanamine, 4-nitro- or 3-Amino-4-nitrofurazan; or 4-Nitro-1,2,5-oxadiazol-3-amine; or 4-Nitro-3-furazanamine; CAS 66328-69-6); or

(iv) ANAzF (Aminonitroazofurazan or 1,2,5-Oxadiazol-3-amine, 4-[2-(4-nitro-1,2,5-oxadiazol-3-yl) diazenyl]; or 1,2,5-Oxadiazol-3-amine, 4-[(4-nitro-1,2,5-oxadiazol-3-yl)azo]- (9CI); or Furazanamine, 4-[(nitrofurananyl)azo]-; or 4-[(4-Nitro-1,2,5-oxadiazol-3-yl)azo]-1,2,5-oxadiazol-3-amine) (CAS 155438-11-2);

(14) GUDN (Guanylurea dinitramide) FOX-12 (CAS 217464-38-5);

(15) HMX and derivatives, as follows:

(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) (MT);

(ii) Difluoroaminated analogs of HMX; or

(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);

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

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

(18) 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); or

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

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

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

(21) Polynitrocubanes with more than four nitro groups;

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

(23) RDX and derivatives, as follows:

(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) (MT);

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

(iii) Difluoraminated derivative of RDX; 1,3-Dinitro-5,5-bis(difluoramino)1,3-diazahexane (CAS No. 193021-34-0);

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

(25) TATB (Triaminotrinitrobenzene) (CAS 3058-38-6);

(26) TEDDZ (3,3,7,7-tetrakis(difluoroamine) octahydro-1,5-dinitro-1,5-diazocine;

(27) Tetrazines, as follows:

(i) BTAT (Bis(2,2,2-trinitroethyl)-3,6-diaminotetrazine); or

(ii) LAX-112 (3,6-diamino-1,2,4,5-tetrazine-1,4-dioxide);

(28) Tetrazoles, as follows:

(i) NTAT (nitrotriazolaminotetrazole); or

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

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

(30) TEX (4,10-Dinitro-2,6,8,12-tetraoxa-4,10-diazaisowurtzitane);

(31) TNAD (1,4,5,8-tetranitro-1,4,5,8-tetraazadecalin) (CAS 135877-16-6);

(32) TNAZ (1,3,3-trinitroazetidine) (CAS 97645-24-4);

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

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

(35) Triazines, as follows:

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

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

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

(viii) PDNT (1-picryl-3,5-dinitrotriazole); or

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

(37) Energetic ionic materials melting between 343 K (70 °C) and 373 K (100 °C) and with detonation velocity exceeding 6800 m/s or detonation pressure exceeding 18 GPa (180 kbar); or

(38) Explosives, not otherwise enumerated in this paragraph or on the CCL in ECCN 1C608, with a detonation velocity exceeding 8700 m/s at maximum density or a detonation pressure exceeding 34 Gpa (340 kbar).

* (b) Propellants, as follows (MT for composite and composite modified double-base propellants):

(1) Any solid propellant with a theoretical specific impulse (see paragraph (k)(4) of this category) greater than:

(i) 240 seconds for non-metallized, non-halogenated propellant;

(ii) 250 seconds for non-metallized, halogenated propellant; or

(iii) 260 seconds for metallized propellant;

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

(3) Propellants that can sustain a steady-state burning rate more than 38 mm/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 °C);

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

(5) Other composite and composite modified double-base propellants.

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

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

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

(3) Liquid high energy density fuels, as follows (MT):

(i) Mixed fuels that incorporate both solid and liquid fuels, such as boron slurry, having a mass-based energy density of 40 MJ/kg or greater; or

(ii) Other high energy density fuels and fuel additives (e.g., cubane, ionic solutions, JP-7, JP-10) having a volume-based energy density of 37.5 GJ per cubic meter or greater, measured at 20 °C and one atmosphere (101.325 kPa) pressure;

Note to paragraph (c)(3)(ii):

JP-4, JP-8, fossil refined fuels or biofuels, or fuels for engines certified for use in civil aviation are not included.

(4) Metal fuels, and fuel or pyrotechnic mixtures 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, as follows:

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

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

(ii) Fuel mixtures or pyrotechnic 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; or

(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)(4)(i) and (c)(4)(ii) of this category whether or not the metals or alloys are encapsulated in aluminum, magnesium, zirconium, or beryllium;

(5) Fuel, pyrotechnic, or energetic mixtures having any nanosized aluminum, beryllium, boron, zirconium, magnesium, or titanium, as follows:

(i) Having particle size less than 200 nm in any direction; and

(ii) Having 60% or higher purity;

(6) Pyrotechnic and pyrophoric materials, as follows:

(i) Pyrotechnic or pyrophoric materials specifically formulated to enhance or control the production of radiated energy in any part of the IR spectrum; or

(ii) Mixtures of magnesium, polytetrafluoroethylene and the copolymer vinylidene difluoride and hexafluoropropylene (MT);

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

(8) Hydrocarbon fuels specially formulated for use in flame throwers or incendiary munitions containing metal stearates (e.g., octal) or palmitates, and M1, M2, and M3 thickeners.

(d) Oxidizers, as follows:

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

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

(3) BDNPN (bis(2,2-dinitropropyl)nitrate) (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) (MT);

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

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

(10) Inhibited red fuming nitric acid (IRFNA) (CAS 8007-58-7) and liquid oxidizers comprised of or containing IRFNA or oxygen difluoride (MT for liquid oxidizers comprised of IRFNA); or

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

* (e) Binders, and mixtures thereof, as follows:

(1) AMMO (azidomethylmethyloxetane and its polymers) (CAS 90683-29-7);

(2) BAMO-3-3 (bis(azidomethyl)oxetane and its polymers) (CAS 17607-20-4);

(3) BTTN (butanetriol trinitrate) (CAS 6659-60-5) (MT);

(4) FAMAO (3-difluoroaminomethyl-3-azidomethyloxetane) and its polymers;

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

(6) GAP (glycidyl azide polymer) (CAS 143178-24-9) and its derivatives (MT for GAP);

(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 °C of less than 47 poise (CAS 69102-90-5) (MT);

(8) 4,5 diazidomethyl-2-methyl-1,2,3-triazole (iso-DAMTR) (MT);

(9) NENAS (nitratoethylnitramine compounds), as follows:

(i) N-Methyl 2-nitratoethylnitramine (Methyl-NENA) (CAS 17096-47-8) (MT);

(ii) N-Ethyl 2-nitratoethylnitramine (Ethyl-NENA) (CAS 85068-73-1) (MT);

(iii) N-Propyl 2-nitratoethylnitramine (CAS 82486-83-7);

(iv) N-Butyl-2-nitratoethylnitramine (BuNENA) (CAS 82486-82-6); or

(v) N-Pentyl 2-nitratoethylnitramine (CAS 85954-06-9);

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

(11) PNO (Poly(3-nitratooxetane));

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

(13) Polynitrorthocarbonates;

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

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

(16) PGN (Polyglycidyl nitrate or poly(nitratomethyloxirane); poly-GLYN); (CAS 27814-48-8);

(17) N-methyl-p-nitroaniline (MT);

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

(19) Dinitropropyl based plasticizers, as follows (MT):

(i) BDNPA (bis (2,2-dinitropropyl) acetal) (CAS 5108-69-0); or

(ii) BDNPF (bis (2,2-dinitropropyl) formal) (CAS 5917-61-3).

(f) Additives, as follows:

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

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

(3) BNO (Butadienenitrile oxide);

(4) Ferrocene derivatives, as follows (MT):

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

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

(iii) Ferrocene carboxylic acids and ferrocene carboxylic acid esters;

(iv) n-butylferrocene (CAS 31904-29-7);

(v) Ethylferrocene (CAS 1273-89-8);

(vi) Propylferrocene;

(vii) Pentylferrocene (CAS 1274-00-6);

(viii) Dicyclopentylferrocene;

(ix) Dicyclohexylferrocene;

(x) Diethylferrocene (CAS 173-97-8);

(xi) Dipropylferrocene;

(xii) Dibutylferrocene (CAS 1274-08-4);

(xiii) Dihexylferrocene (CAS 93894-59-8);

(xiv) Acetylferrocene (CAS 1271-55-2)/1,1′-diacetyl ferrocene (CAS 1273-94-5); or

(xv) Other ferrocene derivatives that do not contain a six carbon aromatic functional group attached to the ferrocene molecule (MT if usable as rocket propellant burning rate modifier);

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

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

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

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

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

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

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

(12) Methyl BAPO (Bis(2-methyl aziridinyl)methylaminophosphine oxide) (CAS 85068-72-0);

(13) 3-Nitraza-1,5-pentane diisocyanate (CAS 7406-61-9);

(14) Organo-metallic coupling agents, as follows:

(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; or

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

(15) PCDE (Polycyanodifluoroaminoethylene oxide);

(16) Certain bonding agents, as follows (MT):

(i) 1,1R,1S-trimesoyl-tris(2-ethylaziridine) (HX-868, BITA) (CAS 7722-73-8); or

(ii) Polyfunctional aziridine amides with isophthalic, trimesic, isocyanuric, or trimethyladipic backbone also having a 2-methyl or 2-ethyl aziridine group;

Note to paragraph (f)(16)(ii):

Included are (1) 1,1H-Isophthaloyl-bis(2-methylaziridine) (HX-752) (CAS 7652-64-4); (2) 2,4,6-tris(2-ethyl-1-aziridinyl)-1,3,5-triazine (HX-874) (CAS 18924-91-9); and (3) 1,1′-trimethyladipoylbis(2-ethylaziridine) (HX-877) (CAS 71463-62-2).

(17) Superfine iron oxide (Fe_2O_3, hematite) with a specific surface area more than 250 m^2/g and an average particle size of 0.003 micrometers or less (CAS 1309-37-1);

(18) TEPAN (HX-879) (tetraethylenepentaamineacrylonitrile) (CAS 68412-45-3); cyanoethylated polyamines and their salts (MT for TEPAN (HX-879));

(19) TEPANOL (HX-878) (tetraethy-lenepentaamineacrylonitrileglycidol) (CAS 68412-46-4); cyanoethylated polyamines adducted with glycidol and their salts (MT for TEPANOL (HX-878));

(20) TPB (triphenyl bismuth) (CAS 603-33-8) (MT); or

(21) Tris (ethoxyphenyl) bismuth (TEPB) (CAS 90591-48-3).

(g) Precursors, as follows:

(1) BCMO (3,3-bis(chloromethyl)oxetane) (CAS 78-71-7);

(2) DADN (1,5-diacetyl-3,7-dinitro-1, 3, 5, 7-tetraazacyclooctane);

(3) Dinitroazetidine-t-butyl salt (CAS 125735-38-8);

(4) CL-20 precursors (any molecule containing hexaazaisowurtzitane) (e.g., HBIW (hexabenzylhexaazaisowurtzitane), TAIW (tetraacetyldibenzylhexa-azaisowurtzitane));

(5) TAT (1, 3, 5, 7-tetraacetyl-1, 3, 5, 7-tetraazacyclooctane) (CAS 41378-98-7);

(6) Tetraazadecalin (CAS 5409-42-7);

(7) 1,3,5-trichlorobenzene (CAS 108-70-3); or

(8) 1,2,4-trihydroxybutane (1,2,4-butanetriol) (CAS 3068-00-6).

* (h) Any explosive, propellant, pyrotechnic, fuel, oxidizer, binder, additive, or precursor that (MT for articles designated as such):

(1) Is classified; or

(2) Is being developed using classified information.

(i) Developmental explosives, propellants, pyrotechnics, fuels, oxidizers, binders, additives, or precursors therefor funded by the Department of Defense via contract or other funding authorization.

Note 1 to paragraph (i):

This paragraph does not control explosives, propellants, pyrotechnics, fuels, oxidizers, binders, additives, or precursors therefor (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination, or (c) identified in the relevant

Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (i):

Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (i):

This paragraph is applicable only to those contracts and funding authorizations that are dated January 5, 2015, or later.

(j) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in paragraphs (a) through (i) of this category (see also § 120.5(c) of this subchapter for nuclear related controls) (MT for articles designated as such).

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

(1) USML 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) The resulting product of the combination or conversion of any substance controlled by this category into an item not controlled will no longer be controlled by this category provided the controlled item cannot easily be recovered through dissolution, melting, sieving, etc. As an example, beryllium converted to a near net shape using hot isostatic processes will result in an uncontrolled part. A cured thermoset containing beryllium powder is not controlled unless meeting an explosive or propellant control. The mixture of beryllium powder in a cured thermoset shape is not controlled by this category. The mixture of controlled beryllium powder mixed with a typical propellant binder will remain controlled by this category. The addition of dry silica powder to dry beryllium powder will remain controlled.

(3) Paragraph (c)(4)(ii)(A) of this category does not apply to boron and boron carbide enriched with boron-10 (20% or more of total boron-10 content).

(4) Theoretical specific impulse (Isp) is calculated using standard conditions (1000 psi chamber pressure expanded to 14.7 psi) and measured in units of pound-force-seconds per pound-mass (lbf-s/lbm) or simplified to seconds (s). Calculations will be based on shifting equilibrium.

(5) Particle size is the mean particle diameter on a weight basis. Best industrial practices will be used in determining particle size and the controls may not be undermined by addition of larger or smaller sized material to shift the mean diameter.

(l)-(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR used in or with defense articles.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technical data subject to the EAR (see § 123.1(b) of this subchapter).

Note 1 to USML Category V:

To assist the exporter, an item has been categorized by the most common use. Also, where appropriate, references have been provided to the related controlled precursors.

Note 2 to USML Category V:

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 government agencies in the license review process and exporters when completing their license application and export documentation.

Note 3 to USML Category V:

Items controlled in this Category, except for materials described in paragraph (c)(6), (h), or (i), are licensed by the Department of Commerce when incorporated into an item subject to the EAR and classified under ECCN 1C608.

Category VI—Surface Vessels of War and Special Naval Equipment

* (a) Warships and other combatant vessels (*i.e.,* battleships, aircraft carriers, destroyers, frigates, cruisers, corvettes, littoral combat ships, mine sweepers, mine hunters, mine countermeasure ships, dock landing ships, amphibious assault ships), Coast Guard Cutters (with or equivalent to those with U.S. designations WHEC, WMEC, WMSL, or WPB for the purpose of this subchapter), or foreign-origin vessels specially designed to provide functions equivalent to those of the vessels listed above;

(b) Other vessels not controlled in paragraph (a) of this category, as follows:

(1) High-speed air cushion vessels for transporting cargo and personnel, ship-to-shore and across a beach, with a payload over 25 tons;

(2) Surface vessels integrated with nuclear propulsion plants or specially designed to support naval nuclear propulsion plants;

(3) Vessels armed or specially designed to be used as a platform to deliver munitions or otherwise destroy or incapacitate targets (e.g., firing lasers, launching torpedoes, rockets, or missiles, or firing munitions greater than .50 caliber); or

(4) Vessels incorporating any mission systems controlled under this subchapter.

Note to paragraph (b)(4):

“Mission systems” are defined as “systems” (see § 120.40(h) of this subchapter) that are defense articles that perform specific military functions such as by providing military communication, electronic warfare, target designation, surveillance, target detection, or sensor capabilities.

Note to paragraphs (a) and (b):

Vessels specially designed for military use that are not identified in paragraph (a) or (b) of this category are subject to the EAR under ECCN 8A609, including any demilitarized vessels, regardless of origin or designation, manufactured prior to 1950 and unmodified since 1949. Vessels with modifications made to incorporate safety features required by law, are cosmetic (e.g., different paint), or that add parts or components otherwise available prior to 1950 are considered “unmodified” for the purposes of this paragraph.

(c) Developmental vessels, and specially designed parts, components, accessories, and attachments therefor, funded by the Department of Defense via contract or other funding authorization.

Note 1 to paragraph (c):

This paragraph does not control vessels, and specially designed parts, components, accessories, and attachments therefor, (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination, or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (c):

Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (c):

This provision is applicable to those contracts and funding authorizations that are dated July 8, 2014, or later.

(d) [Reserved]

* (e) Naval nuclear propulsion plants and prototypes, and special facilities for construction, support, and maintenance therefor(see also § 120.5(c) of this subchapter for nuclear related controls).

(f) Vessel and naval equipment, parts, components, accessories, attachments, associated equipment, and systems, as follows:

(1) Hulls or superstructures, including support structures therefor, that:

(i) Are specially designed for any vessels controlled in paragraph (a) of this category;

(ii) Have armor, active protection systems, or developmental armor systems; or

(iii) Are specially designed to survive 12.5% or greater damage across the length as measured between perpendiculars;

(2) Systems that manage, store, create, distribute, conserve, and transfer energy, and specially designed parts and components therefor, that have:

(i) Storage exceeding 30MJ;

(ii) A discharge rate less than 3 seconds; and

(iii) A cycle time under 45 seconds;

(3) Shipborne auxiliary systems for chemical, biological, radiological, and nuclear (CBRN) compartmentalization, over-pressurization and filtration systems, and specially designed parts and components therefor;

* (4) Control and monitoring systems for autonomous unmanned vessels capable of on-board, autonomous perception and decision-making necessary for the vessel to navigate while avoiding fixed and moving hazards, and obeying rules-of-the road without human intervention;

* (5) Any machinery, device, component, or equipment, including production, testing and inspection equipment, and tooling, specially designed for plants or facilities controlled in paragraph (e) of this section (see also § 120.5(c) of this subchapter for nuclear related controls);

(6) Parts, components, accessories, attachments, and equipment specially designed for integration of articles controlled by USML Categories II, IV, or XVIII or catapults for

launching aircraft or arresting gear for recovering aircraft (MT for launcher mechanisms specially designed for rockets, space launch vehicles, or missiles capable of achieving a range greater than or equal to 300 km);

Note to paragraph (f)(6):

“Range” is the maximum distance that the specified rocket system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining range. The range for rocket systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links, or other external constraints. For rocket systems, the range will be determined using the trajectory that maximizes range, assuming International Civil Aviation Organization (ICAO) standard atmosphere with zero wind.

(7) Shipborne active protection systems (*i.e.,* defensive systems that actively detect and track incoming threats and launch a ballistic, explosive, energy, or electromagnetic countermeasure(s) to neutralize the threat prior to contact with a vessel) and specially designed parts and components therefor;

(8) Minesweeping and mine hunting equipment (including mine countermeasures equipment deployed by aircraft), and specially designed parts and components therefor; or

* (9) Any part, component, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information.

Note 1 to paragraph (f):

Parts, components, accessories, attachments, associated equipment, and systems specially designed for vessels described in this category but not listed in paragraph (f) are subject to the EAR under ECCN 8A609.

Note 2 to paragraph (f):

For controls related to ship signature management, see USML Category XIII.

(g) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in

paragraphs (a) through (f) of this category and classified technical data directly related to items controlled in ECCNs 8A609, 8B609, 8C609, and 8D609 and defense services using the classified technical data. (MT for technical data and defense services related to articles designated as such.)

(See § 125.4 of this subchapter for exemptions.)

(h)-(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR used in or with defense articles.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technical data subject to the EAR (see § 123.1(b) of this subchapter).

Category VII—Ground Vehicles

* (a) Armored combat ground vehicles as follows:

(1) Tanks; or

(2) Infantry fighting vehicles.

* (b) Ground vehicles (not enumerated in paragraph (a) of this category) and trailers that are armed or are specially designed to be used as a firing or launch platform to deliver munitions or otherwise destroy or incapacitate targets (e.g., firing lasers, launching rockets, firing missiles, firing mortars, firing artillery rounds, or firing other ammunition greater than .50 caliber) (MT if specially designed for rockets, space launch vehicles, missiles, drones, or unmanned aerial vehicles capable of delivering a payload of at least 500 kg to a range of at least 300 km).

(c) Ground vehicles and trailers equipped with any mission systems controlled under this subchapter (MT if specially designed for rockets, space launch vehicles, missiles, drones, or unmanned aerial vehicles capable of delivering a payload of at least 500 kg to a range of at least 300 km).

Note to paragraph (c):

“Mission systems” are defined as “systems” (see § 120.40(h) of this subchapter) that are defense articles that perform specific military functions, such as by providing military communication, target designation, surveillance, target detection, or sensor capabilities.

Note to paragraphs (b) and (c):

“Payload” is the total mass that can be carried or delivered by the specified rocket, space launch vehicle, missile, drone, or unmanned aerial vehicle that is not used to maintain flight. For definition of “range” as it pertains to aircraft systems, see note to paragraph (a) USML Category VIII. For definition of “range” as it pertains to rocket systems, see note to paragraph (f)(6) of USML Category VI.

(d) [Reserved]

* (e) Armored support vehicles capable of off-road or amphibious use specially designed to transport or deploy personnel or materiel, or to move with other vehicles over land in close support of combat vehicles or troops (e.g., personnel carriers, resupply vehicles, combat engineer vehicles, recovery vehicles, reconnaissance vehicles, bridge launching vehicles, ambulances, and command and control vehicles).

(f) [Reserved]

(g) Ground vehicle parts, components, accessories, attachments, associated equipment, and systems as follows:

(1) Armored hulls, armored turrets, and turret rings;

(2) Active protection systems (*i.e.,* defensive systems that actively detect and track incoming threats and launch a ballistic, explosive, energy, or electromagnetic countermeasure(s) to neutralize the threat prior to contact with a vehicle) and specially designed parts and components therefor;

(3) Composite armor parts and components specially designed for the vehicles in this category;

(4) Spaced armor components and parts, including slat armor parts and components specially designed for the vehicles in this category;

(5) Reactive armor parts and components;

(6) Electromagnetic armor parts and components, including pulsed power specially designed parts and components therefor;

Note to paragraphs (g)(3)-(6):

See USML Category XIII(m)(1)-(4) for interpretations which explain and amplify terms used in these paragraphs.

(7) Built in test equipment (BITE) to evaluate the condition of weapons or other mission systems for vehicles identified in this category, excluding equipment that provides

diagnostics solely for a subsystem or component involved in the basic operation of the vehicle;

(8) Gun mount, stabilization, turret drive, and automatic elevating systems, and specially designed parts and components therefor;

(9) Self-launching bridge components rated class 60 or above for deployment by vehicles in this category;

(10) Suspension components as follows:

(i) Rotary shock absorbers specially designed for the vehicles weighing more than 30 tons in this category; or

(ii) Torsion bars specially designed for the vehicles weighing more than 50 tons in this category;

(11) Kits specially designed to convert a vehicle in this category into either an unmanned or a driver-optional vehicle. For a kit to be controlled by this paragraph, it must, at a minimum, include equipment for:

(i) Remote or autonomous steering;

(ii) Acceleration and braking; and

(iii) A control system;

(12) Fire control computers, mission computers, vehicle management computers, integrated core processers, stores management systems, armaments control processors, vehicle-weapon interface units and computers;

(13) Test or calibration equipment for the mission systems of the vehicles in this category, except those enumerated elsewhere; or

* (14) Any part, component, accessory, attachment, equipment, or system that (MT for those articles designated as such):

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information.

Note to paragraph (g):

Parts, components, accessories, attachments, associated equipment, and systems specially designed for vehicles in this category but not listed in paragraph (g) are subject to the EAR under ECCN 0A606.

(h) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in paragraphs (a) through (g) of this category and classified technical data directly related to items controlled in ECCNs 0A606, 0B606, 0C606, and 0D606 and defense services using the classified technical data. (See § 125.4 of this subchapter for exemptions.) (MT for technical data and defense services related to articles designated as such.)

(i)-(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR used in or with defense articles.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technical data subject to the EAR (see § 123.1(b) of this subchapter).

Note 1 to Category VII:

Ground vehicles specially designed for military applications that are not identified in this category are subject to the EAR under ECCN 0A606, including any unarmed ground vehicles, regardless of origin or designation, manufactured prior to 1956 and unmodified since 1955. Ground vehicles with modifications made to incorporate safety features required by law, are cosmetic (e.g., different paint, repositioning of bolt holes), or that add parts or components otherwise available prior to 1956 are considered “unmodified” for the purposes of this paragraph. ECCN 0A606 also includes unarmed vehicles derived from otherwise EAR99 civilian vehicles that have been modified or otherwise fitted with materials to provide ballistic protection, including protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better and that do not have reactive or electromagnetic armor.

Note 2 to Category VII:

Armored ground vehicles are (i) ground vehicles that have integrated, fully armored hulls or cabs, or (ii) ground vehicles on which add-on armor has been installed to provide ballistic protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better. Armored support vehicles do not include those that are merely capable of being equipped with add-on armor.

Note 3 to Category VII:

Ground vehicles include any vehicle meeting the definitions or control parameters regardless of the surface (e.g., highway, off-road, rail) upon which the vehicle is designed to operate.

Category VIII—Aircraft and Related Articles

(a) Aircraft, whether manned, unmanned, remotely piloted, or optionally piloted, as follows (MT if the aircraft, excluding manned aircraft, has a range equal to or greater than 300 km):

* (1) Bombers;

* (2) Fighters, fighter bombers, and fixed-wing attack aircraft;

* (3) Turbofan- or turbojet-powered trainers used to train pilots for fighter, attack, or bomber aircraft;

* (4) Attack helicopters;

* (5) Unmanned aerial vehicles (UAVs) specially designed to incorporate a defense article;

* (6) [Reserved]

* (7) Aircraft specially designed to incorporate a defense article for the purpose of performing an intelligence, surveillance, and reconnaissance function;

* (8) Aircraft specially designed to incorporate a defense article for the purpose of performing an electronic warfare function; airborne warning and control aircraft; or aircraft specially designed to incorporate a defense article for the purpose of performing a command, control, and communications function;

(9) Aircraft specially designed to incorporate a defense article for the purpose of performing an air refueling function;

(10) Target drones;

(11) [Reserved]

(12) Aircraft capable of being refueled in-flight including hover-in-flight refueling (HIFR);

(13) [Reserved]

(14) Aircraft with a roll-on/roll-off ramp, capable of airlifting payloads over 35,000 lbs. to ranges over 2,000 nm without being refueled in-flight, and landing onto short or unimproved airfields, other than L-100 and LM-100J aircraft;

* (15) Aircraft not enumerated in paragraphs (a)(1) through (a)(14) as follows:

(i) U.S.-origin aircraft that bear an original military designation of A, B, E, F, K, M, P, R, or S; or

(ii) Foreign-origin aircraft specially designed to provide functions equivalent to those of the aircraft listed in paragraph (a)(15)(i) of this category; or

(16) Aircraft that are armed or are specially designed to be used as a platform to deliver munitions or otherwise destroy targets (e.g., firing lasers, launching rockets, firing missiles, dropping bombs, or strafing);

Note 1 to paragraph (a):

Aircraft specially designed for military applications that are not identified in paragraph (a) of this section are subject to the EAR and classified as ECCN 9A610, including any model of unarmed military aircraft manufactured prior to 1956, regardless of origin or designation, and unmodified since manufacture. Aircraft with modifications made to incorporate safety of flight features or other FAA or NTSB modifications such as transponders and air data recorders are considered “unmodified” for the purposes of this paragraph.

Note 2 to paragraph (a):

“Range” is the maximum distance that the specified aircraft system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining range. The range for aircraft systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links, or other external constraints. For aircraft systems, the range will be determined for a one-way distance using the most fuel-efficient flight profile (e.g., cruise speed and altitude), assuming International Civil Aviation Organization (ICAO) standard atmosphere with zero wind, but with no fuel reserve.

(b)-(c) [Reserved]

(d) Launching and recovery equipment specially designed to allow an aircraft described in paragraph (a) of this category to take off or land on a vessel described in Category VI paragraphs (a) through (c) (MT if the launching and recovery equipment is for an aircraft, excluding manned aircraft, that has a range equal to or greater than 300 km).

Note to paragraph (d):

For the definition of “range,” see note to paragraph (a) of this category.

(e) [Reserved]

(f) Developmental aircraft funded by the Department of Defense via contract or other funding authorization, and specially designed parts, components, accessories, and attachments therefor.

Note 1 to paragraph (f):

This paragraph does not control aircraft and specially designed parts, components, accessories, and attachments therefor (a) in production; (b) determined to be subject to the EAR via a commodity jurisdiction determination, or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (f):

Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (f):

This paragraph is applicable only to those contracts, other funding authorizations, or modifications initiating development of a new defense article that are dated April 16, 2014, or later.

(g) [Reserved]

(h) Parts, components, accessories, attachments, associated equipment and systems, as follows:

(1) Parts, components, accessories, and attachments specially designed for the following U.S.-origin aircraft: The B-1B, B-2, B-21, F-15SE, F/A-18 E/F, EA-18G, F-22, F-35, and future variants thereof; or the F-117 or U.S. Government technology demonstrators. Parts, components, accessories, and attachments of the F-15SE and F/A-18 E/F that are common to earlier models of these aircraft, unless listed in paragraph (h) of this category, are subject to the EAR;

Note to paragraph (h)(1):

This paragraph does not control parts, components, accessories, and attachments that are common to aircraft, other than the KF-21 and variants thereof, described in paragraph (a) of this category but not identified in paragraph (h)(1), and those identified

in paragraph (h)(1). For example, when applying § 120.41(b)(3), a part common to only the F-16 and F-35 is not specially designed for purposes of this paragraph. A part common to only the F-22 and F-35—two aircraft models identified in paragraph (h)(1)—is specially designed for purposes of this paragraph, unless one of the other paragraphs is applicable under § 120.41(b) of this subchapter. Commodities otherwise described in this paragraph that are utilized in the KF-21 are not released from this paragraph due to use in the KF-21.

(2) Rotorcraft gearboxes with internal pitch line velocities exceeding 20,000 feet per minute and able to operate 30 minutes with loss of lubrication without an emergency or auxiliary lubrication system, and specially designed parts and components therefor;

Note to paragraph (h)(2):

Loss of lubrication means a situation where oil/lubrication is mostly or completely lost from a transmission/gearbox such that only a residual coating remains due to the lubrication system failure.

(3) Tail boom folding systems, stabilator folding systems or automatic rotor blade folding systems, and specially designed parts and components therefor;

(4) Wing folding systems, and specially designed parts and components therefor, for:

(i) Aircraft powered by power plants controlled under USML Category IV(d); or

(ii) Aircraft with any of the following characteristics and powered by gas turbine engines:

(A) The portion of the wing outboard of the wing fold is required for sustained flight;

(B) Fuel can be stored outboard of the wing fold;

(C) Control surfaces are outboard of the wing fold;

(D) Hard points are outboard of the wing fold;

(E) Hard points inboard of the wing fold allow for in-flight ejection; or

(F) The aircraft is designed to withstand maximum vertical maneuvering accelerations greater than +3.5g/−1.5g.

(5) On-aircraft arresting gear (e.g., tail hooks and drag chutes) and specially designed parts and components therefor;

(6) Bomb racks, missile or rocket launchers, missile rails, weapon pylons, pylon-to-launcher adapters, unmanned aerial vehicle (UAV) airborne launching systems, external stores support systems for ordnance or weapons, and specially designed parts and

components therefor (MT if the bomb rack, missile launcher, missile rail, weapon pylon, pylon-to-launcher adapter, UAV airborne launching system, or external stores support system is for an aircraft, excluding manned aircraft, or missile that has a “range” equal to or greater than 300 km);

(7) Damage or failure-adaptive flight control systems, that do not consist solely of redundant internal circuitry, specially designed for aircraft controlled in this category;

(8) Threat-adaptive autonomous flight control systems, where a “threat-adaptive autonomous flight control system” is a flight control system that, without input from the operator or pilot, adjusts the aircraft control or flight path to minimize risk caused by hostile threats;

(9) Non-surface-based flight control systems and effectors (e.g., thrust vectoring from gas ports other than main engine thrust vector);

(10) Radar altimeters with output power management LPI (low probability of intercept) or signal modulation (*i.e.,*frequency hopping, chirping, direct sequence-spectrum spreading) LPI capabilities (MT if for an aircraft, excluding manned aircraft, or missile that has a “range” equal to or greater than 300 km);

(11) Air-to-air refueling systems and hover-in-flight refueling (HIFR) systems, and specially designed parts and components therefor;

(12) Unmanned aerial vehicle (UAV) flight control systems and vehicle management systems with swarming capability (*i.e.* UAVs that operate autonomously (without human input) to interact with each other to avoid collisions, fly in formations, and are capable of adapting in real-time to changes in operational/threat environment, or, if weaponized, coordinate targeting) (MT if for an aircraft, excluding manned aircraft, or missile that has a “range” equal to or greater than 300 km);

(13) [Reserved]

(14) Lift fans, clutches, and roll posts for short take-off, vertical landing (STOVL) aircraft and specially designed parts and components for such lift fans and roll posts;

(15) Integrated helmets incorporating optical sights or slewing devices, which include the ability to aim, launch, track, or manage munitions (e.g., Helmet Mounted Cueing Systems, Joint Helmet Mounted Cueing Systems (JHMCS), Helmet Mounted Displays, Display and Sight Helmets (DASH)), and specially designed parts, components, accessories, and attachments therefor;

(16) Fire control computers, stores management systems, armaments control processors, and aircraft-weapon interface units and computers (e.g., AGM-88 HARM Aircraft Launcher Interface Computer (ALIC));

(17) Mission computers, vehicle management computers, and integrated core processers specially designed for aircraft controlled in this category;

(18) Drive systems, flight control systems, and parts and components therefor, specially designed to function after impact of a 7.62mm or larger projectile;

(19) Thrust reversers specially designed to be deployed in flight for aircraft controlled in this category;

* (20) Any part, component, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information.

(21)-(26) [Reserved]

(27) Variable speed gearboxes, where a “variable speed gearbox” has the ability to vary the gearbox output speed by mechanical means within the gearbox while the gearbox input speed from the engine or other source is constant, and is capable of varying output speed by 20% or greater and providing power to rotors, proprotors, propellers, propfans, or liftfans; and specially designed parts and components therefor;

(28) Electrical power or thermal management systems specially designed for an engine controlled in Category XIX and having any of the following:

(i) Electrical power generators that provide greater than 300kW of electrical power (per generator) with gravimetric power densities exceeding 2kW/pound (excluding the mass of the controller for the purpose of calculating the gravimetric power density);

(ii) Heat exchangers that exchange 60 kW/K-m^3 or 1 kW/K of heat or greater into the gas turbine engine flow path; or

(iii) Direct-cooling thermal electronic package heat exchangers that transfer 20kW of heat or greater at 100W/cm^2 or greater.

(29) Any of the following equipment if specially designed for a defense article described in paragraph (h)(1):

(i) Scale test models;

(ii) Full scale iron bird ground rigs used to test major aircraft systems; or

(iii) Jigs, locating fixtures, templates, gauges, molds, dies, or caul plates.

(i) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in paragraphs (a) through (h) of this category and classified technical data directly related to items controlled in ECCNs 9A610, 9B610, 9C610, and 9D610 and defense services using classified technical data. (See § 125.4 of this subchapter for exemptions.) (MT for technical data and defense services related to articles designated as such.)

(j)-(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR used in or with defense articles controlled in this category.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

Note:

Parts, components, accessories, and attachments in paragraphs (h)(3)-(5), (7), (14), (17), or (19) are licensed by the Department of Commerce when incorporated in an aircraft subject to the EAR and classified under ECCN 9A610. Replacement systems, parts, components, accessories and attachments are subject to the controls of the ITAR.

Category IX—Military Training Equipment and Training

(a) Training equipment, as follows:

(1) Ground, surface, submersible, space, or towed airborne targets that:

(i) Have an infrared, radar, acoustic, magnetic, or thermal signature that mimic a specific defense article, specific other item, or specific person; or

(ii) Are instrumented to provide hit/miss performance information for defense articles controlled in this subchapter;

Note to paragraph (a)(1):

Target drones are controlled in USML Category VIII(a).

(2) Devices that are mockups of articles enumerated in this subchapter used for maintenance training or disposal training for ordnance enumerated in this subchapter, that reveal technical data or contain parts, components, accessories, or attachments controlled in this subchapter;

(3) Air combat maneuvering instrumentation and ground stations therefor;

(4) Physiological flight trainers for fighter aircraft or attack helicopters;

(5) Radar trainers specially designed for training on radar controlled by USML Category XI;

(6) Training devices specially designed to be attached to a crew station, mission system, or weapon of an article controlled in this subchapter;

Note to paragraph (a)(6):

This paragraph includes stimulators that are built-in or add-on devices that cause the actual equipment to act as a trainer.

(7) Anti-submarine warfare trainers;

(8) Missile launch trainers;

(9) Radar target generators;

(10) Infrared scene generators; or

* (11) Any training device that:

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information.

Note to paragraph (a):

Training equipment does not include combat games without item signatures or tactics, techniques, and procedures covered by this subchapter.

(b) Simulators, as follows:

(1) System specific simulators that replicate the operation of an individual crew station, a mission system, or a weapon of an end-item that is controlled in this subchapter;

(2)-(3) [Reserved]

(4) Software and associated databases not elsewhere enumerated in this subchapter that can be used to model or simulate the following:

(i) Trainers enumerated in paragraph (a) of this category;

(ii) Battle management;

(iii) Military test scenarios/models; or

(iv) Effects of weapons enumerated in this subchapter; or

* (5) Simulators that:

(i) Are classified;

(ii) Contain classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Are being developed using classified information.

(c)-(d) [Reserved]

(e) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter):

(1) Directly related to the defense articles enumerated in paragraphs (a) and (b) of this category;

(2) Directly related to the software and associated databases enumerated in paragraph (b)(4) of this category even if no defense articles are used or transferred; or

(3) Military training (see § 120.32(a)(3) of this subchapter) not directly related to defense articles or technical data enumerated in this subchapter.

(f)-(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR used in or with defense articles.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technical data subject to the EAR (see § 123.1(b) of this subchapter).

Note to USML Category IX:

Parts, components, accessories, or attachments of a simulator in this category that are common to the simulated system or simulated end-item are controlled under the same USML category or CCL ECCN as the parts, components, accessories, and attachments of the simulated system or simulated end-item.

Category X—Personal Protective Equipment

(a) Personal protective equipment, as follows:

(1) Body armor providing a protection level equal to or greater than NIJ Type IV;

Note 1 to paragraph (a)(1):

For body armor providing a level of protection of Type I, Type II, Type IIA, Type IIIA, or Type III, see ECCNs 1A005 and 1A613.

Note 2 to paragraph (a)(1):

See USML Category XIII(e) for controls on related materials.

(2) Personal protective clothing, equipment, or face paints specially designed to protect against or reduce detection by radar, IR, or other sensors at wavelengths greater than 900 nanometers;

Note to paragraph (a)(2):

See USML Category XIII(j) for controls on related materials.

(3)-(4) [Reserved]

(5) Integrated helmets, not specified in USML Category VIII(h)(15) or USML Category XII, incorporating optical sights or slewing devices, which include the ability to aim, launch, track, or manage munitions;

(6) Helmets and helmet shells providing a protection level equal to or greater than NIJ Type IV;

(7) Goggles, spectacles, visors, vision blocks, canopies, or filters for optical sights or viewers, employing other than common broadband absorptive dyes or UV inhibitors as a means of protection (e.g., narrow band filters/dyes or broadband limiters/coatings with

high visible transparency), having an optical density greater than 3, and that protect against:

(i) Multiple visible (in-band) laser wavelengths;

(ii) Thermal flashes associated with nuclear detonations; or

(iii) Near infrared or ultraviolet (out-of-band) laser wavelengths; or

Note 1 to paragraph (a)(7):

See paragraphs (d)(2) and (3) of this category for controls on related parts, components, and materials.

Note 2 to paragraph (a)(7):

See USML Category XII for sensor protection equipment.

(8) Developmental personal protective equipment and specially designed parts, components, accessories, and attachments therefor, developed for the U.S. Department of Defense via contract or other funding authorization.

Note 1 to paragraph (a)(8):

This paragraph does not control personal protective equipment and specially designed parts, components, accessories, and attachments (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination, or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (a)(8):

Note 1 does not apply to defense articles enumerated on the USML, whether in production or development.

Note 3 to paragraph (a)(8):

This paragraph is applicable only to those contracts and funding authorizations that are dated January 5, 2015, or later.

(b)-(c) [Reserved]

(d) Parts, components, assemblies, accessories, attachments, and associated equipment for the personal protective equipment controlled in this category, as follows:

(1) Ceramic or composite plates that provide protection equal to or greater than NIJ Type IV;

(2) Lenses, substrates, or filters “specially designed” for the articles covered in paragraph (a)(7) of this category;

(3) Materials and coatings specially designed for the articles covered in paragraph (a)(7) of this category with optical density greater than 3, as follows:

(i) Narrowband absorbing dyes;

(ii) Broadband optical switches or limiters (*i.e.,* nonlinear material, tunable or switchable agile filters, optical power limiters, near infrared interference based filters); or

(iii) Narrowband interference based notch filters (*i.e.,* multi-layer dielectric coatings, rugate, holograms or hybrid (*i.e.,*interference with dye)) protecting against multiple laser wavelength and having high visible band transparency; or

* (4) Any component, part, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information.

Note to paragraphs (a) and (d):

See National Institute of Justice Classification, NIJ Standard-0101.06, or national equivalents, for a description of level of protection for armor.

(e) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in paragraphs (a) through (d) of this category.

(f)-(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR used in or with defense articles.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technical data subject to the EAR (see § 123.1(b) of this subchapter).

Category XI—Military Electronics

(a) Electronic equipment and systems not included in Category XII of the U.S. Munitions List, as follows:

* (1) Underwater hardware, equipment, or systems, as follows:

(i) Active or passive acoustic array sensing systems or acoustic array equipment capable of real-time processing that survey or detect, and also track, localize (*i.e.,* determine range and bearing), classify, or identify, surface vessels, submarines, other undersea vehicles, torpedoes, or mines, having any of the following:

(A) Multi-static capability;

(B) Operating frequency less than 20 kHz; or

(C) Operating bandwidth greater than 10 kHz;

(ii) Underwater single acoustic sensor system that distinguishes non-biologic tonals and locates the origin of the sound;

Note to paragraph(a)(1)(ii):

The term tonals implies discrete frequencies in the broadband and narrowband spectra, emanating from man-made objects.

(iii) Non-acoustic systems that survey or detect, and also track, localize (*i.e.,* determine range and bearing), classify, or identify, surface vessels, submarines, other undersea vehicles, torpedoes, or mines;

(iv) Acoustic modems, networks, and communications equipment with real-time adaptive compensation or employing Low Probability of Intercept (LPI);

Note to paragraph (a)(1)(iv):

Adaptive compensation is the capability of an underwater modem to assess the water conditions to select the best algorithm to receive and transmit data.

(v) Low Frequency/Very Low Frequency (LF/VLF) electronic modems, routers, interfaces, and communications equipment, specially designed for submarine communications; or

(vi) Autonomous systems and equipment that enable cooperative sensing and engagement by fixed (bottom mounted/seabed) or mobile Autonomous Underwater Vehicles (AUVs);

* (2) Underwater acoustic countermeasures or counter-countermeasures systems or equipment;

* (3) Radar systems and equipment, as follows:

(i) Airborne radar that maintains positional state of an object or objects of interest, other than weather phenomena, in a received radar signal through time;

Note to paragraph (a)(3)(i):

This paragraph does not control radars that: (1) Are incapable of free space detection of 1 square meter Radar Cross Section (RCS) target beyond 8 nautical miles (nmi); (2) contain a radar update rate of not more than 1Hz; and (3) employ a design determined to be subject to the EAR via a commodity jurisdiction determination.

(ii) Synthetic Aperture Radar (SAR) incorporating image resolution less than (better than) 0.3 m, or incorporating Coherent Change Detection (CCD) with geo-registration accuracy less than (better than) 0.3 m, not including concealed object detection equipment operating in the frequency range from 30 GHz to 3,000 GHz and having a spatial resolution of 0.1 milliradians up to and including 1 milliradians at a standoff distance of 100 m;

(iii) Inverse Synthetic Aperture Radar (ISAR);

(iv) Radar that geodetically-locates (*i.e.,* geodetic latitude, geodetic longitude, and geodetic height) with a target location error 50 (TLE50) less than or equal to 10 m at ranges greater than 1 km;

(v) Any Ocean Surveillance Radar with an average-power-aperture product of greater than 50 Wm^2;

(vi) Any ocean surveillance radar that transmits a waveform with an instantaneous bandwidth greater than 100 MHz and has an antenna rotation rate greater than 60 revolutions per minute (RPM);

(vii) Air surveillance radar with free space detection of 1 square meter RCS target at 85 nmi or greater range, scaled to RCS values as RCS to the 1⁄4 power;

(viii) Air surveillance radar with free space detection of 1 square meter RCS target at an altitude of 65,000 feet and an elevation angle greater than 20 degrees (*i.e.,* counter-battery);

(ix) [Reserved]

(x) Air surveillance radar with a beam solid angle less than or equal to 16 degrees^2 that performs free space tracking of 1 square meter RCS target at a range greater or equal to 25 nmi with revisit rate greater or equal to 1⁄3 Hz;

(xi) Instrumentation radar for anechoic test facility or outdoor range that maintains positional state of an object of interest in a received radar signal through time or provides measurement of RCS of a static target less than or equal to minus 10dBsm, or RCS of a dynamic target;

(xii) Radar incorporating pulsed operation with electronics steering of transmit beam in elevation and azimuth;

Note to paragraph (a)(3)(xii):

This paragraph does not control radars not otherwise controlled in this subchapter, operating with a peak transmit power less than or equal to 550 watts, and employing a design determined to be subject to the EAR via a commodity jurisdiction determination.

(xiii) Radar with mode(s) for ballistic tracking or ballistic extrapolation to source of launch or impact point of articles controlled in USML Categories III, IV, or XV;

(xiv) Active protection radar and missile warning radar with mode(s) implemented for detection of incoming munitions;

(xv) Over the horizon high frequency sky-wave (ionosphere) radar;

(xvi) Radar that detects a moving object through a physical obstruction at distance greater than 0.2 m from the obstruction;

(xvii) Radar having moving target indicator (MTI) or pulse-Doppler processing where any single Doppler filter provides a normalized clutter attenuation of greater than 60dB;

Note to paragraph (a)(3)(xvii):

Normalized clutter attenuation is defined as the reduction in the power level of received distributed clutter when normalized to the thermal noise level.

(xviii) Radar having electronic protection or electronic counter-countermeasures (ECCM) other than manual gain control, automatic gain control, radio frequency selection, constant false alarm rate, and pulse repetition interval jitter;

(xix) Radar employing electronic attack (EA) mode(s) using the radar transmitter and antenna;

(xx) Radar employing electronic support (ES) mode(s) (*i.e.,* the ability to use a radar system for ES purposes in one or more of the following: as a high-gain receiver, as a wide-bandwidth receiver, as a multi-beam receiver, or as part of a multi-point system);

(xxi) Radar employing non-cooperative target recognition (NCTR) (*i.e.,* the ability to recognize a specific platform type without cooperative action of the target platform);

Note to paragraph (a)(3)(xxi):

The definition of “type” in this paragraph is that provided in 14 CFR § 1.1.

(xxii) Radar employing automatic target recognition (ATR) (*i.e.,* recognition of target using structural features (e.g., tank versus car) of the target with system resolution better than (less than) 0.3 m);

(xxiii) Radar that sends interceptor guidance commands or provides illumination keyed to an interceptor seeker;

(xxiv) Radar employing waveform generation for LPI other than frequency modulated continuous wave (FMCW) with linear ramp modulation;

(xxv) Radar that sends and receives communications;

(xxvi) Radar that tracks or discriminates ballistic missile warhead from debris or countermeasures;

(xxvii) Bi-static/multi-static radar that exploits greater than 125 kHz bandwidth and is lower than 2 GHz center frequency to passively detect or track using radio frequency (RF) transmissions (e.g., commercial radio, television stations);

(xxviii) Radar target generators, projectors, or simulators, specially designed for radars controlled by this category; or

(xxix) Radar and laser radar systems specially designed for defense articles in paragraph (a)(1) of USML Category IV or paragraphs (a)(5), (a)(6), or (a)(13) of USML Category VIII (MT if specially designed for rockets, space launch vehicles, missiles, drones, or unmanned aerial vehicles capable of delivering a payload of at least 500 kg to a range of at least 300 km);

Note 1 to paragraph (a)(3)(xxix):

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.

Note 2 to paragraph (a)(3)(xxix):

For definition of “range” as it pertains to rocket systems, see note 1 to paragraph (a) of USML Category IV. “Payload” is the total mass that can be carried or delivered by the specified rocket, SLV, or missile that is not used to maintain flight.

Note to paragraph (a)(3):

This paragraph does not control: (a) Systems or equipment that require aircraft transponders in order to meet control parameters; (b) precision approach radar (PAR) equipment conforming to ICAO standards and employing electronically steerable linear (1- dimensional) arrays or mechanically positioned passive antennas; and (c) radio altimeter equipment conforming to FAA TSO C87.

* (4) Electronic Combat (*i.e.,* Electronic Warfare) systems and equipment, as follows:

(i) ES systems and equipment that search for, intercept and identify, or locate sources of intentional or unintentional electromagnetic energy specially designed to provide immediate threat detection, recognition, targeting, planning, or conduct of future operations;

Note to paragraph (a)(4)(i):

ES provides tactical situational awareness, automatic cueing, targeting, electronic order of battle planning, electronic intelligence (ELINT), communication intelligence (COMINT), or signals intelligence (SIGINT).

(ii) Systems and equipment that detect and automatically discriminate acoustic energy emanating from weapons fire (e.g., gunfire, artillery, rocket propelled grenades, or other projectiles), determining location or direction of weapons fire in less than two seconds from receipt of event signal, and able to operate on-the-move (e.g., operating on personnel, land vehicles, sea vessels, or aircraft while in motion); or

(iii) Systems and equipment specially designed to introduce extraneous or erroneous signals into radar, infrared based seekers, electro-optic based seekers, radio communication receivers, navigation receivers, or that otherwise hinder the reception, operation, or effectiveness of adversary electronics (e.g., active or passive electronic attack, electronic countermeasure, electronic counter-countermeasure equipment, jamming, and counter jamming equipment);

* (5) Command, control, and communications (C3); command, control, communications, and computers (C4); command, control, communications, computers, intelligence, surveillance, and reconnaissance (C4ISR); and identification systems or equipment, that:

(i) Are specially designed to integrate, incorporate, network, or employ defense articles that are controlled in paragraphs or subparagraphs of the categories of § 121.1 of this part that do not use the term specially designed;

(ii) Incorporate U.S. government identification friend or foe (IFF) Modes 4 or 5;

(iii) Implement active or passive ECCM used to counter acts of communication disruption (e.g., radios that incorporate HAVE QUICK I/II, SINCGARS, SATURN);

(iv) Specially designed, rated, certified, or otherwise specified or described to be in compliance with U.S. government NSTISSAM TEMPEST 1-92 standards or CNSSAM TEMPEST 01-02, to implement techniques to suppress compromising emanations of information bearing signals; or

(v) Transmit voice or data signals specially designed to elude electromagnetic detection;

(6) [Reserved]

(7) Developmental electronic equipment or systems funded by the Department of Defense via contract or other funding authorization;

Note 1 to paragraph (a)(7):

This paragraph does not control electronic systems or equipment (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination, or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (a)(7):

Note 1 does not apply to defense articles enumerated on the USML, whether in production or development.

Note 3 to paragraph (a)(7):

This paragraph is applicable only to those contracts and funding authorizations that are dated July 1, 2015, or later.

(8) Unattended ground sensor (UGS) systems or equipment having all of the following:

(i) Automatic target detection;

(ii) Automatic target tracking, classification, recognition, or identification;

(iii) Self-forming or self-healing networks; and

(iv) Self-localization for geo-locating targets;

(9) Electronic sensor systems or equipment for non-acoustic antisubmarine warfare (ASW) or mine warfare (e.g., magnetic anomaly detectors (MAD), electric-field, electromagnetic induction);

(10) Electronic sensor systems or equipment for detection of concealed weapons, having a standoff detection range of greater than 45 m for personnel or detection of vehicle-carried weapons, not including concealed object detection equipment operating in the frequency range from 30 GHz to 3,000 GHz and having a spatial resolution of 0.1 milliradians up to and including 1 milliradians at a standoff distance of 100 m;

(11) Test sets specially designed for testing defense articles controlled in paragraphs (a)(3), (a)(4), (a)(5), or (b); or

(12) Direction finding equipment for determining bearings to specific electromagnetic sources or terrain characteristics specially designed for defense articles in paragraph (a)(1) of USML Category IV or paragraphs (a)(5), (a)(6), or (a)(13) of USML Category VIII (MT if specially designed for rockets, SLVs, missiles, drones, or UAVs capable of delivering a payload of at least 500 kg to a range of at least 300 km. See note 2 to paragraph (a)(3)(xxix) of this category).

Note 1 to paragraph (a):

The term Low Probability of Intercept used in this paragraph and elsewhere in this category is defined as a class of measures that disguise, delay, or prevent the interception of acoustic or electromagnetic signals. LPI techniques can involve permutations of power management, energy management, frequency variability, out-of-receiver-frequency band, low-side lobe antenna, complex waveforms, and complex scanning. LPI is also referred to as Low Probability of Intercept, Low Probability of Detection, and Low Probability of Identification.

Note 2 to paragraph (a):

Paragraphs (a)(3)(xxix) and (a)(12) include terrain contour mapping equipment, scene mapping and correlation (both digital and analogue) equipment, Doppler navigation radar equipment, passive interferometer equipment, and imaging sensor equipment (both active and passive).

*(b) Electronic systems, equipment or software, not elsewhere enumerated in this subchapter, specially designed for intelligence purposes that collect, survey, monitor, or exploit, or analyze and produce information from, the electromagnetic spectrum (regardless of transmission medium), or for counteracting such activities.

(c) Parts, components, accessories, attachments, and associated equipment, as follows:

(1) Application Specific Integrated Circuits (ASICs) and Programmable Logic Devices (PLD) programmed for defense articles in this subchapter;

Note 1 to paragraph (c)(1):

An ASIC is an integrated circuit developed and produced for a specific application or function regardless of number of customers.

Note 2 to paragraph (c)(1):

ASICs and PLDs programmed for 600 series items are controlled in ECCN 3A611.f.

Note 3 to paragraph (c)(1):

Unprogrammed PLDs are not controlled by this paragraph.

(2) Printed Circuit Boards (PCBs) and populated circuit card assemblies for which the layout is specially designed for defense articles in this subchapter;

Note to paragraph (c)(2):

PCBs and populated circuit card assemblies for which the layout is specially designed for 600 series items are controlled in ECCN 3A611.g.

(3) Multichip modules for which the pattern or layout is specially designed for defense articles in this subchapter;

Note to paragraph (c)(3):

Multichip modules for which the pattern or layout is specially designed for 600 series items are controlled in ECCN 3A611.h.

(4) Transmit/receive modules, transmit/receive monolithic microwave integrated circuits (MMICs), transmit modules, and transmit MMICs having all of the following:

(i) A peak saturated power output (in watts), Psat, greater than 505.62 divided by the maximum operating frequency (in GHz) squared [Psat > 505.62 W * GHz2/fGHz2] for any channel;

(ii) A fractional bandwidth of 5% or greater for any channel;

(iii) Any planar side with length d (in cm) equal to or less than 15 divided by the lowest operating frequency in GHz [d ≤ 15cm * GHz/fGHz]; and

(iv) At least one electronically variable phase shifter per channel.

Note 1 to paragraph (c)(4):

A MMIC: (a) Is formed by means of diffusion processes, implantation processes, or deposition processes in or on a single semiconducting piece of material; (b) can be considered as indivisibly associated; (c) performs the function(s) of a circuit; and (d) operates at microwave frequencies (*i.e.,* 300 MHz to 300 GHz).

Note 2 to paragraph (c)(4):

A transmit/receive module is a multifunction electronic assembly that provides bi-directional amplitude and phase control for transmission and reception of signals.

Note 3 to paragraph (c)(4):

A transmit module is an electronic assembly that provides amplitude and phase control for transmission of signals.

Note 4 to paragraph (c)(4):

A transmit/receive MMIC is a multifunction MMIC that provides bi-directional amplitude and phase control for transmission and reception of signals.

Note 5 to paragraph (c)(4):

A transmit MMIC is a MMIC that provides amplitude and phase control for transmission of signals.

Note 6 to paragraph (c)(4):

USML Category XI(c)(4) applies to transmit/receive modules and to transmit modules, with or without a heat sink. The value of length d in USML Category XI(c)(4)(iii) does not include any portion of the transmit/receive module or transmit module that functions as a heat sink.

Note 7 to paragraph (c)(4):

Transmit/receive modules, transmit modules, transmit/receive MMICs, and transmit MMICs may or may not have N integrated radiating antenna elements, where N is the number of transmit or transmit/receive channels.

Note 8 to paragraph (c)(4):

Fractional bandwidth is the bandwidth over which output power remains constant within 3 dB (without the adjustment of other operating parameters), divided by the center frequency, and multiplied by 100. Fractional bandwidth is expressed as a percentage.

(5) High-energy storage capacitors that:

(i) Have a rated voltage of greater than five hundred volts (500 V);

(ii) Have a repetition rate greater than or equal to six (6) discharges per minute;

(iii) Have a full energy life greater than or equal to 10,000 discharges at greater than 0.2 Amps per Joule peak current; and

(iv) Have any of the following:

(A) Volumetric energy density greater than or equal to 1.5 J/cc; or

(B) Mass energy density greater than or equal to 1.3 kJ/kg;

Note to paragraph (c)(5):

Volumetric energy density is Energy per unit Volume. *Mass energy density* is Energy per unit Mass, sometimes referred to as *Gravimetric energy density* or *Specific energy. Energy* ($E = 1/2CV^2$, where C is Capacitance and V is the rated voltage) in these calculations must not be confused with useful energy or extractable energy. *Rated voltage* is the value, based on the capacitor's design, testing, and evaluation, that describes the maximum amount of continuous voltage, at an operating temperature less than or equal to 85 degrees Celsius (85 °C), that will not damage the capacitor. *Rated voltage* does not include short-term transient or surge operating conditions.

(6) Radio frequency circulators of any dimension equal to or less than one quarter (1/4) wavelength of the highest operating frequency and isolation greater than 30 dB;

(7) Polarimeter that detects and measures polarization of radio frequency signals within a single pulse;

(8) Digital radio frequency memory (DRFM) with RF instantaneous input bandwidth greater than 400 MHz, and 4 bit or higher resolution whose output signal is a translation of the input signal (e.g., changes in magnitude, time, frequency) and specially designed parts and components therefor;

(9) Vacuum electronic devices, as follows:

(i) Multiple electron beam or sheet electron beam devices rated for operation at frequencies of 16 GHz or above, and with a saturated power output greater than 10,000 W (70 dBm) or a maximum average power output greater than 3,000 W (65 dBm); or

(ii) Cross-field amplifiers with a gain of 15 dB to 17 dB or a duty factor greater than 5%;

(10) Antenna, and specially designed parts and components therefor, that:

(i) Employ four or more elements, electronically steer angular beams, independently steer angular nulls, create angular nulls with a null depth greater than 20 dB, and achieve a beam switching speed faster than 50 milliseconds;

(ii) Form adaptive null attenuation greater than 35 dB with convergence time less than one second;

(iii) Detect signals across multiple RF bands with matched left hand and right hand spiral antenna elements for determination of signal polarization; or

(iv) Determine signal angle of arrival less than two degrees (e.g., interferometer antenna);

Note to paragraph (c)(10):

This category does not control Traffic Collision Avoidance Systems (TCAS) equipment conforming to FAA TSO C-119c.

(11) Radomes or electromagnetic antenna windows that:

(i) Incorporate radio frequency selective surfaces;

(ii) Operate in multiple non-adjacent frequency bands for radar applications;

(iii) Incorporate a structure that is specially designed to provide ballistic protection from bullets, shrapnel, or blast;

(iv) Have a melting point greater than 1,300 °C and maintain a dielectric constant less than 6 at temperatures greater than 500 °C;

(v) Are manufactured from ceramic materials with a dielectric constant less than 6 at any frequency from 100 MHz to 100 GHz (MT if usable in rockets, SLVs, or missiles capable of achieving a range greater than or equal to 300 km; or if usable in drones or UAVs capable of delivering a payload of at least 500 kg to a range of at least 300 km. See note 2 to paragraph (a)(3)(xxix) of this category);

(vi) Maintain structural integrity at stagnation pressures greater than 6,000 pounds per square foot; or

(vii) Withstand combined thermal shock greater than 4.184×10^6 J/m^2 accompanied by a peak overpressure of greater than 50 kPa (MT if usable in rockets, SLVs, missiles, drones, or UAVs capable of delivering a payload of at least 500 kg to a range of at least 300 km and usable in protecting against nuclear effects (e.g., Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects). See note 2 to paragraph (a)(3)(xxix) of this category);

(12) Underwater sensors (acoustic vector sensors, hydrophones, or transducers) or projectors, specially designed for systems controlled by paragraphs (a)(1) and (a)(2) of this category, having any of the following:

(i) A transmitting frequency below 10 kHz for sonar systems;

(ii) Sound pressure level exceeding 224 dB (reference 1 mPa at 1 m) for equipment with an operating frequency in the band from 10 kHz to 24 kHz inclusive;

(iii) Sound pressure level exceeding 235 dB (reference 1 mPa at 1 m) for equipment with an operating frequency in the band between 24 kHz and 30 kHz;

(iv) Forming beams of less than 1° on any axis and having an operating frequency of less than 100 kHz;

(v) Designed to operate with an unambiguous display range exceeding 5,120 m; or

(vi) Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers with any of the following:

(A) Dynamic compensation for pressure; or

(B) Incorporating other than lead zirconate titanate as the transduction element;

(13) Parts or components containing piezoelectric materials which are specially designed for underwater hardware, equipment, or systems controlled by paragraph (c)(12) of this category;

(14) Tuners specially designed for systems and equipment in paragraphs (a)(4) and (b) of this category;

(15) Electronic assemblies and components, capable of operation at temperatures in excess of 125 °C and specially designed for UAVs or drones controlled by USML Category VIII, rockets, space launch vehicles (SLV), or missiles controlled by USML Category IV capable of achieving a range greater than or equal to 300 km (MT) (see Note 2 to paragraph (a)(3)(xxix) of this category);

(16) Hybrid (combined analogue/digital) computers specially designed for modeling, simulation, or design integration of systems enumerated in paragraphs (a)(1), (d)(1), (d)(2), (h)(1), (h)(2), (h)(4), (h)(8), and (h)(9) of USML Category IV or paragraphs (a)(5), (a)(6), or (a)(13) of USML Category VIII (MT if for rockets, SLVs, missiles, drones, or UAVs capable of delivering a payload of at least 500 kg to a range of at least 300 km or their subsystems. See note 2 to paragraph (a)(3)(xxix) of this category);

(17) Chaff and flare rounds specially designed for the systems and equipment described in paragraph (a)(4)(iii) of this category, and parts and components therefor containing materials controlled in USML Category V;

(18) Parts, components, or accessories specially designed for an information assurance/information security system or radio controlled in this subchapter that modify its published properties (e.g., frequency range, algorithms, waveforms, CODECs, or modulation/demodulation schemes); or

* (19) Any part, component, accessory, attachment, equipment, or system that (MT for those articles designated as such):

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information.

Note to paragraph (c)(19)(ii):

Parts and components controlled by this paragraph are limited to those that store, process, or transmit classified software (see § 120.40(g) of this subchapter).

(d) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in paragraphs (a) through (c) of this category and classified technical data directly related to items controlled in CCL ECCNs 3A611, 3B611, 3C611, and 3D611 and defense services using the classified technical data. (See § 125.4 of this subchapter for exemptions.) (MT for technical data and defense services related to articles designated as such.)

(e)-(w) [Reserved];

(x) Commodities, software, and technology subject to the EAR used in or with defense articles.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

Note to Category XI:

Category XI does not control transmit/receive modules, transmit/receive MMICs, transmit modules, or transmit MMICs that incorporate or are MMICs fabricated exclusively with homojunction CMOS silicon-based circuits on silicon substrates, or radars and radar antennas specially designed to use only such modules or MMICs.

Category XII—Fire Control, Laser, Imaging, and Guidance Equipment

(a) Fire control, aiming, detection, guidance, and tracking systems, as follows:

* (1) Fire control systems;

* (2) Electronic or optical weapon positioning, laying, or spotting systems;

* (3) Laser spot trackers or laser spot detection, location, or imaging systems, with an operational wavelength shorter than 400 nm or longer than 710 nm and that are for laser target designators or coded target markers controlled in paragraph (b)(1);

Note to paragraph (a)(3):

For controls on LIDAR, see paragraph (b)(6) of this category.

* (4) Bomb sights or bombing computers;

* (5) Electro-optical systems that automatically detect and locate ordnance launch, blast, or fire;

* (6) Electro-optical ordnance guidance systems;

* (7) Missile or ordnance electro-optical tracking systems;

* (8) Remote wind-sensing systems specially designed for ballistic-corrected aiming; or

(9) Helmet mounted display (HMD) systems or end items (e.g., Combat Vehicle Crew HMD, Mounted Warrior HMD, Integrated Helmet Assembly Subsystem, Drivers Head Tracked Vision System), other than such items controlled in Category VIII, that:

(i) Incorporate or interface (either via wired or wireless connection) with optical sights or slewing devices that aim, launch, track, or manage munitions; or

(ii) Control infrared imaging systems or end items described in paragraphs (a) through (d) of this category.

* (b) Laser systems and end items, as follows:

(1) Laser target designators or coded target markers, that mediate the delivery of ordnance to a target;

(2) Target illumination systems having a variable beam divergence and a laser output wavelength exceeding 710 nm, to artificially light an area to search, locate, or track a target;

(3) Laser rangefinders having any of the following:

(i) Output wavelength of 1064 nm and any Q-switched pulse output; or

(ii) Output wavelength exceeding 1064 nm and any of the following:

(A) Single or multiple shot(s) within one second ranging capability of 3 km or greater against a standard 2.3 m x 2.3 m NATO target having 10% reflectivity and 23 km atmospheric visibility; or

(B) Multiple shot ranging capability at 3 Hz or greater of 1 km or greater against a standard 2.3 m x 2.3 m NATO target having 10% reflectivity and 23 km atmospheric visibility;

(4) Targeting systems and target location systems, incorporating or specially designed to incorporate both of the following:

(i) A laser rangefinder; and

(ii) A defense article controlled in paragraph (d) of this category (MT if designed or modified for rockets, missiles, space launch vehicles (SLVs), drones, or unmanned aerial vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km);

(5) Systems specially designed to use laser energy with an output wavelength exceeding 710 nm for exploiting differential target-background retroreflectance in order to detect optical/electro-optical equipment (e.g., optical augmentation systems);

(6) Light detection and ranging (LIDAR), laser detection and ranging (LADAR), or range-gated systems, specially designed for a military end user

(MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km); or

(7) Developmental lasers or laser systems funded by the Department of Defense via contract or other funding authorization.

Note 1 to paragraph (b)(7):

This paragraph does not control lasers or laser systems: (a) In production, (b) determined to be subject to the EAR via a Commodity Jurisdiction determination, or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (b)(7):

Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (b)(7):

This provision is applicable to those contracts or other funding authorizations that are dated October 12, 2017 or later.

* (c) Imaging systems or end items, as follows:

(1) Binoculars, bioculars, monoculars, goggles, or head or helmet-mounted imaging systems (including video-based articles having a separate near-to-eye display), as follows:

(i) Employing an autogated third generation image intensifier tube or a higher generation image intensifier tube;

(ii) Fusing output of an image intensifier tube and an infrared focal plane array having a peak response wavelength greater than 1,000 nm; or

(iii) Having an infrared focal plane array or infrared imaging camera, and specially designed for a military end user;

(2) Weapon sights (*i.e.,* with a reticle) or aiming or imaging systems (e.g., clip-on), specially designed to mount to a weapon or to withstand weapon shock or recoil, with or without an integrated viewer or display, and also incorporating or specially designed to incorporate any of the following:

(i) An infrared focal plane array having a peak response wavelength exceeding 1,000 nm;

(ii) Second generation with luminous sensitivity greater than 350 μA/lm, third generation, or higher generation, image intensifier tubes;

(iii) Ballistic computing electronics for adjusting the aim point display; or

(iv) Infrared laser having a wavelength exceeding 710 nm;

(3) Electro-optical reconnaissance, surveillance, target detection, or target acquisition systems, specially designed for articles in this subchapter or specially designed for a military end user (MT if for determining bearings to specific electromagnetic sources (direction finding equipment) or terrain characteristics and designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km);

(4) Infrared search and track (IRST) systems having one of the following:

(i) Airborne or naval systems, that:

(A) Have range performance of 3 km or greater;

(B) Incorporate or are specially designed to incorporate an infrared focal plane array or imaging camera, having a peak response wavelength exceeding 3 microns or greater; and

(C) Maintain positional or angular state of a target through time; or

(ii) Specially designed for a military end user;

(5) Distributed aperture systems having a peak response wavelength exceeding 710 nm specially designed for articles in this subchapter or specially designed for a military end user;

(6) Infrared imaging systems, as follows:

(i) Mobile reconnaissance, scout, or surveillance systems providing real-time target recognition at ranges greater than 3 km (e.g., LRAS, CIV, HTI, SeeSpot, MMS);

Note to paragraph (c)(6)(i):

Target is defined as a NATO standard tank target having a frontal cross-section of 2.3 x 2.3 meters, and a side cross-section of 2.3 x 6.4 meters.

(ii) Airborne stabilized systems specially designed for military reconnaissance (e.g., DB-110, C-B4);

(iii) Multispectral imaging systems that provide automated classification or identification of military or intelligence targets or characteristics;

(iv) Automated missile detection or warning systems;

(v) Systems hardened to withstand electromagnetic pulse (EMP), directed energy, chemical, biological, or radiological threats;

(vi) Systems incorporating mechanism(s) to reduce the optical chain signature for optical augmentation;

(vii) Persistent surveillance systems with a ground sample distance (GSD) of 0.5 m or better (smaller) at 10,000 ft or higher above ground level and a simultaneous coverage area of 3 km^2 or greater;

(viii) Gimbaled infrared systems, as follows:

(A) Having a stabilization better (less) than 30 microradians RMS and a turret with a ball diameter of 15 inches or greater; or

(B) Specially designed for articles in this subchapter or specially designed for a military end user;

(7) Terahertz imaging systems as follows:

(i) Concealed object detection systems operating in the frequency range from 30 GHz to 3000 GHz, and having a resolution less (better) than 0.1 milliradians at a standoff range of 100 m; or

(ii) Specially designed for a military end user;

(8) Systems or equipment, incorporating an ultraviolet or infrared (IR) beacon or emitter, specially designed for Combat Identification;

(9) Systems that project radiometrically calibrated scenes at a frame rate greater than 30 Hz directly into the entrance aperture of an electro-optical or infrared (EO/IR) sensor controlled in this subchapter within either the spectral band exceeding 10 nm but not exceeding 400 nm, or the spectral band exceeding 900 nm but not exceeding 30,000 nm;

(10) Developmental electro-optical, infrared, or terahertz systems funded by the Department of Defense.

Note 1 to paragraph (c)(10):

This paragraph does not control electro-optical, infrared, or terahertz imaging systems: (a) In production, (b) determined to be subject to the EAR via a Commodity Jurisdiction determination, or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (c)(10):

Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (c)(10):

This provision is applicable to those contracts or other funding authorizations that are dated October 12, 2017 or later.

(d) Guidance and navigation systems or end items, as follows:

(1) Guidance or navigation systems (e.g., inertial navigation systems, inertial reference units, attitude and heading reference systems) having any of the following:

(i) A circular error probability at fifty percent (CEP50) of position error rate less (better) than 0.28 nautical miles per hour, without the use of positional aiding references;

(ii) A heading error or true north determination of less (better) than 0.28 mrad secant (latitude) (0.016043 degrees secant (latitude)), without the use of positional aiding references;

(iii) A CEP50 of position error rate less than 0.2 nautical miles in an 8 hour period, without the use of positional aiding references; or

(iv) Meeting or exceeding specified performance at linear acceleration levels exceeding 25g (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of a range greater than or equal to 300 km or incorporating accelerometers specified in paragraph (e)(11) or gyroscopes or angular rate sensors specified in paragraph (e)(12) of this category that are designated MT);

Note 1 to paragraph (d)(1):

For rocket, SLV, or missile flight control and guidance systems (including guidance sets), see Category IV(h).

Note 2 to paragraph (d)(1):

Inertial measurement units are described in paragraph (e) of this category.

(2) Global Navigation Satellite System (GNSS) receiving equipment, as follows:

(i) GNSS receiving equipment specially designed for military applications (MT if designed or modified for airborne applications and capable of providing navigation information at speeds in excess of 600 m/s);

(ii) Global Positioning System (GPS) receiving equipment specially designed for encryption or decryption (e.g., Y-Code, M-Code) of GPS precise positioning service (PPS) signals (MT if designed or modified for airborne applications);

(iii) GNSS receiving equipment specially designed for use with an antenna described in Category XI(c)(10) (MT if designed or modified for airborne applications); or

(iv) GNSS receiving equipment specially designed for use with rockets, missiles, SLVs, drones, or unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km (MT);

Note to paragraph (d)(2)(iv):

“Payload” is the total mass that can be carried or delivered by the specified rocket, missile, SLV, drone, or unmanned aerial vehicle that is not used to maintain flight. For definition of “range” as it pertains to rocket systems, see Note 1 to paragraph (a) of USML Category IV. For definition of “range” as it pertains to aircraft systems, see Note 2 to paragraph (a) of USML Category VIII.

(3) GNSS anti-jam systems specially designed for use with an antenna described in Category XI(c)(10);

(4) Mobile relative gravimeters having automatic motion compensation with an in-service accuracy of less (better) than 0.4 mGal (MT if designed or modified for airborne or marine use and having a time to steady-state registration of two minutes or less);

(5) Mobile gravity gradiometers having an accuracy of less (better) than 10 Eotvos squared per radian per second for any component of the gravity gradient tensor, and having a spatial gravity wavelength resolution of 50 m or less (MT if designed or modified for airborne or marine use);

Note to paragraph (d)(5):

“Eotvos” is a unit of acceleration divided by distance that was used in conjunction with the older centimeter-gram-second system of units. The Eotvos is defined as 1⁄1,000,000,000 Galileo (Gal) per centimeter.

(6) Developmental guidance or navigation systems funded by the Department of Defense (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of a range equal to or greater than 300 km).

Note 1 to paragraph (d)(6):

This paragraph does not control guidance or navigation systems: (a) in production, (b) determined to be subject to the EAR via a Commodity Jurisdiction determination, or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (d)(6):

Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (d)(6):

This provision is applicable to those contracts or other funding authorizations that are dated October 12, 2017 or later.

Note 4 to paragraph (d)(6):

For definition of “range” as it pertains to rocket systems, see Note 1 to paragraph (a) of USML Category IV. For definition of “range” as it pertains to aircraft systems, see Note 2 to paragraph (a) of USML Category VIII.

(e) Parts, components, accessories, or attachments, as follows:

(1) Parts and components specially designed for articles described in paragraph (a)(1) or (a)(5) of this category;

(2) Lasers specially designed for articles in this subchapter;

(3) Laser stacked arrays specially designed for articles in this subchapter;

(4) Night vision or infrared cameras (e.g., camera core) specially designed for articles in this subchapter;

Note to paragraph (e)(4):

The articles controlled by this paragraph have sufficient electronics to enable at a minimum the output of an analog or digital signal once power is applied.

(5) Infrared focal plane arrays specially designed for articles in this subchapter;

(6) Charge multiplication focal plane arrays exceeding 50 mA/W for any wavelength exceeding 760 nm and specially designed for articles described in this subchapter;

(7) Second generation and greater image intensifier tubes specially designed for articles in this subchapter, and specially designed parts and components therefor;

Note to paragraph (e)(7):

Second and third generation image intensifier 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 III-V compound semiconductor photocathode.

(8) Parts and components specially designed for articles described in paragraph (c)(3), (c)(4), (c)(5) or (c)(6)(vi)-(vii) of this category;

(9) Inertial measurement units specially designed for articles in this subchapter (MT for systems incorporating accelerometers specified in paragraph (e)(11) or gyroscopes or angular rate sensors specified in paragraph (e)(12) that are designated MT);

(10) GNSS security devices (e.g., Selective Availability Anti-Spoofing Modules (SAASM), Security Modules (SM), and Auxiliary Output Chips (AOC));

(11) Accelerometers having a bias repeatability of less (better) than 10 μg and a scale factor repeatability of less (better) than 10 parts per million, or capable of measuring greater than 100,000 g (MT);

Note 1 to paragraph (e)(11):

For weapon fuze accelerometers, see Category III(d) or IV(h).

Note 2 to paragraph (e)(11):

MT designation does not include accelerometers that are designed to measure vibration or shock.

(12) Gyroscopes or angular rate sensors as follows:

(i) Having an angle random walk of less (better) than 0.001 degrees per square root hour; or

(ii) Mechanical gyroscopes or rate sensors having a bias repeatability less (better) than 0.0015 degrees per hour (MT if having a rated drift stability of less than 0.5 degrees (1 sigma or rms) per hour in a 1 g environment or specified to function at acceleration levels greater than 100 g);

Note to paragraphs (e)(11) and (e)(12):

“Repeatability” is the closeness of agreement among repeated measurements of the same variable under the same operating conditions when changes in conditions or non-operating periods occur between measurements.

“Bias” is the accelerometer output when no acceleration is applied.

“Scale factor” is the ratio of change in output to a change in the input.

The measurements of “bias” and “scale factor” refer to one sigma standard deviation with respect to a fixed calibration over a period of one year.

“Drift Rate” is the component of gyro output that is functionally independent of input rotation and is expressed as an angular rate.

“Stability” is a measure of the ability of a specific mechanism or performance coefficient to remain invariant when continuously exposed to a fixed operating condition. (This definition does not refer to dynamic or servo stability.)

(13) Optical sensors having a spectral filter specially designed for systems or equipment controlled in USML Category XI(a)(4), or optical sensor assemblies that provide threat warning or tracking for systems or equipment controlled in Category XI(a)(4);

(14) Infrared focal plane array read-out integrated circuits (ROICs) specially designed for articles in this subchapter;

(15) Integrated dewar cooler assemblies specially designed for articles in this subchapter, with or without an infrared focal plane array, and specially designed parts and components therefor;

(16) Gimbals specially designed for articles in this category;

(17) Infrared focal plane array Joule-Thomson (JT) self-regulating cryostats specially designed for articles controlled in this subchapter;

(18) Infrared lenses, mirrors, beam splitters or combiners, filters, and treatments and coatings, specially designed for articles controlled in this category;

Note to paragraph (e)(18):

For the purposes of this paragraph, treatments and coatings may be analyzed as a part, component, accessory, or attachment under paragraph (b) of § 120.41 to determine if they are specially designed.

(19) Drive, control, signal, or image processing electronics, specially designed for articles controlled in this category;

(20) Near-to-eye displays (e.g., micro-displays) specially designed for articles controlled in this category;

(21) Resonators, receivers, transmitters, modulators, gain media, drive electronics, and frequency converters, specially designed for laser systems controlled in this category;

(22) Two-dimensional infrared scene projector emitter arrays (*i.e.,* resistive arrays) specially designed for infrared scene generators controlled in USML Category IX(a)(10);

* (23) Any part, component, accessory, attachment, or associated equipment, that:

(i) Is classified;

(ii) Contains classified software;

(iii) Is manufactured using classified production data; or

(iv) Is being developed using classified information.

(24) Developmental image intensifier tubes, focal plane arrays, read-out-integrated circuits, accelerometers, gyroscopes, angular rate sensors, and inertial measurement units funded by the Department of Defense (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of a range equal to or greater than 300 km).

Note 1 to paragraph (e)(24):

This paragraph does not control items: (a) In production, (b) determined to be subject to the EAR via a Commodity Jurisdiction determination, or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (e)(24):

Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (e)(24):

This provision is applicable to those contracts or other funding authorizations that are dated October 12, 2017 or later.

(f) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in paragraphs (a) through (e) of this category and classified technical data directly related to items controlled in ECCNs 7A611, 7B611, and 7D611. (See § 125.4 for exemptions.) (MT for technical data and defense services related to articles designated as such.)

(g)-(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR used in or with defense articles controlled in this category.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

Note to Category XII:

For purposes of paragraphs (b)(6), (c)(1)(iii), (c)(3), (c)(4)(ii), (c)(5), (c)(6)(viii)(b), and (c)(7)(ii) of this category, a “military end user” means the national armed services (army, navy, marine, air force, or coast guard), national guard, national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support military end uses. A system or end item is not specially designed for a military end user if the item was developed with knowledge that it is or would be for use by both military end users and non-military end users, or if the item was or is being developed with no knowledge of use by a particular end user. For the purpose of conducting a self-determination of jurisdiction, documents contemporaneous with the development must establish such knowledge. For the purpose of a Commodity Jurisdiction determination, the government may base a determination on post-development information that evidences such knowledge or is otherwise consistent with §§ 120.4 and 120.12 of this subchapter.

Category XIII— Materials and Miscellaneous Articles

(a) [Reserved]

(b) Information security or information assurance systems and equipment, cryptographic devices, software, and components, as follows:

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

(2) Military or intelligence cryptographic (including key management) systems, equipment, assemblies, modules, integrated circuits, components, and software (including their cryptographic interfaces) capable of generating spreading or hopping codes for spread spectrum systems or equipment;

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

(4) Military or intelligence systems, equipment, assemblies, modules, integrated circuits, components, or software (including all previous or derived versions) authorized to

control access to or transfer data between different security domains as listed on the Unified Cross Domain Management Office (UCDMO) Control List (UCL); or

(5) Ancillary equipment specially designed for the articles in paragraphs (b)(1)-(b)(4) of this category.

(c) [Reserved]

(d) Materials, as follows:

* (1) Ablative materials fabricated or semi-fabricated from advanced composites (e.g., silica, graphite, carbon, carbon/carbon, and boron filaments) specially designed for the articles in USML Category IV or XV (MT if usable for nozzles, re-entry vehicles, nose tips, or nozzle flaps usable in rockets, space launch vehicles (SLVs), or missiles capable of achieving a range greater than or equal to 300 km); or

(2) Carbon/carbon billets and preforms that are reinforced with continuous unidirectional fibers, tows, tapes, or woven cloths in three or more dimensional planes (MT if designed for rocket, SLV, or missile systems and usable in rockets, SLVs, or missiles capable of achieving a range greater than or equal to 300 km).

Note to paragraph (d):

“Range” is the maximum distance that the specified rocket system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining range. The range for rocket systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links, or other external constraints. For rocket systems, the range will be determined using the trajectory that maximizes range, assuming International Civil Aviation Organization (ICAO) standard atmosphere with zero wind.

Note to paragraph (d)(2):

This paragraph does not control carbon/carbon billets and preforms where reinforcement in the third dimension is limited to interlocking of adjacent layers only.

(e) Armor (e.g., organic, ceramic, metallic) and armor materials, as follows:

(1) Spaced armor with E_m greater than 1.4 and meeting NIJ Level III or better;

(2) Transparent armor having E_m greater than or equal to 1.3 or having E_m less than 1.3 and meeting and exceeding NIJ Level III standards with areal density less than or equal to 40 pounds per square foot;

(3) Transparent ceramic plate greater than 1⁄4 inch-thick and larger than 8 inches × 8 inches, excluding glass, for transparent armor;

(4) Non-transparent ceramic plate or blanks, greater than 1⁄4 inches thick and larger than 8 inches × 8 inches for transparent armor. This includes spinel and aluminum oxynitride (ALON);

(5) Composite armor with E_m greater than 1.4 and meeting or exceeding NIJ Level III;

(6) Metal laminate armor with E_m greater than 1.4 and meeting or exceeding NIJ Level III; or

(7) Developmental armor funded by the Department of Defense via contract or other funding authorization.

Note 1 to paragraph (e)(7):

This paragraph does not control armor (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination, or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (e)(7):

Note 1 does not apply to defense articles enumerated on the USML, whether in production or development.

Note 3 to paragraph (e)(7):

This provision is applicable to those contracts and funding authorizations that are dated July 8, 2014, or later.

* (f) Any article enumerated in this category that (MT for those articles designated as such):

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information.

* (g) Concealment and deception equipment, as follows (MT for applications usable for rockets, SLVs, missiles, drones, or unmanned aerial vehicles (UAVs) capable of achieving a range greater than or equal to 300 km and their subsystems. See note to paragraph (d) of this category):

(1) Polymers loaded with carbonyl iron powder, ferrites, iron whiskers, fibers, flakes, or other magnetic additives having a surface resistivity of less than 5000 ohms/square and greater than 10 ohms/square with electrical isotropy of less than 5%;

(2) Multi-layer camouflage systems specially designed to reduce detection of platforms or equipment in the infrared or ultraviolet frequency spectrums;

(3) High temperature (greater than 300 °F operation) ceramic or magnetic radar absorbing material (RAM) specially designed for use on defense articles or military items subject to the EAR; or

(4) Broadband (greater than 30% bandwidth) lightweight (less than 2 lbs/sq ft) magnetic radar absorbing material (RAM) specially designed for use on defense articles or military items subject to the EAR.

(h) Energy conversion devices not otherwise enumerated in this subchapter, as follows:

(1) Fuel cells specially designed for platforms or soldier systems specified in this subchapter;

(2) Thermal engines specially designed for platforms or soldier systems specified in this subchapter;

(3) Thermal batteries (MT if designed or modified for rockets, SLVs, missiles, drones, or UAVs capable of achieving a range equal to or greater than 300 km. See note to paragraph (d) of this category); or

Note to paragraph (h)(3):

Thermal batteries are single use batteries that contain a solid non-conducting inorganic salt as the electrolyte. These batteries incorporate a pyrolitic material that, when ignited, melts the electrolyte and activates the battery.

(4) Thermionic generators specially designed for platforms or soldier systems enumerated in this subchapter.

* (i) Signature reduction software, and technical data as follows (MT for software specially designed for reduced observables, for applications usable for rockets, SLVs, missiles, drones, or UAVs capable of achieving a range (see note to paragraph (d) of this category) greater than or equal to 300 km, and their subsystems, including software specially designed for analysis of signature reduction; MT for technical data for the development, production, or use of equipment, materials, or software designated as such, including databases specially designed for analysis of signature reduction):

(1) Software associated with the measurement or modification of system signatures for defense articles to reduce detectability or observability;

(2) Software for design of low-observable platforms;

(3) Software for design, analysis, prediction, or optimization of signature management solutions for defense articles;

(4) Infrared signature measurement or prediction software for defense articles or radar cross section measurement or prediction software;

(5) Signature management technical data, including codes and algorithms for defense articles to reduce detectability or observability;

(6) Signature control design methodology (see § 120.43(c) of this subchapter) for defense articles to reduce detectability or observability;

(7) Technical data for use of micro-encapsulation or micro-spheres to reduce infrared, radar, or visual detection of platforms or equipment;

(8) Multi-layer camouflage system technical data for reducing detection of platforms or equipment;

(9) Multi-spectral surface treatment technical data for modifying infrared, visual or radio frequency signatures of platforms or equipment;

(10) Technical data for modifying visual, electro-optical, radiofrequency, electric, magnetic, electromagnetic, or wake signatures (e.g., low probability of intercept (LPI) techniques, methods or applications) of defense platforms or equipment through shaping, active, or passive techniques; or

(11) Technical data for modifying acoustic signatures of defense platforms or equipment through shaping, active, or passive techniques.

(j) Equipment, materials, coatings, and treatments not elsewhere specified, as follows:

(1) Specially treated or formulated dyes, coatings, and fabrics used in the design, manufacture, or production of personnel protective clothing, equipment, or face paints designed to protect against or reduce detection by radar, infrared, or other sensors at wavelengths greater than 900 nanometers (see USML Category X(a)(2)); or

* (2) Equipment, materials, coatings, and treatments that are specially designed to modify the electro-optical, radiofrequency, infrared, electric, laser, magnetic, electromagnetic, acoustic, electro-static, or wake signatures of defense articles or 600 series items subject to the EAR through control of absorption, reflection, or emission to reduce detectability or observability (MT for applications usable for rockets, SLVs, missiles, drones, or UAVs capable of achieving a range greater than or equal to 300 km, and their subsystems. See note to paragraph (d) of this category).

* (k) Tooling and equipment, as follows:

(1) Tooling and equipment specially designed for production of low observable (LO) components; or

(2) Portable platform signature field repair validation equipment (e.g., portable optical interrogator that validates integrity of a repair to a signature reduction structure).

(l) Technical data (see § 120.33 of this subchapter) directly related to the defense articles described in paragraphs (a) through (h), (j), and (k) of this category and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in this category (see also § 120.5(c) of this subchapter for nuclear related controls). (MT for technical data and defense services related to articles designated as such.)

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

(1) Composite armor is defined as having more than one layer of different materials or a matrix.

(2) Spaced armors are metallic or non-metallic armors that incorporate an air space or obliquity or discontinuous material path effects as part of the defeat mechanism.

(3) Reactive armor employs explosives, propellants, or other materials between plates for the purpose of enhancing plate motion during a ballistic event or otherwise defeating the penetrator.

(4) Electromagnetic armor (EMA) employs electricity to defeat threats such as shaped charges.

(5) Materials used in composite armor could include layers of metals, plastics, elastomers, fibers, glass, ceramics, ceramic-glass reinforced plastic laminates, encapsulated ceramics in a metallic or non-metallic matrix, functionally gradient ceramic-metal materials, or ceramic balls in a cast metal matrix.

(6) For this category, a material is considered transparent if it allows 75% or greater transmission of light, corrected for index of refraction, in the visible spectrum through a 1 mm thick nominal sample.

(7) The material controlled in paragraph (e)(4) of this category has not been treated to reach the 75% transmission level referenced in (m)(6) of this category.

(8) Metal laminate armors are two or more layers of metallic materials which are mechanically or adhesively bonded together to form an armor system.

(9) E_m is the line-of-sight target mass effectiveness ratio and provides a measure of the tested armor's performance to that of rolled homogenous armor, where E_m is defined as follows:

$$Em = \frac{\rho_{RHA}\left(P_o - P_r\right)}{AD_{Target}}$$

Where:

ρ_{RHA} = density of RHA, (7.85 g/cm^3)

Po = Baseline Penetration of RHA, (mm)

Pr = Residual Line of Sight Penetration, either positive or negative (mm RHA equivalent)

AD_{TARGET} = Line-of-Sight Areal Density of Target (kg/m^2)

If witness plate is penetrated, P_r is the distance from the projectile to the front edge of the witness plate. If not penetrated, P_r is negative and is the distance from the back edge of the target to the projectile.

(10) NIJ is the National Institute of Justice and Level III refers to the requirements specified in NIJ standard 0108.01 Ballistic Resistant Protective Materials.

(n)-(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR used in or with defense articles.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technical data subject to the EAR (see § 123.1(b) of this subchapter).

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

* (a) Chemical agents, as follows:

(1) Nerve agents, as follows:

(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); or

(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, as follows:

(i) Sulfur mustards, such as: 2-Chloroethylchloromethylsulfide (CAS 2625-76-5) (CWC Schedule 1A); Bis(2-chloroethyl)sulfide (HD) (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, or their protonated salts, as follows:

(A) HN1: Bis (2-chloroethyl) ethylamine (CAS 538-07-8) (CWC Schedule 1A);

(B) HN2: Bis (2-chloroethyl) methylamine (CAS 51-75-2) (CWC Schedule 1A);

(C) HN3: Tris (2-chloroethyl) amine (CAS 555-77-1) (CWC Schedule 1A); or

(D) Other nitrogen mustards, or their salts, having a propyl, isopropyl, butyl, isobutyl, or tertiary butyl group on the bis(2-chloroethyl) amine base;

Note 1 to paragraph (a)(3)(iii):

Pharmaceutical formulations containing nitrogen mustards or certain reference standards for these formulations are not considered to be chemical agents and are subject to the EAR when: (1) The pharmaceutical 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.

Note 2 to paragraph (a)(3)(iii):

A “final medical product,” as used in this paragraph, is a pharmaceutical formulation that is (1) designed for testing and administration in the treatment of human medical conditions, (2) prepackaged for distribution as a clinical or medical product, and (3) approved for marketing by the Food and Drug Administration or has a valid investigational new drug application (IND) in effect, in accordance with 21 CFR part 312.

(iv) Ethyldichloroarsine (ED) (CAS 598-14-1); or

(v) Methyldichloroarsine (MD) (CAS 593-89-5);

(4) Incapacitating agents, such as:

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

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

(iii) Diphenylcyanoarsine (DC) (CAS 23525-22-6);

(5) Chemical warfare agents not enumerated above adapted for use in war to produce casualties in humans or animals, degrade equipment, or damage crops or the environment. (See the CCL at ECCNs 1C350, 1C355, and 1C395 for control of certain chemicals not adapted for use in war.)

Note to paragraph (a)(5):

"Adapted for use in war" means any modification or selection (such as altering purity, shelf life, dissemination characteristics, or resistance to ultraviolet radiation) designed to increase the effectiveness in producing casualties in humans or animals, degrading equipment, or damaging crops or the environment.

Note 1 to paragraph (a):

Paragraph (a) of this category does not include the following: Cyanogen chloride, Hydrocyanic acid, Chlorine, Carbonyl chloride (Phosgene), Ethyl bromoacetate, Xylyl bromide, Benzyl bromide, Benzyl iodide, Chloro acetone, Chloropicrin (trichloronitromethane), Fluorine, and Liquid pepper.

Note 2 to paragraph (a):

Regarding U.S. obligations under the Chemical Weapons Convention (CWC), refer to Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710 through 721). As appropriate, the CWC schedule is provided to assist the exporter.

* (b) Biological agents and biologically derived substances and genetic elements thereof as follows:

(1) Genetically modified biological agents:

(i) Having non-naturally occurring genetic modifications that are known to or are reasonably expected to result in an increase in any of the following:

(A) Persistence in a field environment (*i.e.,* resistance to oxygen, UV damage, temperature extremes, arid conditions, or decontamination processes); or

(B) The ability to defeat or overcome standard detection methods, personnel protection, natural or acquired host immunity, host immune response, or response to standard medical countermeasures; and

(ii) Being any micro-organisms/toxins or their non-naturally occurring genetic elements as listed below:

(A) Bacillus anthracis;

(B) Botulinum neurotoxin producing species of Clostridium;

(C) Burkholderia mallei;

(D) Burkholderia pseudomallei;

(E) Ebola virus;

(F) Foot-and-mouth disease virus;

(G) Francisella tularensis;

(H) Marburg virus;

(I) Variola major virus (Smallpox virus);

(J) Variola minor virus (Alastrim);

(K) Yersinia pestis; or

(L) Rinderpest virus.

(2) Biological agent or biologically derived substances controlled in ECCNs 1C351, 1C353, or 1C354:

(i) Physically modified, formulated, or produced as any of the following:

(A) 1-10 micron particle size;

(B) Particle-absorbed or combined with nano-particles;

(C) Having coatings/surfactants, or

(D) By microencapsulation; and

(ii) Meeting the criteria of paragraph (b)(2)(i) of this category in a manner that is known to or is reasonably expected to result in an increase in any of the following:

(A) Persistence in a field environment (*i.e.,* resistant to oxygen, UV damage, temperature extremes, arid conditions, or decontamination processes);

(B) Dispersal characteristics (e.g., reduced susceptibility to shear forces, optimized electrostatic charges); or

(C) The ability to defeat or overcome: standard detection methods, personnel protection, natural or acquired host immunity, or response to standard medical countermeasures.

Note 1 to paragraph (b):

Non-naturally occurring means that the modification has not already been observed in nature, was not discovered from samples obtained from nature, and was developed with human intervention.

Note 2 to paragraph (b):

This paragraph does not control biological agents or biologically derived substances when these agents or substances have been demonstrated to be attenuated relative to natural pathogenic isolates and are incapable of causing disease or intoxication of ordinarily affected and relevant species (e.g., humans, livestock, crop plants) due to the attenuation of virulence or pathogenic factors. This paragraph also does not control genetic elements, nucleic acids, or nucleic acid sequences (whether recombinant or synthetic) that are unable to produce or direct the biosynthesis of infectious or functional forms of the biological agents or biologically derived substances that are capable of causing disease or intoxication of ordinarily affected and relevant species.

Note 3 to paragraph (b):

Biological agents or biologically derived substances that meet both paragraphs (b)(1) and (b)(2) of this category are controlled in paragraph (b)(1).

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

(1) Alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphonyl difluorides, such as: DF: Methyl Phosphonyldifluoride (CAS 676-99-3) (CWC Schedule 1B); Methylphosphinyldifluoride (CAS 753-59-3) (CWC Schedule 2B);

(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-Pinacolyl methylphosphonochloridate (CAS 7040-57-5) (CWC Schedule 1B); or

(5) Methylphosphonyl dichloride (CAS 676-97-1) (CWC Schedule 2B); Methylphosphinyldichloride (CAS 676-83-5) (CWC Schedule 2B).

(d) [Reserved]

(e) Defoliants, as follows:

(1) 2,4,5-trichlorophenoxyacetic acid (CAS 93-76-5) mixed with 2,4-dichlorophenoxyacetic acid (CAS 94-75-7) (Agent Orange (CAS 39277-47-9)); or

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

* (f) Parts, components, accessories, attachments, associated equipment, materials, and systems, as follows:

(1) Any equipment for the dissemination, dispersion, or testing of articles controlled in paragraphs (a), (b), (c), or (e) of this category, as follows:

(i) Any equipment “specially designed” for the dissemination and dispersion of articles controlled in paragraphs (a), (b), (c), or (e) of this category; or

(ii) Any equipment “specially designed” for testing the articles controlled in paragraphs (a), (b), (c), (e), or (f)(4) of this category and developed under a Department of Defense contract or other funding authorization.

(2) Any equipment, containing reagents, algorithms, coefficients, software, libraries, spectral databases, or alarm set point levels developed under a Department of Defense contract or other funding authorization, for the detection, identification, warning, or monitoring of:

(i) Articles controlled in paragraphs (a) or (b) of this category; or

(ii) Chemical agents or biological agents specified in the Department of Defense contract or other funding authorization.

Note 1 to paragraph (f)(2):

This paragraph does not control articles that are (a) determined to be subject to the EAR via a commodity jurisdiction determination, or (b) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (f)(2):

Note 1 does not apply to defense articles enumerated on the USML.

(3) [Reserved]

(4) For individual protection or collective protection against the articles controlled in paragraphs (a) and (b) of this category, as follows:

(i) M53 Chemical Biological Protective Mask or M50 Joint Service General Purpose Mask (JSGPM);

(ii) Filter cartridges containing sorbents controlled in paragraph (f)(4)(iii) or (n) of this category;

(iii) Carbon meeting MIL-DTL-32101 specifications (e.g., ASZM-TEDA carbon); or

(iv) Ensembles, garments, suits, jackets, pants, boots, or socks for individual protection, and liners for collective protection that allow no more than 1% breakthrough of GD or no more than 2% breakthrough of any other chemical controlled in paragraph (a) of this category, when evaluated by executing the applicable standard method(s) of testing described in the current version of Test Operating Protocols (TOPs) 08-2-201 or 08-2-501 and using the defined Department of Defense-specific requirements;

(5)-(6) [Reserved]

(7) Chemical Agent Resistant Coatings that have been qualified to military specifications (MIL-PRF-32348, MIL-DTL-64159, MIL-C-46168, or MIL-DTL-53039); or

(8) Any part, component, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Is manufactured using classified production data; or

(iii) Is being developed using classified information.

(g) Antibodies, recombinant protective antigens, polynucleotides, biopolymers, or biocatalysts (including their expression vectors, viruses, plasmids, or cultures of specific cells modified to produce them) as follows:

(1) When exclusively funded by a Department of Defense contract for detection of the biological agents at paragraph (b)(1)(ii) of this category even if naturally occurring;

(2) Joint Biological Agent Identification and Diagnostic System (JBAIDS) Freeze Dried reagents listed by JRPD-ASY-No and Description respectively as follows:

(i) JRPD-ASY-0016 Q-Fever IVD Kit;

(ii) JRPD-ASY-0100 Vaccinia (Orthopox);

(iii) JRPD-ASY-0106 Brucella melitensis (Brucellosis);

(iv) JRPD-ASY-0108 Rickettsia prowazekii (Rickettsia);

(v) JRPD-ASY-0109 Burkholderia ssp. (Burkholderia);

(vi) JRPD-ASY-0112 Eastern equine encephalitis (EEE);

(vii) JRPD-ASY-0113 Western equine encephalitis (WEE);

(viii) JRPD-ASY-0114 Venezuelan equine encephalitis (VEE);

(ix) JRPD-ASY-0122 Coxiella burnetii (Coxiella);

(x) JRPD-ASY-0136 Influenza A/H5 IVD Detection Kit;

(xi) JRPD-ASY-0137 Influenza A/B IVD Detection Kit; or

(xii) JRPD-ASY-0138 Influenza A Subtype IVD Detection Kit;

(3) Critical Reagent Polymerase (CRP) Chain Reactions (PCR) assay kits with Catalog-ID and Catalog-ID Product respectively as follows:

(i) PCR-BRU-1FB-B-K Brucella Target 1 FastBlock Master Mix Biotinylated;

(ii) PCR-BRU-1FB-K Brucella Target 1 FastBlock Master Mix;

(iii) PCR-BRU-1R-K Brucella Target 1 LightCycler/RAPID Master Mix;

(iv) PCR-BURK-2FB-B-K Burkholderia Target 2 FastBlock Master Mix Biotinylated;

(v) PCR-BURK-2FB-K Burkholderia Target 2 FastBlock Master Mix;

(vi) PCR-BURK-2R-K Burkholderia Target 2 LightCycler/RAPID Master Mix;

(vii) PCR-BURK-3FB-B-K Burkholderia Target 3 FastBlock Master Mix Biotinylated;

(viii) PCR-BURK-3FB-K Burkholderia Target 3 FastBlock Master Mix;

(ix) PCR-BURK-3R-K Burkholderia Target 3 LightCycler/RAPID Master Mix;

(x) PCR-COX-1FB-B-K Coxiella burnetii Target 1 FastBlock Master Mix Biotinylated;

(xi) PCR-COX-1R-K Coxiella burnetii Target 1 LightCycler/RAPID Master Mix;

(xii) PCR-COX-2R-K Coxiella burnetii Target 2 LightCycler/RAPID Master Mix;

(xiii) PCR-OP-1FB-B-K Orthopox Target 1 FastBlock Master Mix Biotinylated;

(xiv) PCR-OP-1FB-K Orthopox Target 1 FastBlock Master Mix;

(xv) PCR-OP-1R-K Orthopox Target 1 LightCycler/RAPID Master Mix;

(xvi) PCR-OP-2FB-B-K Orthopox Target 2 FastBlock Master Mix Biotinylated;

(xvii) PCR-OP-3R-K Orthopox Target 3 LightCycler/RAPID Master Mix;

(xviii) PCR-RAZOR-BT-X PCR-RAZOR-BT-X RAZOR CRP BioThreat-X Screening Pouch;

(xix) PCR-RIC-1FB-K Ricin Target 1 FastBlock Master Mix;

(xx) PCR-RIC-1R-K Ricin Target 1 LightCycler/RAPID Master Mix;

(xxi) PCR-RIC-2R-K Ricin Target 2 LightCycler/RAPID Master Mix; or

(xxii) PCR-VEE-1R-K Venezuelan equine encephalitis Target 1 LightCycler/RAPID Master Mix; or

(4) Critical Reagent Program Antibodies with Catalog ID and Product respectively as follows:

(i) AB-AG-RIC Aff. Goat anti-Ricin;

(ii) AB-ALVG-MAB Anti-Alphavirus Generic Mab;

(iii) AB-AR-SEB Aff. Rabbit anti-SEB;

(iv) AB-BRU-M-MAB1 Anti-Brucella melitensis Mab 1;

(v) AB-BRU-M-MAB2 Anti-Brucella melitensis Mab 2;

(vi) AB-BRU-M-MAB3 Anti-Brucella melitensis Mab 3;

(vii) AB-BRU-M-MAB4 Anti-Brucella melitensis Mab 4;

(viii) AB-CHOL-0139-MAB Anti-V.cholerae 0139 Mab;

(ix) AB-CHOL-01-MAB Anti-V. cholerae 01 Mab;

(x) AB-COX-MAB Anti-Coxiella Mab;

(xi) AB-EEE-MAB Anti-EEE Mab;

(xii) AB-G-BRU-A Goat anti-Brucella abortus;

(xiii) AB-G-BRU-M Goat anti-Brucella melitensis;

(xiv) AB-G-BRU-S Goat anti-Brucella suis;

(xv) AB-G-CHOL-01 Goat anti-V.cholerae 0:1;

(xvi) AB-G-COL-139 Goat anti-V.cholerae 0:139;

(xvii) AB-G-DENG Goat anti-Dengue;

(xviii) AB-G-RIC Goat anti-Ricin;

(xix) AB-G-SAL-T Goat anti-S. typhi;

(xx) AB-G-SEA Goat anti-SEA;

(xxi) AB-G-SEB Goat anti-SEB;

(xxii) AB-G-SEC Goat anti-SEC;

(xxiii) AB-G-SED Goat anti-SED;

(xxiv) AB-G-SEE Goat anti-SEE;

(xxv) AB-G-SHIG-D Goat anti-Shigella dysenteriae;

(xxvi) AB-R-BA-PA Rabbit anti-Protective Antigen;

(xxvii) AB-R-COX Rabbit anti-C. burnetii;

(xxviii) AB-RIC-MAB1 Anti-Ricin Mab 1;

(xxix) AB-RIC-MAB2 Anti-Ricin Mab 2;

(xxx) AB-RIC-MAB3 Anti-Ricin Mab3;

(xxxi) AB-R-SEB Rabbit anti-SEB;

(xxxii) AB-R-VACC Rabbit anti-Vaccinia;

(xxxiii) AB-SEB-MAB Anti-SEB Mab;

(xxxiv) AB-SLT2-MAB Anti-Shigella-like t x2 Mab;

(xxxv) AB-T2T-MAB1 Anti-T2 Mab 1;

(xxxvi) AB-T2T-MAB2 Anti-T2 Toxin 2;

(xxxvii) AB-VACC-MAB1 Anti-Vaccinia Mab 1;

(xxxviii) AB-VACC-MAB2 Anti-Vaccinia Mab 2;

(xxxix) AB-VACC-MAB3 Anti-Vaccinia Mab 3;

(xl) AB-VACC-MAB4 Anti-Vaccinia Mab 4;

(xli) AB-VACC-MAB5 Anti-Vaccinia Mab 5;

(xlii) AB-VACC-MAB6 Anti-Vaccinia Mab 6;

(xliii) AB-VEE-MAB1 Anti-VEE Mab 1;

(xliv) AB-VEE-MAB2 Anti-VEE Mab 2;

(xlv) AB-VEE-MAB3 Anti-VEE Mab 3;

(xlvi) AB-VEE-MAB4 Anti-VEE Mab 4;

(xlvii) AB-VEE-MAB5 Anti-VEE Mab 5;

(xlviii) AB-VEE-MAB6 Anti-VEE Mab 6; or

(xlix) AB-WEE-MAB Anti-WEE Complex Mab.

(h) Vaccines exclusively funded by a Department of Defense contract, as follows:

(1) Recombinant Botulinum ToxinA/B Vaccine;

(2) Recombinant Plague Vaccine;

(3) Trivalent Filovirus Vaccine; or

(4) Vaccines specially designed for the sole purpose of protecting against biological agents and biologically derived substances identified in paragraph (b) of this category.

Note to paragraph (h):

See ECCN 1A607.k for military medical countermeasures such as autoinjectors, combopens, and creams.

(i) Modeling or simulation tools, including software controlled in paragraph (m) of this category, for chemical or biological weapons design, development, or employment developed or produced under a Department of Defense contract or other funding authorization (e.g., the Department of Defense's HPAC, SCIPUFF, and the Joint Effects Model (JEM)).

(j)-(l) [Reserved]

(m) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles enumerated in

paragraphs (a) through (l) and (n) of this category. (See§ 125.4 of this subchapter for exemptions.)

(n) Developmental countermeasures or sorbents funded by the Department of Defense via contract or other funding authorization;

Note 1 to paragraph (n):

This paragraph does not control countermeasures or sorbents that are (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination, or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (n):

Note 1 does not apply to defense articles enumerated on the USML, whether in production or development.

Note 3 to paragraph (n):

This paragraph is applicable only to those contracts and funding authorizations that are dated July 28, 2017, or later.

(o)-(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR used in or with defense articles controlled in this category.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

Category XV— Spacecraft and Related Articles

(a) Spacecraft, including satellites and space vehicles, whether designated developmental, experimental, research, or scientific, or having a commercial, civil, or military end-use, that:

* (1) Are specially designed to mitigate effects (e.g., scintillation) of or for detection of a nuclear detonation;

* (2) Autonomously detect and track moving ground, airborne, missile, or space objects other than celestial bodies, in real-time using imaging, infrared, radar, or laser systems;

* (3) Conduct signals intelligence (SIGINT) or measurement and signatures intelligence (MASINT);

* (4) Are specially designed to be used in a constellation or formation that when operated together, in essence or effect, form a virtual satellite (e.g., functioning as if one satellite) with the characteristics or functions of other items in paragraph (a);

* (5) Are anti-satellite or anti-spacecraft (e.g., kinetic, RF, laser, charged particle);

* (6) Have space-to-ground weapons systems (e.g., kinetic or directed energy);

* (7) Have any of the following electro-optical remote sensing capabilities or characteristics:

(i) Electro-optical visible and near infrared (VNIR) (*i.e.,* 400nm to 1,000nm) or infrared (*i.e.,* greater than 1,000nm to 30,000nm) with less than 40 spectral bands and having a clear aperture greater than 0.50m;

(ii) Electro-optical hyperspectral with 40 spectral bands or more in the VNIR, short-wavelength infrared (SWIR) (*i.e.,*greater than 1,000nm to 2,500nm) or any combination of the aforementioned and having a Ground Sample Distance (GSD) less than 30 meters;

(iii) Electro-optical hyperspectral with 40 spectral bands or more in the mid-wavelength infrared (MWIR) (*i.e.,* greater than 2,500nm to 5,500nm) having a narrow spectral bandwidth of Δλ less than or equal to 20nm full width at half maximum (FWHM) or having a wide spectral bandwidth with Δλ greater than 20nm FWHM and a GSD less than 200 meters; or

(iv) Electro-optical hyperspectral with 40 spectral bands or more in the long-wavelength infrared (LWIR) (*i.e.,* greater than 5,500nm to 30,000nm) having a narrow spectral bandwidth of Δλ less than or equal to 50nm FWHM or having a wide spectral bandwidth with Δλ greater than 50nm FWHM and a GSD less than 500 meters;

Note 1 to paragraph (a)(7):

Ground Sample Distance (GSD) is measured from a spacecraft's nadir (*i.e.,* local vertical) position.

Note 2 to paragraph (a)(7):

Optical remote sensing spacecraft or satellite spectral bandwidth is the smallest difference in wavelength (*i.e.,* Δλ) that can be distinguished at full width at half maximum (FWHM) of wavelength λ.

Note 3 to paragraph (a)(7):

An optical satellite or spacecraft is not Significant Military Equipment if non-earth pointing.

* (8) Have radar remote sensing capabilities or characteristics (e.g., active electronically scanned array (AESA), synthetic aperture radar (SAR), inverse synthetic aperture radar (ISAR), ultra-wideband SAR), except those having a center frequency equal to or greater than 1 GHz but less than or equal to 10 GHz and having a bandwidth less than 300 MHz;

(9) Provide Positioning, Navigation, and Timing (PNT) signals;

Note to paragraph (a)(9):

This paragraph does not control a satellite or spacecraft that provides only a differential correction broadcast for the purposes of positioning, navigation, or timing.

(10) Autonomously perform collision avoidance;

(11) Are sub-orbital, incorporate propulsion systems described in paragraph (e) of this category or Category IV(d)(1)-(6) of this section, and are specially designed for atmospheric entry or re-entry;

(12) Are specially designed to provide inspection or surveillance of another spacecraft, or service another spacecraft via grappling or docking; or

Note to paragraph (a)(12):

This paragraph does not control spacecraft that dock exclusively via the NASA Docking System (NDS), which are controlled by ECCN 9A515.a.4.

* (13) Are classified, contain classified software or hardware, are manufactured using classified production data, or are being developed using classified information (e.g., having classified requirements, specifications, functions, or operational characteristics or include classified cryptographic items controlled under USML Category XIII of this subchapter).

Note 1 to paragraph (a):

Spacecraft not identified in this paragraph are subject to the EAR (see ECCNs 9A004 and 9A515). Spacecraft described in ECCNs 9A004 and 9A515 remain subject to the

EAR even if defense articles described on the USML are incorporated therein, except when such incorporation results in a spacecraft described in this paragraph.

Note 2 to paragraph (a):

This paragraph does not control (a) the International Space Station (ISS) and its specially designed (as defined in the EAR) parts and components, which are subject to the EAR, or (b) those articles for the ISS that are determined to be subject to the EAR via a commodity jurisdiction determination. Use of a defense article on the ISS that was not specially designed (as defined in the EAR) for the ISS does not cause the item to become subject to the EAR.

Note 3 to paragraph (a):

This paragraph does not control the James Webb Space Telescope, which is subject to the EAR.

(b) Ground control systems or training simulators, specially designed for telemetry, tracking, and control (TT&C) of spacecraft in paragraph (a) of this category.

Note to paragraph (b):

Parts, components, accessories, attachments, equipment, or systems that are common to ground control systems or training simulators controlled in this paragraph and those that are used for spacecraft not controlled in paragraph (a) of this category are subject to the EAR.

(c)-(d) [Reserved]

(e) Spacecraft parts, components, accessories, attachments, equipment, or systems, as follows:

(1) Antenna systems specially designed for spacecraft that:

(i) Have a dimension greater than 25 meters in diameter or length of the major axis;

(ii) Employ active electronic scanning;

(iii) Are adaptive beam forming; or

(iv) Are for interferometric radar;

(2) Space-qualified optics (*i.e.,* lens, mirror or membrane) having one of the following:

(i) Active properties (e.g., adaptive, deformable) with a largest lateral clear aperture dimension greater than 0.35m; or

(ii) A largest lateral clear aperture dimension greater than 0.50m;

(3) Space-qualified focal plane arrays (FPA) having a peak response in the wavelength range exceeding 900nm and readout integrated circuit (ROIC), whether separate or integrated, specially designed therefor;

(4) Space-qualified mechanical (*i.e.,* active) cryocooler or active cold finger systems, and associated control electronics specially designed therefor;

(5) Space-qualified active vibration suppression systems, including active isolation and active dampening systems, and associated control electronics specially designed therefor;

(6) Optical bench assemblies specially designed to enable spacecraft to meet or exceed the parameters described in paragraph (a) of this category;

(7) Space-qualified kinetic or directed-energy systems (e.g., RF, laser, charged particle) specially designed for spacecraft in paragraph (a)(5) or (a)(6) of this category, and specially designed parts and components therefor (e.g., power conditioning and beam-handling/switching, propagation, tracking, and pointing equipment);

(8) [Reserved]

(9) Space-qualified cesium, rubidium, hydrogen maser, or quantum (e.g., based upon Al, Hg, Yb, Sr, Be Ions) atomic clocks, and specially designed parts and components therefor;

(10) Attitude determination and control systems, and specially designed parts and components therefor, that provide a spacecraft's geolocation accuracy, without using Ground Location Points, better than or equal to:

(i) 5 meters (CE90) from low earth orbit (LEO);

(ii) 30 meters (CE90) from medium earth orbit (MEO);

(iii) 150 meters (CE90) from geosynchronous orbit (GEO); or

(iv) 225 meters (CE90) from high earth orbit (HEO);

(11) Space-based systems, and specially designed parts and components therefor, as follows:

(i) Nuclear reactors and associated power conversion systems (e.g., liquid metal or gas-cooled fast reactors);

(ii) Radioisotope-based power systems (e.g., radioisotope thermoelectric generators);

(iii) Nuclear thermal propulsion systems (e.g., solid core, liquid core, gas core fission); or

(iv) Electric (Plasma/Ion) propulsion systems that provide a thrust greater than 300 milli-Newtons and a specific impulse greater than 1,500 sec; or that operate at an input power of more than 15kW;

(12) Thrusters (e.g., spacecraft or rocket engines) using bi-propellants or mono-propellant that provide greater than 150 lbf (*i.e.,* 667.23 N) vacuum thrust (MT for rocket motors or engines having a total impulse capacity equal to or greater than 8.41 × 10^5 newton seconds);

(13) Control moment gyroscope (CMG) specially designed for spacecraft;

(14) Space-qualified monolithic microwave integrated circuits (MMIC) that combine transmit and receive (T/R) functions on a single die as follows:

(i) Having a power amplifier with maximum saturated peak output power (in watts), Psat, greater than 200 divided by the maximum operating frequency (in GHz) squared [Psat >200 W* GHz2/fGHz2]; or

(ii) Having a common path (e.g., phase shifter-digital attenuator) circuit with greater than 3 bits phase shifting at operating frequencies 10 GHz or below, or greater than 4 bits phase shifting at operating frequencies above 10 GHz;

(15) Space-qualified oscillator for radar in paragraph (a) of this category with phase noise less than −120 dBc/Hz + (20 log10(RF) (in GHz)) measured at 2 KHz* RF (in GHz) from carrier;

(16) Space-qualified star tracker or star sensor with angular accuracy less than or equal to 1 arcsec (1-Sigma) per star coordinate, and a tracking rate equal to or greater than 3.0 deg/sec, and specially designed parts and components therefor (MT);

* (17) Primary, secondary, or hosted payload that performs any of the functions described in paragraph (a) of this category;

Note 1 to paragraph (e)(17):

Primary payload is that complement of equipment designed from the outset to accomplish the prime mission function of the spacecraft payload mission set. The primary payload may operate independently from the secondary payload(s). *Secondary payload* is that complement of equipment designed from the outset to be fully integrated into the spacecraft payload mission set. The secondary payload may operate separately from the primary payload. *Hosted payload* is a complement of equipment or sensors that uses the available or excess capacity (mass, volume, power, etc.) of a spacecraft to accommodate an additional, independent mission. The hosted payload may share the

spacecraft bus support infrastructure. The hosted payload performs an additional, independent mission which does not dictate control or operation of the spacecraft. A hosted payload is not capable of operating as an independent spacecraft. *Spacecraft bus*(distinct from the spacecraft payload), provides the support infrastructure of the spacecraft (e.g., command and data handling, communications and antenna(s), electrical power, propulsion, thermal control, attitude and orbit control, guidance, navigation and control, structure and truss, life support (for crewed mission)) and location (e.g., attachment, interface) for the spacecraft payload. *Spacecraft payload* is that complement of equipment attached to the spacecraft bus that performs a particular mission in space (e.g., communications, observation, science).

Note 2 to paragraph (e)(17):

An ECCN 9A004 or ECCN 9A515.a spacecraft remains a spacecraft subject to the EAR even when incorporating a hosted payload performing a function described in paragraph (a) of this category. All spacecraft that incorporate primary or secondary payloads that perform a function described in paragraph (a) of this category are controlled by that paragraph. This paragraph does not control primary or secondary payloads of the James Webb Space Telescope, which are subject to the EAR.

* (18) Secondary or hosted payload, and specially designed parts and components therefor, developed with Department of Defense-funding;

Note 1 to paragraph (e)(18):

This paragraph does not control payloads that are (a) determined to be subject to the EAR via a commodity jurisdiction determination, or (b) identified in the relevant Department of Defense contract or other funding authorization or agreement as being developed for both military and either civil or commercial applications.

Note 2 to paragraph (e)(18):

This paragraph is applicable only to those contracts or funding authorizations or agreements that are dated May 13, 2015, or later.

(19) Spacecraft heat shields or heat sinks specially designed for atmospheric entry or re-entry, and specially designed parts and components therefor (MT if usable in rockets, SLVs, missiles, drones, or UAVs capable of delivering a payload of at least 500 kg to a range of at least 300 km);

Note to paragraph (e)(19):

“Payload” is the total mass that can be carried or delivered by the specified rocket, SLV, missile, drone, or UAV that is not used to maintain flight. For definition of “range” as it pertains to aircraft systems, see note to paragraph (a) of USML Category VIII. For

definition of “range” as it pertains to rocket systems, see note 1 to paragraph (a) of USML Category IV.

(20) Equipment modules, stages, or compartments that incorporate propulsion systems described in paragraph (e) of this category or Category IV(d)(1)-(6) of this section, and can be separated or jettisoned from another spacecraft; or

* (21) Any part, component, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software; or

(iii) Is being developed using classified information.

Note 1 to paragraph (e):

Parts, components, accessories, attachments, equipment, or systems specially designed for spacecraft or other articles enumerated in this category but not listed in paragraph (e) are subject to the EAR.

Note 2 to paragraph (e):

The articles described in this paragraph are subject to the EAR when, prior to export, reexport, retransfer, or temporary import, they are integrated into and included as an integral part of an item subject to the EAR (see note 2 to paragraph (e)(17) of this category). Articles do not become subject to the EAR until integrated into the item subject to the EAR. Export, reexport, retransfer, or temporary import of, and technical data and defense services directly related to defense articles intended to be integrated remain subject to the ITAR.

Note 3 to paragraph (e):

For the purposes of this paragraph, an article is space-qualified if it is designed, manufactured, or qualified through successful testing, for operation at altitudes greater than 100 km above the surface of the Earth. The use of an altitude of 100 km above the surface of the Earth in this paragraph does not represent a legal demarcation between national air space and outer space under United States or international law.

Note 4 to paragraph (e):

(1) A determination that a specific article (or commodity) (e.g., by product serial number) is space-qualified by virtue of testing alone does not mean that other articles in the same production run or model series are space-qualified if not individually tested. (2) “Article” is synonymous with “commodity,” as defined in EAR § 772.1. (3) A specific article not designed or manufactured for use at altitudes greater than 100 km above the

surface of the Earth is not space-qualified before it is successfully tested. (4) The terms “designed” and “manufactured” in this definition are synonymous with “specially designed.”

(f) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in paragraphs (a) through (e) of this category and classified technical data directly related to items controlled in ECCNs 9A515, 9B515, or 9D515 and defense services using the classified technical data. Defense services include the furnishing of assistance (including training) to a foreign person in the integration of a satellite or spacecraft to a launch vehicle, including both planning and onsite support, regardless of the jurisdiction, ownership, or origin of the satellite or spacecraft, or whether technical data is used. It also includes the furnishing of assistance (including training) to a foreign person in the launch failure analysis of a satellite or spacecraft, regardless of the jurisdiction, ownership, or origin of the satellite of spacecraft, or whether technical data is used. (See § 125.4 of this subchapter for exemptions, and § 124.15 of this subchapter for special export controls for satellites and satellite launches.) (MT for technical data and defense services related to articles designated as such.)

Note 1 to paragraph (f):

The technical data control of this paragraph does not apply to certain technical data directly related to articles described in paragraphs (c) or (e) of this category when such articles are integrated into and included as an integral part of a satellite subject to the EAR. For controls in these circumstances, see ECCN 9E515. This only applies to that level of technical data (including marketing data) necessary and reasonable for a purchaser to have assurance that a U.S. built item intended to operate in space has been designed, manufactured, and tested in conformance with specified contract requirements (e.g., operational performance, reliability, lifetime, product quality, or delivery expectations) as well as data necessary for normal orbit satellite operations, to evaluate in-orbit anomalies, and to operate and maintain associated ground station equipment (except encryption hardware).

Note 2 to paragraph (f):

Activities and technology/technical data directly related to or required for the spaceflight (e.g., sub-orbital, orbital, lunar, interplanetary, or otherwise beyond Earth orbit) passenger or participant experience, regardless of whether the passenger or participant experience is for space tourism, scientific or commercial research, commercial manufacturing/production activities, educational, media, or commercial transportation purposes, are not subject to the ITAR or the EAR. Such activities and technology/technical data include those directly related to or required for: (a) Spacecraft access, ingress, and egress, including the operation of all spacecraft doors, hatches, and airlocks; (b) physiological training (e.g., human-rated centrifuge training or parabolic flights, pressure suit or spacesuit training/operation); (c) medical evaluation or assessment of the spaceflight passenger or participant; (d) training for and operation by

the passenger or participant of health and safety related hardware (e.g., seating, environmental control and life support, hygiene facilities, food preparation, exercise equipment, fire suppression, communications equipment, safety-related clothing or headgear) or emergency procedures; (e) viewing of the interior and exterior of the spacecraft or terrestrial mock-ups; (f) observing spacecraft operations (e.g., pre-flight checks, landing, in-flight status); (g) training in spacecraft or terrestrial mock-ups for connecting to or operating passenger or participant equipment used for purposes other than operating the spacecraft; or (h) donning, wearing, or utilizing the passenger's or participant's flight suit, pressure suit, or spacesuit, and personal equipment.

Note 3 to paragraph (f):

Paragraph (f) and ECCNs 9E001, 9E002 and 9E515 do not control the data transmitted to or from a satellite or spacecraft, whether real or simulated, when limited to information about the health, operational status, or measurements or function of, or raw sensor output from, the spacecraft, spacecraft payload(s), or its associated subsystems or components. Such information is not within the scope of information captured within the definition of technology in the EAR for purposes of Category 9 Product Group E. Examples of such information, which are commonly referred to as “housekeeping data,” include (i) system, hardware, component configuration, and operation status information pertaining to temperatures, pressures, power, currents, voltages, and battery charges; (ii) spacecraft or payload orientation or position information, such as state vector or ephemeris information; (iii) payload raw mission or science output, such as images, spectra, particle measurements, or field measurements; (iv) command responses; (v) accurate timing information; and (vi) link budget data. The act of processing such telemetry data—*i.e.,* converting raw data into engineering units or readable products—or encrypting it does not, in and of itself, cause the telemetry data to become subject to the ITAR or to ECCN 9E515 for purposes of 9A515, or to ECCNs 9E001 or 9E002 for purposes of 9A004. All classified technical data directly related to items controlled in USML Category XV or ECCNs 9A515, and defense services using the classified technical data, remains subject to the ITAR. This note does not affect controls in USML XV(f), ECCN 9D515, or ECCN 9E515 on software source code or commands that control a spacecraft, payload, or associated subsystems for purposes of 9A515. This note also does not affect controls in ECCNs 9D001, 9D002, 9E001, or 9E002 on software source code or commands that control a spacecraft, payload, or associated subsystems for purposes of 9A004.

(g)-(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR used in or with defense articles.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles where the purchase documentation also includes commodities, software, or technology subject to the EAR (see § 123.21(b) of this subchapter).

Category XVI—Nuclear Weapons Related Articles

(a) [Reserved]

* (b) Modeling or simulation tools that model or simulate the environments generated by nuclear detonations or the effects of these environments on systems, subsystems, components, structures, or humans.

(c) [Reserved]

(d) Parts, components, accessories, attachments, associated equipment, and production, testing, and inspection equipment and tooling, specially designed for the articles in paragraph (b) of this category.

(e) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in paragraph (b) of this category (see also § 120.5(c) of this subchapter for nuclear related controls).

(f)-(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR used in or with defense articles.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technical data subject to the EAR (see § 123.1(b) of this subchapter).

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

* (a) All articles, and technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) relating thereto, that are classified in the

interests of national security and that are not otherwise enumerated on the U.S. Munitions List.

Category XVIII—Directed Energy Weapons

* (a) Directed energy weapons as follows:

(1) Systems or equipment that, other than as a result of incidental, accidental, or collateral effect:

(i) Degrade, destroy or cause mission-abort of a target;

(ii) Disturb, disable, or damage electronic circuitry, sensors or explosive devices remotely;

(iii) Deny area access;

(iv) Cause lethal effects; or

(v) Cause ocular disruption or blindness; and

(2) Use any non-acoustic technique such as lasers (including continuous wave or pulsed lasers), particle beams, particle accelerators that project a charged or neutral particle beam, high power radio-frequency (RF), or high pulsed power or high average power radio frequency beam transmitters.

* (b) Systems or equipment specially designed to detect, identify, or provide defense against articles specified in paragraph (a) of this category.

(c)-(d) [Reserved]

(e) Components, parts, accessories, attachments, systems or associated equipment specially designed for any of the articles in paragraphs (a) or (b) of this category.

(f) Developmental directed energy weapons funded by the Department of Defense via contract or other funding authorization, and specially designed parts and components therefor;

Note 1 to paragraph (f):

This paragraph does not control directed energy weapons (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination, or (c)

identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (f):

Note 1 does not apply to defense articles enumerated on the USML, whether in production or development.

Note 3 to paragraph (f):

This paragraph is applicable only to those contracts and funding authorizations that are dated July 28, 2017, or later.

(g) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (e) of this category;

(x) Commodities, software, and technology subject to the EAR used in or with defense articles controlled in this category.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

Category XIX—Gas Turbine Engines and Associated Equipment

* (a) Turbofan and Turbojet engines (including those that are technology demonstrators, developmental engines, or variable cycle engines) capable of 15,000 lbf (66.7 kN) of thrust or greater that have any of the following:

(1) With or specially designed for thrust augmentation (afterburner);

(2) Thrust or exhaust nozzle vectoring;

(3) Parts or components controlled in paragraph (f)(6) of this category;

(4) Specially designed for sustained 30 second inverted flight or negative g maneuver; or

(5) Specially designed for high power extraction (greater than 50 percent of engine thrust at altitude) at altitudes greater than 50,000 feet.

* (b) Turboshaft and Turboprop engines (including those that are technology demonstrators or developmental engines) that have any of the following:

(1) Capable of 2000 mechanical shp (1491 kW) or greater and specially designed with oil sump sealing when the engine is in the vertical position; or

(2) Capable of a specific power of 225 shp/(lbm/sec) or greater and specially designed for armament gas ingestion and non-civil transient maneuvers, where specific power is defined as maximum takeoff shaft horsepower (shp) divided by compressor inlet flow (lbm/sec).

* (c) Gas turbine engines (including technology demonstrators, developmental engines, and variable cycle engines) specially designed for unmanned aerial vehicle systems controlled in this subchapter, cruise missiles, or target drones (MT if for an engine used in an aircraft, excluding manned aircraft, or missile that has a “range” equal to or greater than 300 km).

* (d) GE38, AGT1500, CTS800, MT7, T55, HPW3000, GE3000, T408, and T700 engines.

Note to paragraph (d):

Engines subject to the control of this paragraph are licensed by the Department of Commerce when incorporated in an aircraft subject to the EAR and controlled under ECCN 9A610. Such engines are subject to the controls of the ITAR in all other circumstances.

* (e) Digital engine control systems (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) specially designed for gas turbine engines controlled in this category (MT if the digital engine control system is for an aircraft, excluding manned aircraft, or missile that has a range equal to or greater than 300 km).

Note to paragraph (e):

Digital electronic control systems autonomously control the engine throughout its whole operating range from demanded engine start until demanded engine shut-down, in both normal and fault conditions.

(f) Parts, components, accessories, attachments, associated equipment, and systems as follows:

(1) Parts, components, accessories, and attachments specially designed for the following U.S.-origin engines (and military variants thereof): F101, F107, F112, F118, F119, F120, F135, F136, F414, F415, and J402;

Note to paragraph (f)(1):

This paragraph does not control parts, components, accessories, and attachments that are common to engines enumerated in paragraph (a) through (d) of this category but not identified in paragraph (f)(1), and those identified in paragraph (f)(1). For example, a part common to only the F110 and F136 is not specially designed for purposes of this paragraph. A part common to only the F119 and F135—two engine models identified in paragraph (f)(1)—is specially designed for purposes of this paragraph, unless one of the other paragraphs is applicable under § 120.41(b).

* (2) Hot section components (*i.e.,* combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled intermediate pressure turbine blades, vanes, disks and related cooled structures; cooled low pressure turbine blades, vanes, disks and related cooled structures; cooled shaft-driving power turbine blades, vanes, disks and related cooled structures; cooled augmenters; and cooled nozzles) specially designed for gas turbine engines controlled in this category;

(3) Uncooled turbine blades, vanes, disks, and tip shrouds specially designed for gas turbine engines controlled in this category;

(4) Combustor cowls, diffusers, domes, and shells specially designed for gas turbine engines controlled in this category;

(5) Engine monitoring systems (*i.e.,* prognostics, diagnostics, and health) specially designed for gas turbine engines and components controlled in this category;

* (6) Any part, component, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information.

(7) Investment casting cores, core dies, or wax pattern dies for parts or components enumerated in paragraphs (f)(1), (f)(2), or (f)(3) of this category;

(8) Pressure gain combustors specially designed for engines controlled in this category, and specially designed parts and components therefor;

(9) Three-stream fan systems, specially designed for gas turbine engines controlled in this Category, that allow the movement of airflow between the streams to control fan pressure ratio or bypass ratio (by means other than use of fan corrected speed or the primary nozzle area to change the fan pressure ratio or bypass ratio), and specially designed parts, components, accessories, and attachments therefor;

(10) High pressure compressors, specially designed for gas turbine engines controlled in this Category, with core-driven bypass streams that have a pressure ratio greater than one, occurring across any section of the bypass duct, and specially designed parts, components, accessories, and attachments therefor;

(11) Intermediate compressors of a three-spool compression system, specially designed for gas turbine engines controlled in this Category, with an intermediate spool-driven bypass stream that has a pressure ratio greater than one, occurring across any section of the bypass duct, and specially designed parts, components, accessories, and attachments therefor; or

(12) Any of the following equipment if specially designed for a defense article described in paragraph (f)(1): Jigs, locating fixtures, templates, gauges, molds, dies, caul plates, or bellmouths.

(g) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in paragraphs (a) through (f) of this category and classified technical data directly related to items controlled in ECCNs 9A619, 9B619, 9C619, and 9D619 and defense services using the classified technical data. (See § 125.4 of this subchapter for exemptions.) (MT for technical data and defense services related to articles designated as such.)

(h)-(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR used in or with defense articles controlled in this category.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

Category XX—Submersible Vessels and Related Articles

(a) Submersible and semi-submersible vessels that are:

* (1) Submarines specially designed for military use;

(2) Mine countermeasure vehicles;

(3) Anti-submarine warfare vehicles;

(4) Armed or are specially designed to be used as a platform to deliver munitions or otherwise destroy or incapacitate targets (e.g., firing torpedoes, launching rockets, firing missiles, deploying mines, deploying countermeasures) or deploy military payloads;

(5) Swimmer delivery vehicles specially designed for the deployment, recovery, or support of swimmers or divers from submarines;

(6) Integrated with nuclear propulsion systems;

(7) Equipped with any mission systems controlled under this subchapter; or

Note to paragraph (a)(7):

“Mission system” is defined as a “system” (see § 120.40(h) of this subchapter) that are defense articles that perform specific military functions such as by providing military communication, electronic warfare, target designation, surveillance, target detection, or sensor capabilities.

(8) Developmental vessels funded by the Department of Defense via contract or other funding authorization.

Note 1 to paragraph (a)(8):

This paragraph does not control vessels, and specially designed parts, components, accessories, attachments, and associated equipment therefor, (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (a)(8):

Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (a)(8):

This provision is applicable to those contracts and funding authorizations that are dated July 8, 2014, or later.

* (b) Engines, electric motors, and propulsion plants as follows:

(1) Naval nuclear propulsion plants and prototypes, and special facilities for construction, support, and maintenance therefor (see also § 120.5(c) of this subchapter for nuclear related controls);

(2) Electric motors specially designed for submarines that have the following:

(i) Power output of more than 0.75 MW (1,000 hp);

(ii) Quick reversing;

(iii) Liquid cooled; and

(iv) Totally enclosed.

(c) Parts, components, accessories, attachments, and associated equipment, including production, testing, and inspection equipment and tooling, specially designed for any of the articles in paragraphs (a) and (b) of this category (MT for launcher mechanisms specially designed for rockets, space launch vehicles, or missiles capable of achieving a range greater than or equal to 300 km).

Note to paragraph (c):

“Range” is the maximum distance that the specified rocket system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining range. The range for rocket systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links, or other external constraints. For rocket systems, the range will be determined using the trajectory that maximizes range, assuming International Civil Aviation Organization (ICAO) standard atmosphere with zero wind.

(d) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles described in paragraphs (a) through (c) of this category. (MT for technical data and defense services related to articles designated as such.) (See § 125.4 of this subchapter for exemptions.)

(e)-(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR used in or with defense articles.

Note to paragraph (x):

Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technical data subject to the EAR (see § 123.1(b) of this subchapter).

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

* (a) Any article not enumerated on the U.S. Munitions List may be included in this category until such time as the appropriate U.S. Munitions List category is amended. The decision on whether any article may be included in this category, and the designation of the defense article as not Significant Military Equipment, shall be made by the Director, Office of Defense Trade Controls Policy.

(b) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter) directly related to the defense articles covered in paragraph (a) of this category.

[58 FR 39287, July 22, 1993]

Editorial Note
Editorial Notes: For Federal Register citations affecting § 121.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.
Effective Date Note
Effective Date Note 2: At 88 FR 84074, Dec. 4, 2023, § 121.1, under Category VIII, was amended by revising the note to paragraph (h)(1), effective from Dec. 4, 2023, until Dec. 1, 2024, or when terminated by the Department, whichever occurs first. At 89 FR 93170, Nov. 26, 2024, the effective period was extended to Dec. 1, 2026.

121.2-121.16 [Reserved]

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

Authority: Sections 2 and 38, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.
Source:58 FR 39298, July 22, 1993, unless otherwise noted.

122.1 Registration: requirements, exemptions, and purpose.

(a) ***Requirement to register.*** Any person who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles, or furnishing defense services, is required to register with the Directorate of Defense Trade Controls under § 122.2. For the purpose of this subchapter, engaging in such a business requires only one occasion of manufacturing or exporting or temporarily importing a defense article or furnishing a defense service. A manufacturer who does not engage in exporting must nevertheless register. (*See* part 129 of this subchapter for requirements for registration of persons who engage in brokering activities.)

(b) ***Exemptions.*** The registration requirements of paragraph (a) of this section do not apply to:

(1) Officers and employees of the U.S. 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; or

(4) Persons who engage in the fabrication of articles solely for experimental or scientific purposes, including research and development.

Note to paragraph (b):

Persons who qualify for the exemptions in paragraphs (b)(2) or (b)(4) of this section remain subject to the requirements for licenses or other approvals for exports of defense articles and defense services and may not receive an export license or approval unless registered under § 122.2.

(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, unless an exception is granted by the Directorate of Defense Trade Controls.

[78 FR 52686, Aug. 26, 2013, as amended at 89 FR 99084, Dec. 10, 2024]

122.2 Registration: submission of registration statement, certification, frequency, renewal, and lapse.

(a) ***Submission of registration statement.*** An intended registrant must submit a Statement of Registration (Department of State form DS-2032) to the Office of Defense Trade Controls Compliance by following the electronic filing instructions available on the Directorate of Defense Trade Controls website at *www.pmddtc.state.gov*. The Statement of Registration may include subsidiaries and affiliates when more than 50 percent of the voting securities are owned by the registrant, or the subsidiaries and affiliates are otherwise controlled by the registrant (see § 120.66 of this subchapter). Registrants may not establish new entities for the purpose of reducing registration fees. The Statement of Registration must:

(1) Be signed by a U.S. person 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; and

(2) Include documentation that demonstrates the registrant is incorporated or otherwise authorized to do business in the United States.

(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 or its parent, subsidiary, or other affiliate listed in the Statement of Registration, or any of its chief executive officers, presidents, vice presidents, secretaries, partners, members, other senior officers or officials (*e.g.,* comptroller, treasurer, general counsel), or any member of the board of directors of the intended registrant, or of any parent, subsidiary, or other affiliate listed in the Statement of Registration:

(i) Has ever been indicted or otherwise charged (*e.g.,* charged by criminal information in lieu of indictment) for or has been convicted of violating any U.S. criminal statutes enumerated in § 120.6 of this subchapter or violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than 1 year; 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; and

(2) Whether the intended registrant is foreign owned or foreign controlled (see § 120.65 of this subchapter). If the intended registrant is foreign owned or foreign controlled, the certification shall include an explanation of such ownership or control, including the identities of the foreign person or persons who ultimately own or control the registrant. This requirement applies to a registrant who is a U.S. person and is owned or controlled by a foreign person. It also applies to a registrant who is a foreign person and is owned or controlled by a foreign person from the same country or a foreign person from another country.

(c) ***Incomplete registration submission.*** 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.

(d) ***Frequency.*** A person who is required to register and pay a registration fee must renew the registration and pay a registration fee on an annual basis after initial registration.

(e) ***Renewal 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. 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.

(f) ***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.

[89 FR 99084, Dec. 10, 2024]

122.3 Registration fees.

(a) ***Registration fee.*** A person who is required to register must submit payment of a fee following the payment guidelines available on the Directorate of Defense Trade Controls website at *www.pmddtc.state.gov*. The fee to be paid shall be one of the following:

(1) ***Tier 1.*** The first tier is a set fee of $3,000 per year. This applies to new registrants. It also applies to those who are renewing their registrations and for whom the Department did not issue a favorable determination on a license application or other request for authorization during the 12-month period ending 90 days prior to the expiration of the current registration.

(2) ***Tier 2.*** The second tier is a set fee of $4,000 for registrants renewing their registrations who have submitted license applications or other requests for authorization and received five or fewer favorable determinations during the 12-month period ending 90 days prior to the expiration of their current registration.

(3) ***Tier 3.*** The third tier is a calculated fee for registrants who have submitted license applications or other requests for authorization and received more than five favorable determinations during the 12-month period ending 90 days prior to the expiration of their current registration. For these registrants, the fee calculation is $4,000 plus $1,100 times the total number of favorable determinations over five.

(b) ***Website, discounts, and further guidance.*** Information on certain discounts for registrants who are wholly exempt from income tax pursuant to 26 U.S.C. 501(c)(3), and for Tier 3 registrants who are low-value exporters or temporary importers are available on the Directorate of Defense Trade Controls website at *www.pmddtc.state.gov* by selecting “Conduct Business” on the top heading bar, then selecting “Registration” from the left menu bar, and finally selecting “Payment of Registration” from the subsequent left menu bar. Other guidance and information relevant to the payment of registration fees is also available on the website.

[89 FR 99085, Dec. 10, 2024]

122.4 Notification of changes in information furnished by registrants.

(a) A registrant must, within five days of the event, provide to the Directorate of Defense Trade Controls a written notification, signed by a senior officer (e.g., chief executive officer, president, secretary, partner, member, treasurer, general counsel), if:

(1) Any of the persons referred to in § 122.2(b) is indicted or otherwise charged (e.g., by criminal information in lieu of indictment) for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.6 of this subchapteror violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than 1 year, or becomes ineligible 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 change in the following information contained in the Statement of Registration:

(i) Registrant's name;

(ii) Registrant's address;

(iii) Registrant's legal organization structure;

(iv) Ownership or control;

(v) The establishment, acquisition, or divestment of a U.S. or foreign subsidiary or other affiliate who is engaged in manufacturing defense articles, exporting defense articles or defense services; or

(vi) Board of directors, senior officers, partners, or owners.

Note 1 to paragraph (a):

All other changes in the Statement of Registration must be provided as part of annual registration renewal.

Note 2 to paragraph (a):

For one year from the effective date of the rule, “Amendment to the International Traffic in Arms Regulations: Registration and Licensing of Brokers, Brokering Activities, and Related Provisions,” RIN 1400-AC37, the following changes must be provided as part of the annual registration renewal: Pursuant to § 129.3(d) of this subchapter, changes to combine an existing broker registration with an existing manufacturer/exporter registration; and pursuant to § 122.2(a) of this subchapter, changes to an existing registration to remove partially owned and not otherwise controlled subsidiaries or affiliates, which are not the subject of an internal reorganization, merger, acquisition, or divestiture.

(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 § 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) 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 of a party to those agreements. The registrant must provide to the Directorate of Defense Trade Controls a signed copy of such an amendment to each agreement signed by the new U.S. entity, the former U.S. licensor and the foreign licensee, within 60 days of this notification, unless an extension of time is approved by the Directorate of Defense Trade Controls. Any agreement not so amended may 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; 78 FR 52687, Aug. 26, 2013; 81 FR 87429, Dec. 5, 2016; 87 FR 16423, Mar. 23, 2022]

122.5 Maintenance of records by registrants.

(a) A person who is required to register must maintain records concerning the manufacture, acquisition and disposition (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. 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 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 Deputy Assistant Secretary of State for 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) 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, as amended at 79 FR 8084, Feb. 11, 2014]

PART 123—LICENSES FOR THE EXPORT AND TEMPORARY IMPORT OF DEFENSE ARTICLES

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; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105-261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107-228; Sec. 520, Pub. L. 112-55; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.
Source:58 FR 39299, July 22, 1993, unless otherwise noted.

123.1 Requirement for export or temporary import licenses.

(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, unless the export or temporary import qualifies for an exemption under the provisions of this subchapter. The applicant must be registered with the Directorate of Defense Trade Controls pursuant to part 122 of this subchapter prior to submitting an application. Applications for unclassified exports and temporary imports must be submitted electronically. Applications for classified exports and classified temporary imports must be submitted via paper. Further guidance is provided on the Internet Web site of the Directorate of Defense Trade Controls. The application forms for export or temporary import are as follows:

(1) Unclassified permanent exports must be made on Form DSP-5;

(2) Unclassified temporary exports must be made on Form DSP-73;

(3) Unclassified temporary imports must be made on Form DSP-61; or

(4) Classified exports or temporary imports must be made on Form DSP-85.

(b) Applications for Department of State export or temporary import licenses for proposed exports or temporary imports of defense articles, including technical data, may include commodities, software, and technical data subject to the EAR if:

(1) The purchase documentation (e.g., purchase order, contract, letter of intent, or other appropriate documentation) includes both defense articles described on the U.S. Munitions List and items on the Commerce Control List;

(2) The commodities, software, and technical data subject to the EAR are for end-use in or with the U.S. Munitions List defense article(s) proposed for export; and

(3) The license application separately enumerates the commodities, software, and technical data subject to the EAR in a U.S. Munitions List "(x)" paragraph entry.

(c) As a condition to the issuance of a license or other approval, the Directorate of Defense Trade Controls may require all pertinent documentation 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. Stating "Not Applicable" or "See Attached" is not acceptable. See the Directorate of Defense Trade Controls Internet Web site for additional guidance on the completion of a license application form;

(2) Attachments and supporting technical data or brochures should be submitted with the license application. All freight forwarders and U.S. consignors must be listed in the license application. See the Directorate of Defense Trade Controls Internet Web site for instructions and limitations on attaching documentation;

(3) Certification by an empowered official must accompany all application submissions (*see* § 126.13 of this subchapter);

(4) An application for a license for the permanent export of defense articles sold commercially must be accompanied by purchase documentation (e.g., purchase order, contract, letter of intent, or other appropriate documentation). In cases involving the Foreign Military Sales program, a copy of the relevant Letter of Offer and Acceptance is required, unless the procedures of § 126.4(c) or § 126.6 of this subchapter are followed;

(5) Form DSP-83, duly executed, must accompany all license applications for the permanent export of significant military equipment, including classified defense articles or classified technical data (*see* §§ 123.10 and 125.3 of this subchapter); and

(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 § 120.32 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; 77 FR 22670, Apr. 17, 2012; 78 FR 22758, Apr. 16, 2013; 79 FR 61230, Oct. 10, 2014; 87 FR 16423, Mar. 23, 2022]

123.2 Import jurisdiction.

The Department of State regulates the temporary 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; 77 FR 22670, Apr. 17, 2012]

123.4 Temporary import license exemptions.

(a) 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, of

unclassified U.S.-origin defense items (including any items manufactured abroad pursuant to U.S. Government approval) if the item temporarily imported:

(1) 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 Justice 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).

(b) 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 § 120.16 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 § 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) ***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) 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 (CBP) 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 with CBP, identify 22 CFR 123.4 as the authority for the export, and provide, as requested by CBP, the entry document number or a copy of the CBP 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; 77 FR 16597, Mar. 21, 2012; 77 FR 22670, Apr. 17, 2012; 81 FR 54735, Aug. 17, 2016; 82 FR 17, Jan. 3, 2017; 87 FR 16423, Mar. 23, 2022]

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. The license for temporary export must be electronically submitted to U.S. Customs and Border Protection, unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions. In the event a physical license is required by U.S. Customs and Border Protection, the licensee is to retain the duly endorsed license for temporary export in accordance with § 123.22(b) of this subchapter. In the case of a military aircraft or vessel temporarily exported under its own power, evidence that the Department of State has duly authorized it to leave the United States must be readily available on board the aircraft or vessel.

(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 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, as amended at 82 FR 17, Jan. 3, 2017]

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 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 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.

(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, U.S. or foreign, must inform the end-user and all consignees that the defense articles being exported are subject to U.S. export laws and regulations as follows:

(1) The exporter must incorporate the following information as an integral part of the commercial invoice, whenever defense articles are to be shipped (exported in tangible form), retransferred (in tangible form), or reexported (in tangible form) pursuant to a license or other approval under this subchapter:

(i) The country of ultimate destination;

(ii) The end-user;

(iii) The license or other approval number or exemption citation; and

(iv) The following statement: “These items are controlled by the U.S. government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.”

Note to paragraph (b)(1)(iv):

The phrase “or as otherwise authorized by U.S. law and regulations” is included because U.S. regulations contain specific exemptions from licensing requirements (e.g., ITAR exemptions, and EAR license exceptions and No License Required designations) and allow for certain amounts of U.S. origin content in foreign made items (see 15 CFR 734).

(2) When exporting items subject to the EAR pursuant to a Department of State license or other approval, the U.S. exporter must also provide the end-user and consignees with the appropriate EAR classification information for each item. This includes the Export Control Classification Number (ECCN) or EAR99 designation.

(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 CFR 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) The Directorate of Defense Trade Controls may authorize reexport or retransfer of an item subject to the EAR provided that:

(1) The item was initially exported, reexported or transferred pursuant to a Department of State license or other approval;

(2) The item is for end-use in or with a defense article; and

(3) All requirements of paragraph (c) of this section are satisfied for the item subject to the EAR, as well as for the associated defense article.

(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;

(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 16597, Mar. 21, 2012; 78 FR 22759, Apr. 16, 2013; 78 FR 61755, Oct. 3, 2013; 81 FR 54735, Aug. 17, 2016; 87 FR 16423, Mar. 23, 2022]

123.10 Nontransfer and use assurances.

(a) A nontransfer and use certificate (*i.e.,* Form DSP-83) is required for the export of significant military equipment and classified articles, including classified technical data, pursuant to a license or other authorization, except for the exemptions in §§ 126.5 and 126.7 of this subchapter. 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, as amended at 89 FR 67290, Aug. 20, 2024]

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.

[81 FR 54736, Aug. 17, 2016]

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 Section 36(c) of the Arms Export Control Act.

(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 § 120.37 of this subchapter. 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 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 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 defense articles controlled under Category I paragraphs (a) through (g) of the United States Munitions List, § 121.1 of this subchapter, in an amount of $1,000,000 or more.

(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.

(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; 77 FR 16598, Mar. 21, 2012; 85 FR 3832, Jan. 23, 2020; 87 FR 16424, Mar. 23, 2022]

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 § 120.16 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 identifies 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.

(2) Port Directors of U.S. Customs and Border Protection shall permit the export of parts or components 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 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."

(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 inoperable and do not reveal any technical data in excess of that which is exempted from the licensing requirements of § 125.4(b) of this subchapterand do not contain components (*see* § 120.40(c) of this subchapter) covered by the U.S. Munitions List (*see* § 121.1 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 electronically submit a certification to U.S. Customs and Border Protection that these conditions are met, unless directed by U.S. Customs and Border Protection to provide such a certification in another manner. 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 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 electronically submit a certification to U.S. Customs and Border Protection that these conditions are met, unless directed by U.S. Customs and Border Protection to provide such a certification in another manner.

(6) For exemptions for personal protective gear, refer to § 123.17.

(7) [Reserved]

(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 § 120.65 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) [Reserved]

[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; 77 FR 16598, Mar. 21, 2012; 78 FR 40631, July 8, 2013; 79 FR 61230, Oct. 10, 2014; 79 FR 66609, Nov. 10, 2014; 82 FR 17, Jan. 3, 2017; 85 FR 3832, Jan. 23, 2020; 87 FR 16424, Mar. 23, 2022]

123.17 Exemption for personal protective gear.

(a)-(e) [Reserved]

(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 export information through CBP's electronic system(s) per § 123.22(unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions), 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 electronically submit documentation to this effect, along with the Internal Transaction Number from U.S. Customs and Border Protection's electronic system(s), unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions.

(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 electronically submit documentation to this effect, along with the Internal Transaction Number using U.S. Customs and Border Protection's electronic system(s), unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions. 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 (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 §§ 120.15(d) and 120.16(c) 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 25867, May 2, 2012; 78 FR 40631, July 8, 2013; 82 FR 18, Jan. 3, 2017; 85 FR 3832, Jan. 23, 2020; 87 FR 16424, Mar. 23, 2022]

123.18 [Reserved]

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 [Reserved]

123.21 Duration, renewal, and disposition of licenses.

(a) A license is valid for four years. 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.

(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 its electronic system(s), or directly to the Directorate of Defense Trade Controls (DDTC), as appropriate. Before the export of any hardware, via a license or other authorization, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically submit export information to U.S. Customs and Border Protection, unless electronic reporting is unavailable, in which case U.S. Customs and Border Protection will issue instructions (*see* paragraph (b) of this section). In addition to electronically providing the export information to U.S. Customs and Border Protection before export, all

mandatory supporting documentation (e.g., attachments, certifications, proof of filing in U.S. Customs and Border Protection's system(s) such as the Internal Transaction Number (ITN)) must be submitted electronically, unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions.

(1) 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 U.S. Customs and Border Protection.

(2) When a defense article is temporarily exported from the United States and subsequently 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 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 U.S. Customs and Border Protection 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 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, 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 must include the Internal Transaction Number (ITN) for the shipment and must be accompanied by an explanation for urgency. The export filing via U.S. Customs and Border Protection's electronic system(s) must be made at least two hours prior to any departure by air from the United States. When shipping via ground, the filing in U.S. Customs and Border Protection's electronic system(s) must be made 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, 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:

(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. 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. 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 must provide the export data electronically to DDTC. 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.*** Licenses issued by the Directorate of Defense Trade Controls are subject to return requirements as follows:

(1) A license issued electronically by DDTC and electronically decremented by U.S. Customs and Border Protection through its electronic system(s) is not required to be returned to DDTC. A copy of the license must be maintained by the applicant in accordance with § 122.5 of this subchapter.

(2) Licenses issued by DDTC but not decremented by U.S. Customs and Border Protection through its electronic system(s) (e.g., oral or visual technical data releases) must be maintained by the applicant in accordance with § 122.5 of this subchapter.

(3) A license issued by DDTC but not used by the applicant does not need to be returned to DDTC, even when expired.

(4) 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; 76 FR 68312, Nov. 4, 2011; 77 FR 16599, Mar. 21, 2012; 82 FR 18, Jan. 3, 2017; 83 FR 50007, Oct. 4, 2018]

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 U.S. Customs and Border Protection using its electronic system(s) and the license must be filed with 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 U.S. Customs and Border Protection."

(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; 82 FR 19, Jan. 3, 2017]

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 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 [Reserved]

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 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.

(2) The proposed exports concern exclusively one or more foreign persons (e.g., companies or governments) 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.

(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 re-transfer 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 re-transfer 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 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 or the European Union. In no case, however, can the provisions of this section apply or be 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; 87 FR 16424, Mar. 23, 2022]

123.28 Scope of a license.

Unless limited by a condition set out in a license, the export, reexport, retransfer, or temporary import authorized by a license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. DDTC grants licenses in reliance on representations the applicant made in or submitted in connection with the license application, letters of explanation, and other documents submitted.

[81 FR 35616, June 3, 2016]

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT, AND OTHER DEFENSE SERVICES

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; 22 U.S.C. 2776; Section 1514, Pub. L. 105-261; Pub. L. 111-266; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.
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 § 120.32 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 §§ 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 § 120.32 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 § 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 § 120.32 of this subchapter by granting a license under part 125 of this subchapter.

(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.

(e) Unless limited by a condition set out in an agreement, the export, reexport, retransfer, or temporary import authorized by a license is for the item(s), end-use(s), and parties described in the agreement, license, and any letters of explanation. DDTC approves agreements and grants licenses in reliance on representations the applicant made in or submitted in connection with the agreement, letters of explanation, and other documents submitted.

[71 FR 20542, Apr. 21, 2006, as amended at 75 FR 52624, Aug. 27, 2010; 81 FR 35616, June 3, 2016; 87 FR 16424, Mar. 23, 2022]

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.

(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 § 120.32 of this subchapter.

(c) NATO countries, 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 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.

(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) [Reserved]

(iv) Naval nuclear propulsion equipment listed in USML Category VI and USML Category XX;

(v) Gas turbine engine hot sections covered by Category XIX(f);

(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) [Reserved]

(x) Category XV;

(xi) [Reserved]

(xii) Submersible and semi-submersible vessels and related articles covered in USML Category XX; or

(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; 78 FR 40933, July 8, 2013; 79 FR 47, Jan. 2, 2014; 81 FR 87429, Dec. 5, 2016; 87 FR 16424, Mar. 23, 2022]

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 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]

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.

(a) 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. 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.

(b) [Reserved]

[58 FR 39305, July 22, 1993, as amended at 81 FR 54736, Aug. 17, 2016]

124.8 Clauses required both in manufacturing license agreements and technical assistance agreements.

(a) 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 22 CFR 126.7 or 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.”

(b) [Reserved]

[58 FR 39305, July 22, 1993, as amended at 76 FR 28177, May 16, 2011; 81 FR 35616, June 3, 2016; 81 FR 54736, Aug. 17, 2016; 89 FR 67290, Aug. 20, 2024; 89 FR 68778, Aug. 28, 2024]

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, commercial invoice or other appropriate document whenever the licensed articles are sold or otherwise transferred:

These items are controlled by the U.S. government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

(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.”

(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.”

[58 FR 39305, July 22, 1993, as amended at 81 FR 54736, Aug. 17, 2016]

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.

[59 FR 29951, June 10, 1994, as amended at 71 FR 20543, Apr. 21, 2006]

124.11 Congressional certification pursuant to Section 36(d) of the Arms Export Control Act.

(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 for the manufacturing abroad of any item of significant military equipment that is entered into with any country regardless of dollar value. Additionally, any manufacturing license agreement or technical assistance agreement providing for the export of major defense equipment shall also require a certification when meeting the requirements of § 123.15 of this subchapter.

(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 section 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; 77 FR 16599, Mar. 21, 2012; 87 FR 16424, Mar. 23, 2022]

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 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 DD254, 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 Security Service 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.

(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 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 124.8 and 124.9)."

[58 FR 39305, July 22, 1993, as amended at 71 FR 20543, Apr. 21, 2006; 72 FR 71786, Dec. 19, 2007; 81 FR 35617, June 3, 2016; 81 FR 54736, Aug. 17, 2016; 81 FR 87430, Dec. 5, 2016]

124.13 Procurement by U.S. 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; 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 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; 87 FR 16424, Mar. 23, 2022]

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 items are controlled by the U.S. government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.' ”

(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) Unless the articles covered by the agreement are in fact intended to be distributed to private persons or entities (e.g., 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 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; 81 FR 54736, Aug. 17, 2016; 85 FR 3833, Jan. 23, 2020]

124.15 Special Export Controls for Defense Articles and Defense Services Controlled under Category XV: Space Systems and Space Launches.

(a) The export of a satellite or related item controlled by Category XV of part 121 of this subchapter 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 (NATO) or a major non-NATO ally of the United States always requires special export 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 of any satellite controlled pursuant to this subchapter or subject to the EAR: 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 section 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 section.

(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 section 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 sub-licensing provisions available in this subchapter may be used for the export of technical data in order to obtain or satisfy insurance requirements. Such exports are always subject to the prior approval and re-transfer 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, as amended at 79 FR 27189, May 13, 2014]

124.16 [Reserved]

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

Authority: Secs. 2 and 38, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.
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 § 120.34 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) For the export of technical data related to articles in Category VI(e), Category XVI, and Category XX(b)(1) of § 121.1 of this subchapter, see § 120.5(c) of this subchapter.

(f) Unless limited by a condition set out in an agreement, the export, reexport, retransfer, or temporary import authorized by a license is for the item(s), end-use(s), and parties described in the agreement, license, and any letters of explanation. DDTC approves agreements and grants licenses in reliance on representations the applicant made in or submitted in connection with the agreement, letters of explanation, and other documents submitted.

[58 FR 39310, July 22, 1993, as amended at 71 FR 20544, Apr. 21, 2006; 78 FR 40933, July 8, 2013; 79 FR 47, Jan. 2, 2014; 81 FR 62008, Sept. 8, 2016; 87 FR 16424, Mar. 23, 2022]

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.

(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.

(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; 81 FR 54737, Aug. 17, 2016]

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 nontransfer 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 (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 § 120.16 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 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 (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;

(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) Technical data, including classified information, regardless of media or format, exported, reexported, or retransferred by or to a U.S. person, or a foreign person employee of a U.S. person travelling or on temporary assignment abroad, subject to the following restrictions:

(i) Foreign persons may only export, reexport, retransfer, or receive such technical data as they are authorized to receive through a separate license or other approval.

(ii) The technical data exported, reexported, or retransferred under this authorization may only be possessed or used by a U.S. person or authorized foreign person. Sufficient security precautions must be taken to prevent the unauthorized release of the technical data. Such security precautions may include encryption of the technical data; the use of secure network connections, such as virtual private networks; the use of passwords or other access restrictions on the electronic device or media on which the technical data is stored; and the use of firewalls and other network security measures to prevent unauthorized access.

(iii) The individual is an employee of the U.S. government or is directly employed by a U.S. person and not by a foreign subsidiary.

(iv) Technical data authorized under this exception may not be used for foreign production purposes or for defense services unless authorized through a license or other separate approval.

(v) 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 such 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 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. 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 (f), (g), and (h) (build-to-print, build/design-to-specification, and basic research, respectively) of § 120.43 of this subchapter and must not include paragraph (c), (d), (e), or (i) (design methodology, engineering analysis, manufacturing know-how, and applied research, respectively) of § 120.43.

[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; 75 FR 52624, 52626, Aug. 27, 2010; 79 FR 66609, Nov. 10, 2014; 81 FR 35617, June 3, 2016; 87 FR 16424, Mar. 23, 2022]

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 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 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 [Reserved]

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.

(b) An application for the export of classified technical data or other classified defense articles must be accompanied by a completed form DSP-83 (*see* § 123.10 of this subchapter). 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 Security Program Operating Manual (unless such requirements are inconsistent 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, as amended at 81 FR 54737, Aug. 17, 2016]

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 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). 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]

PART 126—GENERAL POLICIES AND PROVISIONS

Authority:22 U.S.C. 287c, 2651a, 2752, 2753, 2776, 2778, 2779, 2779a, 2780, 2791, 2797, 10423; sec. 1225, Pub. L. 108-375, 118 Stat. 2091; sec. 7045, Pub. L. 112-74, 125 Stat. 1232; sec. 1250A, Pub. L 116-92, 133 Stat. 1665; sec. 205, Pub. L. 116-94, 133 Stat. 3052; and E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.
Source:58 FR 39312, July 22, 1993, unless otherwise noted.

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. (See also § 129.7 of this subchapter, which imposes restrictions on brokering activities similar to those in this section.) The exemptions provided in this subchapter do not apply with respect to defense articles or defense services originating in or for export to any proscribed countries, areas, or persons as described in this section, except that the following exemptions may be utilized:

(1) Transfers pursuant to § 123.17 of this subchapter, or § 126.6, or § 126.18(e);

(2) Transfers by or for the U.S. Government pursuant to the following sections:

(i) § 126.4(a)(1) or (3);

(ii) § 126.4(b)(1); or

(iii) § 126.4(a)(2) or (b)(2) when the export is destined for Russia and in support of government space cooperation; or

(3) When the recipient is a U.S. Government department or agency.

(b) ***Shipments.*** A defense article licensed or otherwise authorized for export, temporary import, reexport, or retransfer under this subchapter may not be shipped on a vessel, aircraft, spacecraft, or other means of conveyance that is owned by, operated by, leased to, or leased from any of the proscribed countries, areas, or other persons referred to in this section.

(c) Identification in § 126.1 of the ITAR may derive from:

(1) ***Exports and sales prohibited by United Nations Security Council sanctions measures.*** Whenever the United Nations Security Council mandates sanctions measures, all transactions that are prohibited by the aforementioned measures and involve U.S. persons (see § 120.62 of this subchapter) inside or outside of the United States, or any person in the United States, and defense articles or defense services described on the United States Munitions List (22 CFR part 121), irrespective of origin, are prohibited under the ITAR for the duration of the sanction, unless the Department of State publishes a notice in the Federal Register specifying different measures.

(2) ***Terrorism.*** Exports or temporary imports of defense articles or defense services to countries that the Secretary of State has determined to be State Sponsors of Terrorism are prohibited under the ITAR. These countries have repeatedly provided support for acts of international terrorism, which is contrary to the foreign policy of the United States and 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). Exports to countries that the Secretary of State has determined and certified to Congress, pursuant to section 40A of the Arms Export Control Act (22 U.S.C. 2781) and Executive Order 13637, are not cooperating fully with United States antiterrorism efforts are subject to the policy specified in paragraph (a) of this section. The Secretary of State makes such determinations and certifications annually.

(3) ***Arms embargoes and sanctions.*** The policy specified in paragraph (a) of this section applies to countries subject to a United States arms embargo or sanctions regime, such as those described in the Foreign Assistance Act of 1961 (22 U.S.C. 2151 *et seq.*), the International Religious Freedom Act of 1998 (22 U.S.C. 6401 *et seq.*), or the Child Soldiers Prevention Act of 2008 (22 U.S.C. 2370c-2370c-2), or whenever an export of defense articles or defense services would not otherwise be in furtherance of world peace and the security and foreign policy of the United States.

(d) ***Countries subject to certain prohibitions:***

(1) For defense articles and defense services, the following countries have a policy of denial:

Table 1 to Paragraph (d)(1)

Country
Belarus.
Burma.
China.
Cuba.

Country
Iran.
North Korea.
Syria.
Venezuela.

(2) For defense articles and defense services, a policy of denial applies as specified in the associated paragraphs in the following table:

Table 2 to Paragraph (d)(2)	
Country	**Country specific paragraph location**
Afghanistan	See also paragraph (g) of this section.
Cambodia	See also paragraph (o) of this section.
Central African Republic	See also paragraph (u) of this section.
Cyprus	See also paragraph (r) of this section.
Democratic Republic of the Congo	See also paragraph (i) of this section.
Eritrea	See also paragraph (h) of this section.
Ethiopia	See also paragraph (n) of this section.
Haiti	See also paragraph (j) of this section.
Iraq	See also paragraph (f) of this section.
Lebanon	See also paragraph (t) of this section.
Libya	See also paragraph (k) of this section.
Nicaragua	See also paragraph (p) of this section.
Russia	See also paragraph (l) of this section.
Somalia	See also paragraph (m) of this section.
South Sudan	See also paragraph (w) of this section.
Sudan	See also paragraph (v) of this section.
Zimbabwe	See also paragraph (s) of this section.

(e)

(1) ***Proposed and final sales.*** No sale, export, transfer, reexport, or retransfer of, and no proposal or presentation 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.

(2) ***Duty to notify.*** Any person who knows or has reason to know of a proposed, final, or actual sale, export, transfer, reexport, or retransfer of articles, services, or data as described in paragraph (e)(1) of this section 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.

Note to paragraph (e):

"Proposal" and "presentation" mean the communication of information in sufficient detail that it would permit an intended purchaser to decide to acquire the article in question or to enter into an agreement as described in part 124 of this subchapter. For example, communicating information on the equipment's performance characteristics, price, and probable availability for delivery would be a proposal or presentation requiring a license or other approval.

(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; or

(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 arms embargoes, due to their affiliation with the Taliban, Al-Qaida, or those associated with them, are published in lists maintained by the United Nations Security Council's Sanctions Committees (established pursuant to United Nations Security Council resolutions (UNSCR) 1267, 1988, and 1989).

(h) ***Eritrea.*** It is the policy of the United States to deny licenses or other approvals for exports of defense articles or defense services destined to or for the armed forces, police, intelligence, or other internal security forces of Eritrea.

(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;

(2) Defense articles and defense services intended solely for the support of or use by the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) or the African Union-Regional Task Force;

(3) Protective clothing, including flak jackets and military helmets, 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;

(4) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training; or

(5) Defense articles and defense services as approved by the relevant committee of the Security Council.

(j) ***Haiti.*** 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:

(1) Defense articles and defense services to or by the United Nations, a United Nations-authorized mission, or a security unit that operates under the command of the Government of Haiti, intended to be used by or in coordination with those entities and intended solely to further the objectives of peace and stability in Haiti;

(2) Other defense articles and defense services as approved in advance by the committee of the United Nations Security Council concerned with Haiti; or

(3) Non-lethal defense articles intended solely for humanitarian or protective use, and related defense services, when intended to further the objectives of peace and stability in Haiti.

(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) [Reserved]

(2) Non-lethal military equipment when intended solely for security or disarmament assistance to the Libyan government;

(3) The provision of any technical assistance or training when intended solely for security or disarmament assistance to the Libyan government;

(4) Small arms, light weapons, and related materiel temporarily exported to Libya for the sole use of United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, notified to the Committee of the Security Council concerning Libya in advance and in the absence of a negative decision by the Committee within five working days of such a notification;

(5) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training;

(6) Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee of the Security Council concerning Libya;

(7) Protective clothing, including flak jackets and military helmets, temporarily exported to Libya by United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only;

(8) Defense services to Libyan security forces intended solely to promote the process of reunification of Libyan military and security institutions, as well as associated temporary exports of defense articles intended solely for use by the non-Libyan providers of those defense services for delivery of those services and for their protective use, as notified in advance to the committee of the United Nations Security Council concerned with Libya; or

(9) Military aircraft and or naval vessels temporarily exported by the U.S. Government into the territory of Libya solely to deliver items or facilitate activities otherwise exempted or not covered by the United Nations's arms embargo on Libya, including humanitarian assistance, as well as defense articles for defensive purposes that remain at all times aboard the vessel or aircraft while temporarily in Libya or on the person of any non-Libyan personnel temporarily disembarked from such vessel or aircraft.

(l) ***Russia.*** It is the policy of the United States to deny licenses or other approvals for exports of defense articles and defense services destined for Russia, except that a license or other approval may be issued, on a case-by-case basis, for government space cooperation.

(m) ***Somalia.*** It is the policy of the United States to deny licenses or other approvals for exports of defense articles and defense services destined for Somalia, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services to the Government of the Federal Republic of Somalia, the Somali National Army, the Somali National Intelligence and Security Agency, the Somali National Police Force, and the Somali Custodial Corps;

(2) Defense articles and defense services intended solely for the support of, or use by:

(i) United Nations personnel, including United Nations Transitional Assistance Mission in Somalia (UNTMIS) and United Nations Support Office in Somalia (UNSOS);

(ii) African Union Support and Stabilization Mission in Somalia (AUSSOM), and the troop- and police-contributing countries to AUSSOM; or

(iii) European Union training and support activities, Turkey, the United Kingdom, or the United States, as well as any other United Nations Member State forces, with a status of forces agreement or a memorandum of understanding with the Government of the Federal Republic of Somalia;

(3) Supplies of protective clothing, including flak jackets and military helmets, temporarily exported to Somalia by United Nations personnel, representatives of the media, private security contractors and humanitarian development workers and associated personnel for their personal use only;

(4) The delivery of non-lethal military equipment by States, or international, regional or subregional organizations intended solely for humanitarian or protective use; or

(5) Entry into Somali ports for temporary visits of vessels carrying weapons and military equipment for defensive purposes provided that such items remain at all times aboard such vessels.

(n) ***Ethiopia.*** It is the policy of the United States to deny licenses or other approvals for exports of defense articles or defense services destined to or for the armed forces, police, intelligence, or other internal security forces of Ethiopia.

(o) ***Cambodia.*** 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 Cambodia, except that a license or other approval may be issued, on a case-by-case basis, for defense articles and defense services in furtherance of conventional weapons destruction or humanitarian mine action activities.

(p) ***Nicaragua.*** It is the policy of the United States to deny licenses or other approvals for exports and imports of defense articles or defense services, destined for or originating in Nicaragua, except that a license or other approval may be issued, on a case-by-case basis, for non-lethal military equipment intended solely for humanitarian assistance, to include natural disaster relief.

(q) [Reserved]

(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:

(1) 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; and

(2) From October 1, 2024, through September 30, 2025, the policy of denial and the status of Cyprus as a proscribed destination is suspended.

(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).

(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) or as authorized by the Government of Lebanon.

(u) ***Central African Republic.*** 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 from armed groups and associated individuals operating within the Central African Republic.

(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; or

(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.

(w) ***South Sudan.*** It is the policy of the United States to deny licenses or other approvals for exports of defense articles and defense services destined for South Sudan, 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, United Nations personnel, including the United Nations Mission in the Republic of South Sudan (UNMISS) and the United Nations Interim Security Force for Abyei (UNISFA);

(2) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training as notified in advance to the United Nations Security Council committee concerned with South Sudan;

(3) Protective clothing, including flak jackets and military helmets, temporarily exported to South Sudan by United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only;

(4) Defense articles and defense services temporarily exported to South Sudan by the forces of a State which is taking action, in accordance with international law, solely and directly to facilitate the protection or evacuation of its nationals and those for whom it has consular responsibility in South Sudan, as notified to the committee of the United Nations Security Council concerned with South Sudan;

(5) Defense articles and defense services to or in support of the African Union Regional Task Force intended solely for regional operations to counter the Lord's Resistance Army, as notified in advance to the committee of the United Nations Security Council concerned with South Sudan;

(6) Defense articles and defense services solely in support of the implementation of the terms of the peace agreement, as approved in advance by the committee of the United Nations Security Council concerned with South Sudan;

(7) Any other defense articles or defense services as approved in advance by the committee of the United Nations Security Council concerned with South Sudan; or

(8) Non-lethal military equipment solely in support of the implementation of the peace agreement, and related technical assistance or training on non-lethal military equipment.

[58 FR 39312, July 22, 1993]

Editorial Note
Editorial Note: For Federal Register citations affecting § 126.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

126.2 Temporary suspension or modification of this subchapter.

The Deputy Assistant Secretary for 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.

[79 FR 8085, Feb. 11, 2014]

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 Deputy Assistant Secretary of State for Defense Trade Controls may make an exception to the provisions of this subchapter.

[79 FR 8085, Feb. 11, 2014]

126.4 Transfers by or for the United States Government.

(a) ***By a department or agency.*** A license is not required for the export, reexport, retransfer, or temporary import of a defense article or the performance of a defense service, when made by a department or agency of the U.S. Government:

(1) For official use by a department or agency of the U.S. Government, including:

(i) By employees of the U.S. Government acting within their official capacity; or

(ii) By persons or entities in a contractual relationship with the U.S. Government using the defense article or performing the defense service to conduct the contracted-for activities within the scope of the contractual relationship and:

(A) Within a U.S. Government-controlled facility;

(B) When an employee of the U.S. Government is empowered and responsible to ensure that the defense article is not diverted and is only used within the scope of the contractual relationship; or

(C) Use of the exemption in paragraph (a)(1)(ii) is authorized by the Deputy Assistant Secretary of State for Defense Trade Controls at the request of a department or agency of the U.S. Government.

(D) The provision in this paragraph (a)(1)(ii) may not be used to release technical data to a person or entity of a country identified in § 126.1.

(2) For carrying out a cooperative project, program, or other activity in furtherance of an agreement or arrangement that provides for the export, reexport, retransfer, or temporary import of the defense article, or the performance of activities that constitute the defense service, and is one of the following:

(i) A binding international agreement to which the United States or any agency thereof is a party; or

(ii) An arrangement with international partners authorized by Title 10 or 22 of the United States Code or pertinent National Defense Authorization Act provisions.

(3) For carrying out any foreign assistance or sales program authorized by law and subject to control by the President by other means.

(4) For any other security cooperation programs and activities of the Department of Defense authorized by law and subject to control by the President by other means.

(i) For purposes of this paragraph (a)(4), “security cooperation programs and activities of the Department of Defense” means any program, activity, or interaction of the Department of Defense with the security establishment of a foreign country to:

(A) Build and develop allied and friendly security capabilities for self-defense and multinational operations;

(B) Provide the armed forces with access to the foreign country during peacetime or a contingency operation; or

(C) Build relationships that promote specific United States security interests.

(ii) The U.S. Government must obtain appropriate end-use and retransfer assurances from the foreign party and to ensure that the recipient is aware of and will comply with paragraph (f) of this section.

(5) Authorization under this section is for compliance with the ITAR only and does not constitute any other U.S. Government approval that may be required prior to the transfer of a defense article, and does not satisfy other obligations of U.S. law or regulation, or applicable Government process, procedure, or practice, including the

requirement that any export of an item listed on the MTCR Annex receive the case-by-case review called for in the MTCR Guidelines.

(6) The exemption in this paragraph (a) does not apply when a U.S. Government department or agency acts as a transmittal agent on behalf of a private individual or firm, either as a convenience or in satisfaction of security requirements.

(7) The authorization requirement expressed in paragraph (f) of this section does not apply to defense articles and services exported from the United States pursuant to paragraphs (a)(1) and (3) of this section, provided the defense articles and services are subject to the terms thereof.

(b) ***By a person on behalf of a department or agency.*** A license is not required for the export, reexport, retransfer, or temporary import of a defense article or the performance of a defense service, when made by another person for a department or agency of the U.S. Government:

(1) To a department or agency of the U.S. Government at its request; or

(2) To an entity other than the U.S. Government at the written direction of a department or agency of the U.S. Government or pursuant to an international agreement or arrangement, for an activity authorized for that department or agency in paragraphs (a)(1) through (4) of this section.

(c) ***Return to the United States.*** No license is required under this subchapter for the return to the United States of a defense article exported pursuant to this section and not subsequently reexported or retransferred other than pursuant to this section, to:

(1) A department or agency of the U.S. Government; or

(2) The person who exported the item.

(d) ***Prohibited activities and arms embargoes.*** This section does not authorize any department or agency of the U.S. Government to make or authorize any export that is otherwise prohibited by any other administrative provisions or by any statute or that is inconsistent with U.S. arms embargoes or United Nations Security Council Resolutions (*see* § 126.1).

(e) ***Export clearance.*** For exports shipped other than by a U.S. diplomatic pouch or a U.S. Government aircraft, vehicle, or vessel, an Electronic Export Information (EEI) filing must be submitted to U.S. Customs and Border Protection using its electronic system(s) at the time of export, unless electronic submission of such information is unavailable, in which case U.S. Customs and Border Protection or the Department of Defense transmittal authority will issue instructions.

(f) ***Change in end-use or end-user.*** Any change in end-use or end-user of a defense article, to any party or use not authorized by this section, requires approval of the Directorate of Defense Trade Controls through a license or other approval.

[84 FR 16401, Apr. 19, 2019]

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 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 §§ 120.15(d) and 120.16, 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, 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 Web site 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

(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 16600, Mar. 21, 2012; 87 FR 16424, Mar. 23, 2022]

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 U.S. person responsible for the transfer maintains records of all transfers in accordance with part 122 of this subchapter, and

(5) 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, U.S. Customs and Border Protection is provided the Electronic Export Information, Internal Transaction Number and any other documents required by U.S. Customs and Border Protection in carrying out its responsibilities. The invoices for the shipment must be annotated: “This shipment is authorized for export pursuant to 22 CFR 126.6(c), under FMS Case [insert case identification]. The U.S. Government point of contact is ____, telephone number ____,” and

(iii) Any classified hardware and related technical data involved in the transfer must have the requisite U.S. Government security clearance and transportation plan and be shipped in accordance with the Department of Defense National Industrial Security Program Operating Manual. The exporter shall provide an electronic copy of the transportation plan via the U.S. Customs and Border Protection's electronic system(s), unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions, or

(6) 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) 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.

[65 FR 45287, July 21, 2000, as amended at 70 FR 50964, Aug. 29, 2005; 71 FR 20546, Apr. 21, 2006; 79 FR 77885, Dec. 29, 2014; 82 FR 19, Jan. 3, 2017]

126.7 Exemption for defense trade and cooperation among Australia, the United Kingdom, and the United States.

(a) No license or other approval is required for the export, reexport, retransfer, or temporary import of defense articles, the performance of defense services, or engaging in brokering activities as described in part 129 of this subchapter, between or among authorized users of this exemption, subject to the requirements and limitations in paragraph (b) of this section.

(b) The exemption described in paragraph (a) of this section is subject to the following requirements and limitations:

(1) The activity must be to or within the physical territory of Australia, the United Kingdom, or the United States;

(2) The transferor, recipient, or broker must each be:

(i) U.S. persons registered with the applicable Directorate of Defense Trade Controls (DDTC) registration pursuant to §§ 122.1 and 129.3 of this subchapter, and not debarred under § 127.7 of this subchapter;

(ii) A U.S. Government department or agency; or

(iii) Authorized users identified through the DDTC website and, if engaging in brokering activities, registered with DDTC pursuant to § 129.3 of this subchapter;

(3) The defense article or defense service is not identified in supplement no. 2 to this part as ineligible for transfer under the exemption in paragraph (a) of this section;

(4) The value of the transfer does not exceed the amounts described in § 123.15 of this subchapter and does not involve the manufacturing abroad of significant military equipment as described in § 124.11 of this subchapter; and

(5) Transferors must comply with the requirements of § 123.9(b) of this subchapter.

Note 1 to paragraph (b):

The exemption in paragraph (a) of this section does not remove other applicable U.S. statutory and regulatory requirements. For example, for U.S. authorized users, transfers of classified defense articles and defense services must still meet the requirements in 32 CFR part 117, National Industrial Security Program Operating Manual (NISPOM),

in addition to all other applicable laws. Australian authorized users must, for example, meet the requirements in the Australian Protective Security Policy Framework, including appropriate security risk management for contracted providers. United Kingdom authorized users must, for example, meet the requirements in the Government Functional Standards GovS 007: Security.

[89 FR 67290, Aug. 20, 2024]

126.8-126.12 [Reserved]

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, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is the subject of an indictment or has been otherwise charged (e.g., by criminal information in lieu of indictment) for, or has been convicted of, violating any of the U.S. criminal statutes enumerated in § 120.6 of this subchapter;

(2) The applicant or the chief executive officer, president, vice-presidents, secretary, partner, member, 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 temporarily import or export defense articles or defense services 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 § 120.68(a) of this subchapter has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.6 of this subchapter, or is ineligible to contract with, or to receive a license or other approval to temporarily import or export defense articles or defense services 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)(20), 66 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.

(b) In addition, all applications for licenses must include 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. 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 to make shipments under the license, and only to those foreign consignees and foreign intermediate consignees listed on the license. 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 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 and foreign intermediate consignees, the applicant must provide a letter of explanation with each application.

(c) In cases when natural foreign persons are employed at or assigned to security-cleared facilities, provision by the applicant of a technology control plan 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; 77 FR 16601, Mar. 21, 2012; 78 FR 52688, Aug. 26, 2013; 87 FR 16424, Mar. 23, 2022]

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 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 re-exports 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 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 Deputy Assistant Secretary of State for 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) of this subchapter.

(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 record keeping 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; 79 FR 8085, Feb. 11, 2014]

126.15 Expedited processing of license applications for the export of defense articles and defense services to Australia, the United Kingdom, or Canada.

(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.

(c) Any application submitted for authorization of the export of defense articles or defense services to Australia, the United Kingdom, or Canada, describing an export that cannot be undertaken under an exemption provided in this subchapter, will be expeditiously processed by the Department of State. The prospective export must occur wholly within, or between the physical territories of Australia, the United Kingdom, Canada, or the United States, and between governments or persons from such countries.

(d) To the extent practicable, any application in paragraph (c) of this section to export defense articles and defense services related to a government-to-government agreement between Australia, the United Kingdom, or Canada, and the United States must be approved, returned, or denied within 30 days of submission. For all other license applications, any review shall be completed no later than 45 calendar days after the date of the application. The provisions of this paragraph (d) do not apply to any applications which require congressional certification.

[70 FR 39919, July 12, 2005, as amended at 89 FR 67291, Aug. 20, 2024]

126.16 Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and Australia.

(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 Australian 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 Australian Community within the Australian Community, or between a member of the United States Community and a member of the Australian Community.

(iii) ***Reexport and retransfer.***

(A) Reexport means, for purposes of this section only, the movement of previously Exported Defense Articles by a member of the Australian Community from the Approved Community to a location outside the Territory of Australia.

(B) Retransfer means, for purposes of this section only, the movement of previously Exported Defense Articles by a member of the Australian Community from the Approved Community to a location within the Territory of Australia;

(iv) ***Intermediate consignee*** means, for purposes of this section, an entity or person who receives, but does not have access to, defense articles, including technical data, 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 United States Community to members of the Australian Community (*see* paragraph (d) of this section regarding the identification of members of the Australian Community) of defense articles and defense services not listed in supplement no. 1 to part 126 of this subchapter, 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 Australia. 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 CFR parts 447, 478, and 479, which are unaffected by the Defense Trade Cooperation Treaty between the United States and Australia.

(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 Australia, all of the following conditions must be met:

(i) The exporter must be registered with the Directorate of Defense Trade Controls (DDTC) 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 Australian Community (*see* paragraph (d) of this section regarding the identification of members of the Australian Community). Australian non-governmental entities and facilities that become ineligible for such membership will be removed from the Australian 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 Australia and mutually agreed to by the U.S. Government and the Government of Australia pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and the Implementing Arrangement thereto (the Australia 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 Australia (*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 United States Community and Australian 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 Australian Community (*see* paragraph (d) of this section regarding the identification of members of the Australian 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 Australia and mutually agreed

to by the Government of the United States and the Government of Australia pursuant to the terms of the Defense Trade Cooperation Treaty between the United States and Australia and the Australia 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 the Australian 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 Australia 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 Australia:

(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 DDTC 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 Australia 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) ***Australian Community.*** For purposes of the exemption provided by this section, the Australian Community consists of:

(1) Government of Australia authorities with entities identified as members of the Approved Community through the DDTC Web site at the time of a transaction under this section; and

(2) The non-governmental Australian entities and facilities identified as members of the Approved Community through the DDTC Web site at the time of a transaction under this section; non-governmental Australian entities and facilities that become ineligible for such membership will be removed from the Australian 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 Australia:

(1) United States and Australian combined military or counter-terrorism operations;

(2) United States and Australian cooperative security and defense research, development, production, and support programs;

(3) Mutually determined specific security and defense projects where the Government of Australia 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 DDTC Web site;

(2) Operations, programs, and projects that cannot be publicly identified will be confirmed in written correspondence from DDTC; 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 Australian Community if that exporter has been licensed by DDTC to export (as defined by § 120.50 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 DDTC.

(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 U.S. 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 U.S. Department of Defense for an end-use identified pursuant to paragraph (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, an 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 DDTC 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 DDTC 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.

(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 subchapterby a member of the Australian Community (*see* paragraph (d) of this section for specific information on the identification of the Community) to another member of the Australian 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 DDTC (*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 Australian Community to a foreign person that is not a member of the Australian 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 DDTC (*see*paragraph (d) of this section for specific information on the identification of the Australian 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 Australian Community, to an end-use that is not authorized by this exemption is prohibited without a license or other written approval of DDTC (*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, an 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 DDTC for the export, transfer, reexport, 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 of this subchapter, Note 2 that are incorporated in an aircraft that is eligible to ship under this section

continue to require separate authorization from DDTC for their export, transfer, reexport, or retransfer).

(7) A license or prior approval from DDTC 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 Australian Department of Defence (ADOD) elements deployed outside the Territory of Australia and engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using ADOD transmission channels or the provisions of this section (Note: For purposes of paragraph (h)(7)(i) through (iv) of this section, per Section 9(9) of the Australia Implementing Arrangement, "ADOD Transmission channels" includes electronic transmission of a defense article and transmission of a defense article by an ADOD contracted carrier or freight forwarder that merely transports or arranges transport for the defense article in this instance.);

(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 United States or Australian) that is operating in direct support of ADOD elements deployed outside the Territory of Australia and engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using ADOD transmission channels or the provisions of this section;

(iii) The reexport is made by a member of the Australian Community to ADOD elements deployed outside the Territory of Australia engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using ADOD transmission channels or the provisions of this section;

(iv) The reexport is made by a member of the Australian Community to an Approved Community member (either United States or Australian) that is operating in direct support of ADOD elements deployed outside the Territory of Australia engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using ADOD transmission channels or the provisions of this section; or

(v) The defense article or defense service will be delivered to the ADOD for an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses); the ADOD may deploy the item as necessary when conducting official business within or outside the Territory of Australia. The item must remain under the effective control of the ADOD 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 Australian Community must immediately notify DDTC 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 DDTC 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 DDTC, 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 DDTC to retire the license(s) and transition to this section. When this approval is conveyed to U.S. Customs and Border Protection by DDTC, the license(s) will be returned to DDTC 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 DDTC with a letter citing approval by DDTC to transition to this section as the reason for returning the license(s).

(3) If a member of the Australian Community desires to transition defense articles received under an existing license or other approval to the processes established under the Treaty, the Australian Community member must submit a written request to the Government of Australia. The Government of Australia will submit the request to DDTC for review and approval. The defense article or defense service shall remain subject to the conditions and limitations of the existing license or other approval until the Australian Community member has received via the Government of Australia the approval from DDTC.

(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, and such defense article or defense service previously exported shall remain on the U.S. Munitions List and be subject to the requirements of this subchapter 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 Australia and this section shall be marked or identified prior to movement as follows:

(i) For classified defense articles and defense services the standard marking or identification shall read“//CLASSIFICATION LEVEL USML//REL AUS and USA Treaty Community//.” For example, for defense articles classified SECRET, the marking or identification shall be “//SECRET USML//REL AUS and USA Treaty Community//.”

(ii) Unclassified defense articles and defense services exported under or transitioned pursuant to this section shall be handled while in Australia as “Restricted USML” and the standard marking or identification shall read“//RESTRICTED USML//REL AUS 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 AUS 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 paragraphs (j)(1)(i) and (j)(1)(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 impractical 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 paragraphs (j)(1)(i) and (j)(1)(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.-Australia Defense Trade Cooperation Treaty for export only to Australia for use in approved projects, programs or operations by members of the Australian 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 DDTC 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 DDTC Web site; or

(ii) Australian intermediate consignees who are:

(A) Members of the Australian Community; or

(B) Freight forwarders, customs brokers, commercial air freight and surface shipment carriers, or other Australian parties that are identified at the time of export as being on the list of Authorized Australian Intermediate Consignees, which is available on the DDTC Web site.

(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 defense articles or defense services pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section shall maintain detailed records of their exports, imports, and transfers. Exporters shall also maintain detailed records of any reexports and retransfers approved or otherwise authorized by DDTC of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and Australia 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 DDTC or a person designated by DDTC (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 using U.S. Customs and Border Protection's electronic system(s);

(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 Australia and this section must electronically file Electronic Export Information (EEI) using U.S. Customs and Border Protection's electronic system(s), 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 Australian combined military or counter-terrorism operations identify § 126.16(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 Australian cooperative security and defense research, development, production, and support programs identify § 126.16(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 Australia is the end-user identify § 126.16(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 § 126.16(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 Australia and this section, submit a statement to DDTC 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) DDTC or a person designated by DDTC (e.g., the Diplomatic Security Service), 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 Australian 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 Australia and this section by any person identified in paragraph (b)(2) of this section shall not take place until 30 days after DDTC has acknowledged receipt of a written notification 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 (see § 120.36 of this subchapter); or

(iv) An amended contract that meets the requirements of paragraphs (o)(1)(i) through (o)(1)(iii) of this section.

(2) The written notification required in paragraph (o)(1) of this section shall indicate the item/model number, general item description, U.S. Munitions List category, value, and quantity of items to be exported pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section, and 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.

[78 FR 21526, Apr. 11, 2013, as amended at 81 FR 62008, Sept. 8, 2016; 82 FR 19, Jan. 3, 2017; 87 FR 16424, Mar. 23, 2022]

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) ***Reexport and retransfer.***

(A) ***Reexport*** means, for purposes of this section only, movement of previously Exported Defense Articles by a member of the United Kingdom Community from the Approved Community to a location outside the Territory of the United Kingdom.

(B) ***Retransfer*** means, for purposes of this section only, the movement of previously Exported Defense Articles by a member of the United Kingdom Community from the Approved Community to a location within the Territory of the United Kingdom.

(iv) ***Intermediate consignee*** means, for purposes of this section, an approved entity or person who receives, but does not have access to, defense articles, including technical data, 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 United States 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 of this subchapter, 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 CFR 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 this section.

(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 (DDTC) 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 United States 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 Government of the United States and the Government of the 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 DDTC 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 form 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 DDTC Web site 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 DDTC Web site (*www.pmddtc.state.gov*) 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 DDTC Web site;

(2) Operations, programs, and projects that cannot be publicly identified will be confirmed in written correspondence from DDTC; 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 DDTC to export (as defined by § 120.50 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 DDTC.

(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 U.S. 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 U.S. Department of Defense for an end-use identified pursuant to paragraph (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, an 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 DDTC 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 DDTC 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 subchapterby 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 DDTC (*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 DDTC (*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 DDTC (*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, an 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 DDTC for the export, transfer, reexport, 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 of this subchapter, Note 2 that are incorporated in an aircraft that is eligible to ship under this section continue to require separate authorization from DDTC for their export, transfer, reexport, or retransfer).

(7) A license or prior approval from DDTC 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 (UK MOD) 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 United

States or UK) that is operating in direct support of UK MOD 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 UK MOD 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 UK MOD 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 UK MOD for an authorized end-use (*see*paragraphs (e) and (f) of this section regarding authorized end-uses); the UK MOD 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 UK MOD 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 DDTC 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 DDTC 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 DDTC, 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 DDTC to retire the license(s) and transition to this section. When this approval is conveyed to U.S. Customs and Border Protection by DDTC, the license(s) will be returned to DDTC 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 DDTC with a letter citing approval by DDTC 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 DDTC, 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 DDTC.

(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, and such defense article or defense service previously exported shall remain on the U.S. Munitions List and be subject to the requirements of this subchapter 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 prior to movement as follows:

(i) For classified defense articles and defense services the standard marking or identification shall read "//CLASSIFICATION LEVEL USML//REL USA and GBR Treaty Community//." For example, for defense articles classified SECRET, the marking or identification shall be "//SECRET USML//REL USA and GBR 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 USA and GBR 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 USA and GBR 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 paragraphs (j)(1)(i) and (j)(1)(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 impractical 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 paragraphs (j)(1)(i) and (j)(1)(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 DDTC 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 DDTC Web site; or

(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 DDTC Web site.

(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 defense articles or defense services 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. Exporters shall also maintain detailed records of any reexports and retransfers approved or otherwise authorized by DDTC 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 DDTC or a person designated by DDTC (e.g., U.S. Department of State's Bureau of Diplomatic Security) 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 using U.S. Customs and Border Protection's electronic system(s);

(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 U.S. Customs and Border Protection's electronic system(s), 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 DDTC 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) DDTC or a person designated by DDTC (e.g., U.S. Department of State's Bureau of Diplomatic Security), 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 DDTC has acknowledged receipt of a written notification 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 (see § 120.36 of this subchapter); or

(iv) An amended contract that meets the requirements of paragraphs (o)(1)(i) through (o)(1)(iii) of this section.

(2) The written notification required in paragraph (o)(1) of this section shall indicate the item/model number, general item description, U.S. Munitions List category, value, and quantity of items to be exported pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section, and 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.

[77 FR 16601, Mar. 21, 2012, as amended at 79 FR 8085, Feb. 11, 2014; 79 FR 21616, Apr. 17, 2014; 81 FR 62008, Sept. 8, 2016; 82 FR 19, Jan. 3, 2017; 87 FR 16424, Mar. 23, 2022]

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 paragraph (d) of this section 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, 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) of this subchapter 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 § 120.63 of this subchapter, 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(d)(1) 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.

(d) Notwithstanding any other provisions of this subchapter, no approval is needed from the Directorate of Defense Trade Controls (DDTC) for the reexport of unclassified defense articles or defense services to individuals who are dual national or third-country national employees of a foreign business entity, foreign governmental entity, or international organization, that is an authorized end-user, foreign signatory, or consignee (including approved sub-licensees) for those defense articles or defense services, when such individuals are:

(1) Regular employees of the foreign business entity, foreign governmental entity, or international organization;

(2) Nationals exclusively of countries that are members of NATO, the European Union, Australia, Japan, New Zealand, or Switzerland;

(3) Within the physical territories of the countries listed in paragraph (d)(2) of this section or the United States during the reexport;

(4) Signatory to a Non-Disclosure Agreement, unless their employer is a signatory or sublicensee to an agreement under § 124.1 authorizing those defense articles or defense services; and

(5) Not the recipient of any permanent transfer of hardware.

(e) Notwithstanding any other provisions of this subchapter, no license is required for the retransfer or reexport of classified defense articles to citizens of Australia or the United Kingdom, provided such individuals:

(1) Are dual nationals of another country;

(2) Are authorized users or regular employees of an authorized user of the exemption in § 126.7;

(3) Hold a security clearance approved by Australia, the United Kingdom, or the United States that is equivalent to the classification level of SECRET or above in the United States; and

(4) Are either:

(i) Within the physical territory of Australia, the United Kingdom, or the United States; or

(ii) A member of the armed forces of Australia, the United Kingdom, or the United States acting in their official capacity.

[76 FR 28177, May 16, 2011, as amended at 81 FR 35617, June 3, 2016; 81 FR 62008, Sept. 8, 2016; 81 FR 66807, Sept. 29, 2016; 87 FR 16425, Mar. 23, 2022; 89 FR 67291, Aug. 20, 2024]

Supplement No. 1 to Part 126

[Supplement No. 1*—*An “X” in the chart indicates that the item is excluded from use under the exemption referenced 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.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
I-XXI	Classified defense articles and services. *See* Note 1	X	X	X
I-XXI	Defense articles listed in the Missile Technology Control Regime (MTCR) Annex	X	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	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 §§ 123.15 and 124.11 of this subchapter. *See* Note 17	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 paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement		X	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, where such measures are readily identifiable, made at originating Government direction		X	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	X

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
I-XXI	Defense articles and services specific to sensor fusion beyond that required for display or identification correlation. *See* Note 3		X	X
I-XXI	Defense articles and services specific to the automatic target acquisition or recognition and cueing of multiple autonomous unmanned systems		X	X
I-XXI	Nuclear power generating equipment or propulsion equipment (e.g., nuclear reactors), specifically designed for military use and components therefor, specifically designed for military use. *See* also § 123.20 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 § 120.43(i) of this subchapter, design methodology as defined in § 120.43(c) of this subchapter, engineering analysis as defined in § 120.43(d) of this subchapter, or manufacturing know-how as defined in § 120.43(e) 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	Firearms, close assault weapons, and combat shotguns	X		

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
II(k)	Software source code related to USML Category II(c), II(d), or II(i). *See* Note 4		X	X
II(k)	Manufacturing know-how related to USML Category II(d). *See* Note 5	X	X	X
III	Ammunition for firearms, close assault weapons, and combat shotguns listed in USML Category I	X		
III	Defense articles and services specific to ammunition and fuse setting devices for guns and armament controlled in USML Category II			X
III(e)	Manufacturing know-how related to USML Category III(d)(1) or III(d)(2) and their specially designed components. *See* Note 5	X	X	X
III(e)	Software source code related to USML Category III(d)(1) or III(d)(2). *See*Note 4		X	X
IV	Defense articles and services specific to man-portable air defense systems (MANPADS). *See* Note 6	X	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 the warhead or the sonar, guidance, and control section of torpedoes		X	X
IV	Defense articles and services specific to anti-personnel landmines. *See* Note 15	X	X	X
IV	Defense articles and services specific to cluster munitions	X	X	X
IV(i)	Software source code directly related to defense articles described in USML Category IV(a), (b), (c), or (g). *See* Note 4		X	X
IV(i)	Manufacturing know-how directly related to defense articles described in USML Category IV(a), (b), (d), (g), or (h). *See* Note 5	X	X	X

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
V	The following energetic materials and related substances:			X
	a. TATB (triaminotrinitrobenzene) (CAS 3058-38-6);			
	b. Explosives controlled in USML Category V(a)(38);			
	c. Iron powder (CAS 7439-89-6) with particle size of 3 micrometers or less produced by reduction of iron oxide with hydrogen;			
	d. BOBBA-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)			
V(a)(13)	ANF or ANAzF as described in USML Category V(a)(13)(iii) and (iv)			X
V(a)(23)	Difluoraminated derivative of RDX as described in USML Category V(a)(23)(iii)			X
V(c)(7)	Pyrotechnics and pyrophorics specifically formulated for military purposes to enhance or control radiated energy in any part of the IR spectrum			X
V(d)(3)	Bis-2, 2-dinitropropylnitrate (BDNPN)			X
V(i)	Developmental explosives, propellants, pyrotechnics, fuels, oxidizers, binders, additives, or precursors therefor, funded by the Department of Defense via contract or other funding authorization in accordance with notes 1 to 3 for USML Category V(i). This exclusion does not apply if 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 paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement		X	X

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
VI	Defense articles and services 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 103 K (−170 °C)			X
VI	Defense articles and services 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 and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators which have single-pole normal metal armatures that 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	X
VI(a)	Nuclear powered vessels.	X	X	X
VI(e)	Defense articles and services specific to naval nuclear propulsion equipment. *See* Note 7	X	X	X
VI(g)	Software source code related to USML Category VI(a) or VI(c). *See* Note 4		X	X
VII	Defense articles and services 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 103 K (−170 °C)			X

[Supplement No. 1*—*An “X” in the chart indicates that the item is excluded from use under the exemption referenced 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.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
VII	Defense articles and services 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 and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators which have single-pole normal metal armatures that rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator			X
VIII	Defense articles and services specific to cryogenic equipment, and specially designed components and 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 103 K (−170 °C)			X
VIII	Defense articles and services 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 and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators which have single-pole normal metal armatures that rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator			X
VIII(a)	All USML Category VIII(a) items.	X		
VIII(f)	Developmental aircraft parts, components, accessories, and attachments identified in USML Category VIII(f)	X		

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
VIII(i)	Manufacturing know-how related to USML Category VIII(a) or VIII(e), and specially designed parts or components therefor. *See* Note 5	X	X	X
VIII(i)	Software source code related to USML Category VIII(a) or VIII(e). *See* Note 4		X	X
IX	Training or simulation equipment for Man Portable Air Defense Systems (MANPADS). *See* Note 6		X	X
IX(e)	Software source code related to USML Category IX(a) or IX(b). *See* Note 4		X	X
IX(e)	Software that is both specifically designed or modified for military use and specifically designed or modified for modeling or simulating military operational scenarios			X
X(e)	Manufacturing know-how related to USML Category X(a)(1) or X(a)(2), and specially designed components therefor. *See* Note 5	X	X	X
XI(a), (c), (d)	Defense articles and services specific to countermeasures and counter- countermeasures, other than Underwater Acoustic Decoy Countermeasures (ADC) Mk2 Mods 1 through 7. *See* Note 9		X	X
XI(a)	High Frequency and Phased Array Microwave Radar systems, with capabilities such as search, acquisition, tracking, moving target indication, and imaging radar systems. *See* Note 16		X	
XI(a), (c), and (d)	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10		X	X
XI(a), (c), and (d)	Defense articles and services specific to USML Category XI(b) (e.g., communications security (COMSEC) and TEMPEST)		X	X
XI(d)	Software source code related to USML Category XI(a). *See* Note 4		X	X

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
XI(d)	Manufacturing know-how related to USML Category XI(a)(3) or XI(a)(4), and specially designed components therefor. *See* Note 5	X	X	X
XII	Defense articles and services specific to countermeasures and counter- countermeasures, other than Underwater Acoustic Decoy Countermeasures (ADC) Mk 2 Mods 1 through 7. *See* Note 9		X	X
XII	Defense articles and services specific to USML Category XII(c) articles, except: —2nd-generation image intensification tubes, —2nd-generation image intensification night sighting equipment, and —end-items in paragraph (c) and components in paragraphs (e)(4) through (7) of USML Category XII, and the following technical data directly related thereto: —technical data limited to basic operations, maintenance, and training information as authorized under the exemption in § 125.4(b)(5) of this subchapter for export 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(f)	Technical data and defense services directly related to night vision commodities beyond basic operations, maintenance, and training information, unless pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (2), or (4) of § 126.16 or § 126.17 of this subchapter	X	X	X
XII(f)	Manufacturing know-how directly related to any of the following: —defense articles described in USML Category XII(d), and	X	X	X

[Supplement No. 1*—*An “X” in the chart indicates that the item is excluded from use under the exemption referenced 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.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
	—specially designed parts and components therefor. *See* Note 5			
XII(f)	Software source code directly related to defense articles described in USML Category XII(a), (b), (c), or (d). *See* Note 4		X	X
XIII(b)	Defense articles and services specific to USML Category XIII(b) (Military Information Security Assurance Systems, cryptographic devices, software, and components)		X	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(e)	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(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(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	X
XIII(l)	Software source code related to USML Category XIII(a). *See* Note 4		X	X
XIV	Defense articles and services related to toxicological agents, including chemical agents, biological agents, and associated equipment		X	X
XIV(a), XIV(b), XIV(d),	Chemical agents listed in USML Category XIV(a), (d) and (e), biological agents and biologically derived substances in USML Category XIV(b), and equipment listed in USML Category XIV(f) for	X		

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
XIV(e), XIV(f)	dissemination of the chemical agents and biological agents listed in USML 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	X
XV(b)	Defense articles and services specific to ground control stations for spacecraft telemetry, tracking, and control. Defense articles and services are not excluded under this entry if they do not control the spacecraft. Receivers for receiving satellite transmissions are also not excluded under this entry		X	X
XV(c)	Defense articles and services specific to GPS/PPS security modules		X	X
XV(c)	Defense articles controlled in USML Category 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(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)(1)	Antennas having any of the following:	X		
	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 earth 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			

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
	the antenna (which is the angular distance between half power points of the beam)			
XV(e)(12)	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)(10)	Attitude determination and control 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 parts, components, accessories, attachments, equipment, or systems for USML Category XV(a) items, except when specially designed for use in commercial communications satellites	X		
XV(e)	Defense articles and services specific to spacecraft, ground control station systems (only for spacecraft control as controlled in USML Category XV(b)), subsystems, components, parts, accessories, attachments, and associated equipment controlled in Category XV		X	X
XV(f)	Technical data and defense services directly related to the other defense articles excluded from the exemptions for USML Category XV	X	X	X
XVI	Defense articles and services specific to design and testing of nuclear weapons	X	X	X
XVII	Classified articles, and technical data and defense services relating thereto, not elsewhere enumerated. *See* Note 1	X	X	X
XVIII	Defense articles and services specific to directed energy weapon systems		X	X
XIX(e), XIX(f)(1), XIX(f)(2), XIX(g)	Defense articles and services specific to gas turbine engine hot section components and to Full Authority Digital Engine Control Systems (FADEC) or Digital Electronic Engine Controls (DEEC). *See* Note 8		X	X

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
XIX(g)	Technical data and defense services for gas turbine engine hot sections. (This does not include hardware). *See* Note 8	X	X	X
XX	Defense articles and services related to submersible vessels, oceanographic, and associated equipment	X	X	X
XX	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10		X	X
XX	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 103 K (−170 °C)			X
XX	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 and 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
XX(a)	Nuclear powered vessels.	X	X	X
XX(b)	Defense articles and services specific to naval nuclear propulsion equipment. *See* Note 7	X	X	X
XX(c)	Defense articles and services specific to submarine combat control systems other than mounting racks and cabinets		X	X
XX(d)	Software source code related to USML Category XX(a). *See* Note 4		X	X

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
XXI	Articles, and technical data and defense services relating thereto, not otherwise enumerated on the USML, but placed in this category by the Director, Office of Defense Trade Controls Policy	X	X	X

Note 1: Classified defense articles and services are not eligible for export under the Canadian exemptions. U.S. origin articles, technical data, and services controlled in USML 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:

(a) 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 for Electromagnetic Interference (EM) reduction), technologies, and signature prediction, test and measurement equipment and software, and material transmissivity/reflectivity prediction codes and optimization software.

(b) 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 and services 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

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
end-use identified in paragraph (e)(1), (e)(2), or (e)(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 § 120.43(g) 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 paragraph (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 and services specific to Man Portable Air Defense Systems (MANPADS) includes missiles that 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 consists of technical data that concern 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: A complete gas turbine engine with embedded hot section components or digital engine controls is eligible for export or transfer under the Treaties. Technical data, other than those data required for routine external maintenance and operation, related to the hot section is not eligible for export under the Canadian exemption. Technical data, other than those data required for routine external maintenance and operation, related to the hot section or digital engine controls, as well as individual hot section parts or components are not eligible for the Treaty exemption whether shipped separately or accompanying a complete engine. Gas turbine engine hot section exempted defense article components and technology are 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. Examples of gas turbine engine hot section developmental technologies are Integrated High Performance Turbine Engine Technology (IHPTET), Versatile, Affordable Advanced Turbine Engine (VAATE), and Ultra-Efficient Engine Technology (UEET), which are also excluded from export under the exemptions.				

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
Note 9: Examples of countermeasures and counter-countermeasures related to defense articles not exportable under the AS or UK treaty exemptions are:				
(a) IR countermeasures;				
(b) Classified techniques and capabilities;				
(c) Exports for precision radio frequency (RF) 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 capabilities. Precision RF location is defined as root mean square (RMS) angle of arrival accuracy of less than five degrees (5° RMS) and RF emitter location of less than ten percent (10%) range error;				
(d) Providing the capability to reprogram; and				
(e) Acoustics (including underwater), active and passive countermeasures, and counter-countermeasures other than the Underwater Acoustic Decoy Countermeasures (ADC) Mk 2 Mods 1 through 7.				
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); 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 that 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 USML XI(a)(1), (a)(2), (b), (c), and (d)).				
Note 11: This exclusion does not apply to the platforms (e.g., vehicles) for which the armored plates are applied. For exclusions related to the platforms, refer to the other exclusions in this list, particularly for the category in which the platform is controlled.				
The excluded defense articles include constructions 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 materials 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				

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
other protective garments which may be exported IAW the terms of the AS or UK Treaty.				
Note 12: Defense services or technical data specific to applied research (§ 120.43(i) of this subchapter), design methodology (§ 120.43(c) of this subchapter), engineering analysis (§ 120.43(d) of this subchapter), or manufacturing know-how (§ 120.43(e) of this subchapter) are not eligible for export under the Canadian exemptions. However, this exclusion does not include defense services or technical data specific to build-to-print as defined in § 120.43(f) of this subchapter, build/design-to-specification as defined in § 120.43(g) of this subchapter, or basic research as defined in § 120.43(h) of this subchapter, 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:				
(a) 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 to part 126 of this subchapter and in accordance with § 126.5 of this subchapter; and				
(b) A written arrangement between the U.S. exporter and the Canadian recipient must:				
(1) 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;				
(2) Prohibit the disclosure of the technical data to any other contractor or subcontractor who is not a Canadian-registered person;				
(3) Provide that any subcontract contain all the limitations of § 126.5 of this subchapter;				

[Supplement No. 1*—*An “X” in the chart indicates that the item is excluded from use under the exemption referenced 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.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
(4) 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				
(5) Include a clause requiring that all 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.”				
(c) The U.S. exporter must provide the Directorate of Defense Trade Controls a semi-annual report regarding all of their on-going activities authorized under § 126.5 of this subchapter. 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; and the names and addresses of all the Canadian contractors and subcontractors.				
Note 15: This exclusion does not apply to demining equipment in support of the clearance of landmines and unexploded ordnance for humanitarian purposes.				
As used in this exclusion, “anti-personnel landmine” means any mine placed under, on, or near the ground or other surface area, or delivered by artillery, rocket, mortar, or similar means or dropped from an aircraft and which is designed to be detonated or exploded by the presence, proximity, or contact of a person; any device or material which is designed, constructed, or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act; any manually-emplaced munition or device designed to kill, injure, or damage and which is actuated by remote control or automatically after a lapse of time.				
Note 16: The radar systems described are controlled in USML Category XI(a)(3)(i) through (v). As used in this entry, the term “systems” includes equipment, devices, software, assemblies, modules, components, practices, processes, methods, approaches, schema, frameworks, and models.				
Note 17: This exclusion does not apply to the export of defense articles previously notified to Congress pursuant to § 123.15 or § 124.11 of this subchapter. For use of the				

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USML Category	**Exclusion**	**(CA) § 126.5**	**(AS) § 126.16**	**(UK) § 126.17**
Australian and UK exemptions for congressional notification, see §§ 126.16(o) and 126.17(o).				

[79 FR 77885, Dec. 29, 2014; as amended at 87 FR 16425, Mar. 23, 2022; 88 FR 21911, Apr. 12, 2023]

Supplement No. 2 to Part 126—Excluded Technology List

This supplement lists the defense articles and defense services excluded from the scope of the exemption provided at § 126.7. The United States Munitions List (USML), see 22 CFR 121.1, entries in column 1 represent the location of the excluded defense articles and defense services within the USML and does not indicate the entire USML entry in column 1 is excluded; only the portions of those entries that are further described in column 2 are excluded.

USML entry	Exclusion
I through XV, and XX	Missile Technology Control Regime (MTCR) articles, as annotated on the USML by an “MT” designation, except for articles described in USML Category VIII(h)(12); and directly related technical data and defense services.
I through XX	Articles having anti-tamper features developed in accordance with a U.S. Department of Defense (DoD) Program Protection Plan, not already installed in the commodity they are intended to protect; and directly related technical data and defense services.
II(k), III(e), IV(i), X(e), and XIX(g)	Manufacturing know-how (see § 120.43(e) of this subchapter) directly related to: —articles described in USML Categories II(d), III(d)(1) or (2), IV(a), (b), (d), (g), or (h), X(a)(1) or (2), or XIX; or —parts, components, accessories, or attachments that are only used in those articles.

USML entry	Exclusion
II(j)(9) through (11), and (k)	Articles described in USML Category II(j)(9) through (11) that are not an element of an armament, weapon, or military platform; and directly related technical data and defense services.
III(a)(9) and (e); IV(a)(5) and (6), (b)(2), (c), (g), (h), and (i); VI(f)(6) and (g); VIII(h)(6) and (i); XI(c) and (d); XII(a), (d), (e), and (f); and XX(c) and (d)	Cluster munitions and articles specially designed for cluster munitions; and directly related technical data and defense services.
IV(a)(3), (9), (10), and (11), (b)(2), (h)(5), and (i)	Articles described in USML Category IV(a)(3), (9), (10), or (11), or (h)(5); launcher mechanisms for MANPADS; and directly related technical data and defense services.
V(a)(13)(iii) and (iv), (a)(23)(iii), (d)(3), (i), and (j)	Articles described in USML Category V(a)(13)(iii) or (iv), (a)(23)(iii), or (d)(3); articles, other than propellants, described in USML Category V(i); and directly related technical data and defense services.
VI(e), (f)(5), and (g); and XX(b)(1), (c), and (d)	Articles described in USML Category VI(e) or (f)(5), or XX(b)(1); articles specially designed for articles described in USML Category XX(b)(1); and directly related technical data and defense services.
VIII(a)(2), (h)(1), and (i)	The F-22 aircraft and articles specially designed for the F-22, other than those also used in aircraft other than the F-22; and directly related technical data and defense services.
X(a)(7)(ii), (d)(2) and (3), and (e)	Articles described in USML Category X(a)(7)(ii); articles specially designed therefor; and directly related technical data and defense services.
XI(a)(1)(i) and (ii), and (d)	Articles described in USML Category XI(a)(1)(i) or (ii); and directly related technical data and defense services.
XI(a)(2),(c)(1) through (3), and (d)	Classified articles described in USML Category XI(a)(2), other than underwater acoustic decoy countermeasures; classified articles specially designed therefor; and classified, directly related technical data and defense services.
XI(a)(3)(xviii),(c)(1) through (3), and (d)	Classified articles described in USML Category XI(a)(3)(xviii); classified articles specially

USML entry	Exclusion
	designed therefor; and classified, directly related technical data and defense services.
XI(a)(4)(i),(c)(1) through (3), and (d)	Classified articles described in USML Category XI(a)(4)(i); classified articles specially designed therefor; and classified, directly related technical data and defense services.
XI(a)(4)(iii),(c)(1) through (3), and (d)	Classified countermeasure and counter-countermeasure equipment described in USML Category XI(a)(4)(iii); classified articles specially designed therefor; and classified, directly related technical data and defense services.
XI(a)(5)(iii),(c)(1) through (3) and (18), and (d)	Classified articles described in USML Category XI(a)(5)(iii); classified articles specially designed therefor; and classified, directly related technical data and defense services.
XI(b) and (d)	Classified articles described in USML Category XI(b); and classified, directly related technical data and defense services.
XI(c) and (d)	(1) Articles described in USML Category XI(c) or (d) specially designed for articles described in USML Category XI(a)(1)(i) or (ii); and directly related technical data and defense services. (2) Classified articles described in USML Category XI(c) or (d) that implement countermeasures or counter-countermeasures for defense articles described in USML Category XI(a); and classified, directly related technical data and defense services. (3) Classified articles described in USML Category XI(c) specially designed for articles described in USML Category XIII(b); and classified, directly related technical data and defense services.
XIII(b) and (l)	Classified articles described in USML Category XIII(b); and classified, directly related technical data and defense services.
XIII(d)(2) and (l)	Articles described in USML Category XIII(d)(2); and directly related technical data and defense services.
XIV(a), (b), (c)(5), (f)(1), (i), and (m)	Articles described in USML Category XIV(a), (b), (c)(5), (f)(1), or (i); and directly related technical data and defense services.

USML entry	Exclusion
XV(a), (e), and (f)	Classified articles described in USML Category XV(a) or (e); and classified, directly related technical data and defense services.
XVI	Articles described in USML Category XVI; and directly related technical data and defense services.
XVIII	Classified articles described in USML Category XVIII specially designed for counter-space operations; and classified, directly related technical data and defense services.
XIX(e), (f)(1), (2), (7), and (12), and (g)	(1) Classified articles described in USML Category XIX(e), (f)(1), or (f)(2), not already integrated into a complete engine; and directly related technical data and defense services. (2) Classified articles described in USML Category XIX(f)(7) or (12) for excluded articles described in USML Category XIX(f)(1) or (2); and directly related technical data and defense services.
XX(b)(2), (c), and (d)	Articles described in USML Category XX(b)(2); articles specially designed therefor; and directly related technical data and defense services.
XX(d)	Design methodology, engineering analysis, and manufacturing know-how (see § 120.43 of this subchapter) directly related to: —crewed vessels described in USML Category XX(a); or —articles described in USML Category XX(b) or (c) that are used only in: ○ crewed vessels, ○ classified payloads, or ○ classified Uncrewed Underwater Vehicle (UUV) signature reduction techniques.
XXI	Commodities, software, technical data, and defense services, unless specifically designated as eligible for the exemption provided at § 126.7 in State's written Category XXI determination.

[89 FR 67291, Aug. 20, 2024]

PART 127—VIOLATIONS AND PENALTIES

Authority: Sections 2, 38, and 42, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129; Pub. L. 114-74, 129 Stat. 584.
Source:58 FR 39316, July 22, 1993, unless otherwise noted.

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;

(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; or

(5) To possess or attempt to possess any defense article with intent to export or transfer such defense article in violation of 22 U.S.C. 2778 and 2779, or any regulation, license, approval, or order issued thereunder.

(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 acts pursuant to an exemption under this subchapter is responsible for the acts of employees, agents, brokers, and all authorized persons to whom possession of the defense article, which includes technical data, has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article abroad. All persons abroad subject to U.S. jurisdiction who obtain custody of a defense article exported from the United States or produced under an agreement described in part 124 of this subchapter, and regardless 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 who is ineligible pursuant to § 120.16(c) of this subchapter, or a person with knowledge that another person is ineligible pursuant to § 120.16(c) 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) 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 manner in any transaction subject to this subchapter that may involve any defense article, which includes technical data, defense services, or brokering activities, where such ineligible person may obtain any benefit therefrom or have any direct or indirect interest therein.

(e) No person may knowingly or willfully attempt, solicit, 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, 22 U.S.C. 2779, or any regulation, license, approval, or order issued thereunder.

[77 FR 16641, Mar. 21, 2012, as amended at 78 FR 52688, Aug. 26, 2013; 79 FR 8088, Feb. 11, 2014; 87 FR 16425, Mar. 23, 2022]

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.

(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.

(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 brokering activity regulated by this subchapter.

(14) Any other shipping document that has information related to the export of the defense article or defense service.

[58 FR 39316, July 22, 1993, as amended at 77 FR 16642, Mar. 21, 2012; 78 FR 52689, Aug. 26, 2013]

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).

[77 FR 16642, Mar. 21, 2012]

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.

(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.

[70 FR 50965, Aug. 29, 2005, as amended at 77 FR 16642, Mar. 21, 2012]

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 (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) ***Administrative debarment.*** In implementing section 38 of the Arms Export Control Act, the Assistant Secretary of State for Political-Military Affairs may debar and thereby prohibit any person from participating directly or indirectly in any activities that are subject to this subchapter for any of the reasons listed below. Any such prohibition is referred to as an administrative debarment for purposes of this subchapter. The Assistant Secretary of State for Political-Military Affairs shall determine the appropriate period of time for administrative debarment, which generally shall be for a period of three years. Reinstatement is not automatic, however, and in all cases the debarred persons must submit a request for reinstatement and be approved for reinstatement before engaging in any activities subject to this subchapter. (*See* part 128 of this subchapter for administrative procedures.)

(b) ***Statutory debarment.*** 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 and to prohibit that person from participating directly or indirectly in any activities that are subject to this subchapter. Such individuals shall be notified in writing that they are statutorily 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. Statutory debarment in such cases is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, which established guilt beyond a reasonable doubt in accordance with due process. Reinstatement is not automatic, and in all cases the debarred person must submit a request for reinstatement to the Department of State and be approved for reinstatement before engaging in any activities subject to this subchapter. The procedures of part 128 of this subchapter are not applicable in such cases.

(c) ***Grounds.***

(1) The basis for statutory debarment, as described in paragraph (b) of this section, is any conviction for violating the Arms Export Control Act (*see* § 127.3) or any conspiracy to violate the Arms Export Control Act.

(2) The basis for administrative debarment, as described in paragraph (a) of this section and 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.

(d) ***Appeals.*** Any person who is ineligible pursuant to paragraph (b) 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.

[78 FR 52689, Aug. 26, 2013, as amended at 81 FR 87430, Dec. 5, 2016]

127.8 [Reserved]

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 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.

[78 FR 52689, Aug. 26, 2013]

127.10 Civil penalty.

(a)

(1) The Assistant Secretary of State for Political-Military Affairs is authorized to impose a civil penalty, as follows:

(i) For each violation of 22 U.S.C. 2778, an amount not to exceed the greater of $1,271,078 or the amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed;

(ii) For each violation of 22 U.S.C. 2779a, an amount not to exceed $1,055.721, or five times the amount of the prohibited incentive payment, whichever is greater; and

(iii) For each violation of 22 U.S.C. 2780, an amount not to exceed $1,256,607.

(2) The 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; 77 FR 16642, Mar. 21, 2012; 81 FR 36793, June 8, 2016; 82 FR 3170, Jan. 11, 2017; 83 FR 237, Jan. 3, 2018; 83 FR 2738, Jan. 19, 2018; 84 FR 9959, Mar. 19, 2019; 85 FR 2022, Jan. 14, 2020; 86 FR 7807, Feb. 2, 2021; 87 FR 1074, Jan. 10, 2022; 88 FR 1507, Jan. 11, 2023; 89 FR 702, Jan. 5, 2024; 90 FR 1868, Jan. 10, 2025]

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 § 120.6 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 Deputy Assistant Secretary of State for 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(b) (statutory debarment) may not utilize the procedures provided by paragraph (b) of this section while the statutory debarment is in force. Such persons may utilize only the procedures provided by § 127.7(d).

[71 FR 20550, Apr. 21, 2006, as amended at 79 FR 8088, Feb. 11, 2014; 81 FR 87430, Dec. 5, 2016; 87 FR 16425, Mar. 23, 2022]

127.12 Voluntary disclosures.

(a) ***General policy.*** The Department strongly encourages the disclosure of information to the Directorate of Defense Trade Controls by persons that believe they may have violated any export control provision of the Arms Export Control Act, or any regulation, 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 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 subchapterconcerning 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 paragraph (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 § 120.67 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 paragraph (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 § 120.67 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.

[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; 77 FR 16642, Mar. 21, 2012; 87 FR 16425, Mar. 23, 2022]

PART 128—ADMINISTRATIVE PROCEDURES

Authority: Sections. 2, 38, 40, 42, and 71, Arms Export Control Act. 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; E.O. 12291, 46 FR 1981; E.O. 13637, 78 FR 16129.
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 (AECA) 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. Pursuant to delegated authorities, the Secretary of State is authorized to make decisions on whether license applications or other written requests for approval shall be granted, or whether exemptions may be used. The Secretary of State is also authorized to revoke, suspend, or amend licenses or other written approvals whenever such action is deemed to be advisable. The administration of the AECA 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 AECA, is highly discretionary, it is excluded from review under the Administrative Procedure Act.

[87 FR 16425, Mar. 23, 2022]

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 §§ 128.3through 128.16.

[87 FR 16425, Mar. 23, 2022]

128.3 Institution of Administrative Proceedings.

(a) ***Charging letters.*** The Deputy Assistant Secretary of State for Defense Trade Controls or the Director, Office of Defense Trade Controls Compliance, 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 provision 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 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; 78 FR 52689, Aug. 26, 2013]

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 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 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 paragraph (b) of this section shall be in duplicate and mailed or delivered to the designated Administrative Law Judge. A copy shall be simultaneously mailed to the Deputy Assistant Secretary of State for Defense Trade Controls, SA-1, Room 1200, Department of State, Washington, DC 20522-0112, or delivered to 2401 Street NW., Washington, DC addressed to the Deputy Assistant Secretary of State for 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; 79 FR 8089, Feb. 11, 2014]

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 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 Prehearing 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 prehearing conference to consider:

(i) Simplification of issues;

(ii) The necessity or desirability of amendments to pleadings;

(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 Deputy Assistant Secretary of State for 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 Deputy Assistant Secretary of State for Defense Trade Controls 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.

[79 FR 8089, Feb. 11, 2014]

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 Deputy Assistant Secretary of State for 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 the Deputy Assistant Secretary of State for 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; 79 FR 8089, Feb. 11, 2014]

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 order may set a probationary period during which the order may be held in abeyance for all or part of the debarment period, subject to the conditions stated therein. The Deputy Assistant Secretary of State for 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; 78 FR 52689, Aug. 26, 2013; 79 FR 8089, Feb. 11, 2014]

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, and orders imposing civil penalties and probationary periods are available for public inspection in the Public Reading Room of the Department of State.

[78 FR 52690, Aug. 26, 2013]

PART 129—REGISTRATION AND LICENSING OF BROKERS

Authority: Section 38, Pub. L. 104-164, 110 Stat. 1437, (22 U.S.C. 2778); E.O. 13637, 78 FR 16129.
Source:62 FR 67276, Dec. 24, 1997, unless otherwise noted.

129.1 Purpose.

(a) 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.

(b) All brokering activities identified in this subchapter apply equally to those defense articles and defense services designated in § 121.1 of this subchapter and those items designated in 27 CFR 447.21 (U.S. Munitions Import List).

[78 FR 52690, Aug. 26, 2013, as amended at 85 FR 3833, Jan. 23, 2020]

129.2 Definitions.

As used in this part:

(a) ***Broker*** means any person (*see* § 120.61 of this subchapter) described below who engages in the business of brokering activities:

(1) Any U.S. person (see § 120.62 of this subchapter) wherever located;

(2) Any foreign person (see § 120.63 of this subchapter) located in the United States; or

(3) Any foreign person located outside the United States where the foreign person is owned or controlled by a U.S. person.

Note to paragraph (a)(3):

For purposes of this paragraph, “owned by a U.S. person” means more than 50 percent of the outstanding voting securities of the firm are owned by a U.S. person, and “controlled by a U.S. person” means one or more U.S. persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. U.S. person control is rebuttably presumed to exist where U.S. persons own 25 percent

or more of the outstanding voting securities unless one foreign person controls an equal or larger percentage.

(b) ***Brokering activities*** means any action on behalf of another to facilitate the manufacture, export, permanent import, transfer, reexport, or retransfer of a U.S. or foreign defense article or defense service, regardless of its origin.

(1) Such action includes, but is not limited to:

(i) Financing, insuring, transporting, or freight forwarding defense articles and defense services; or

(ii) Soliciting, promoting, negotiating, contracting for, arranging, or otherwise assisting in the purchase, sale, transfer, loan, or lease of a defense article or defense service.

(2) Such action does not include:

(i) Activities by a U.S. person in the United States that are limited exclusively to U.S. domestic sales or transfers (e.g., not for export);

(ii) Activities by employees of the U.S. Government acting in an official capacity;

(iii) Activities by regular employees (see § 120.64 of this subchapter) acting on behalf of their employer, including those regular employees who are dual nationals or third-country nationals that satisfy the requirements of § 126.18 of this subchapter;

Note to paragraph (b)(2)(iii):

The exclusion does not apply to persons subject to U.S. jurisdiction with respect to activities involving a defense article or defense service originating in or destined for any proscribed country, area, or person identified in § 126.1 of this subchapter.

(iv) Activities that do not extend beyond administrative services, such as providing or arranging office space and equipment, hospitality, advertising, or clerical, visa, or translation services, collecting product and pricing information to prepare a response to Request for Proposal, generally promoting company goodwill at trade shows, or activities by an attorney that do not extend beyond the provision of legal advice to clients;

(v) Activities performed by an affiliate, as defined in § 120.66 of this subchapter, on behalf of another affiliate;

(vi) Activities by persons, including their regular employees (see § 120.64 of this subchapter), that do not extend beyond acting as an end-user of a defense article

or defense service exported pursuant to a license or other approval under part 123, 124, or 125 of this subchapter, or subsequently acting as a reexporter or retransferor of such article or service under such license or other approval, or under an approval pursuant to § 123.9 of this subchapter;

(vii) Activities by persons to facilitate the manufacture in the United States or export of an item subject to the EAR; or

(viii) Activities by persons to facilitate the reexport, or transfer of an item subject to the EAR that has been approved pursuant to a license, license exception, or no license required authorization under the EAR or a license or other approval under this subchapter.

(c) For the purposes of this subchapter, engaging in the business of brokering activities requires only one occasion of brokering as described in paragraph (b) of this section.

[78 FR 52690, Aug. 26, 2013, as amended at 85 FR 3833, Jan. 23, 2020; 87 FR 16425, Mar. 23, 2022]

129.3 Requirement to register.

(a) Except as provided in paragraph (b) of this section, any person who engages in brokering activities (*see* § 129.2) is required to register with the Directorate of Defense Trade Controls. Registration under this section is generally a precondition for the issuance of approval for brokering activities required under this part 129 or the use of exemptions.

(b) ***Exemptions.*** Registration, approval, recordkeeping, and reporting under this section are not required for:

(1) Foreign governments or international organizations, including their employees, acting in an official capacity; or

(2) Persons exclusively in the business of financing, insuring, transporting, customs brokering, or freight forwarding, whose activities do not extend beyond financing, insuring, transporting, customs brokering, or freight forwarding. Examples include air carriers or freight forwarders that merely transport or arrange transportation for licensed defense articles, and banks or credit companies who merely provide commercially available lines or letters of credit to persons registered or required to register in accordance with parts 122 or 129 of this subchapter. However, banks, firms, or other persons providing financing for defense articles or defense services are required to register under certain circumstances, such as when the bank or its employees are directly involved in arranging transactions involving defense articles or defense services or hold title to defense articles, even when no physical custody

of defense articles is involved. In such circumstances, the banks, firms, or other persons providing financing for defense articles or defense services are not exempt.

(c) Persons exempt from registration, approval, recordkeeping, and reporting as provided in § 129.3(b) are subject to the policy on embargoes and other proscriptions as outlined in § 129.7.

(d) U.S. persons who are registered as a manufacturer or exporter in accordance with part 122 of this subchapter, including their U.S. or foreign subsidiaries and other affiliates listed on their Statement of Registration who are required to register under this part, are not required to submit a separate broker registration or pay a separate broker registration fee when more than 50 percent of the voting securities are owned by the registrant or such subsidiaries and affiliates are otherwise controlled by the registrant (see § 120.66 of this subchapter), and they are listed and identified as brokers within their manufacturer or exporter Statement of Registration. All other requirements of this part apply to such brokers and their brokering activities.

(e) Registration under this section is a precondition for the issuance of approval for brokering activities required under this section or the use of exemptions, unless an exception is granted by the Directorate of Defense Trade Controls.

[78 FR 52690, Aug. 26, 2013, as amended at 87 FR 16426, Mar. 23, 2022]

129.4 Requirement for approval.

(a) Except as provided in § 129.5, no person who is required to register as a broker pursuant to § 129.3 of this subchapter may engage in the business of brokering activities pursuant to § 129.2(b) without first obtaining the approval of the Directorate of Defense Trade Controls for the brokering of any of the following:

(1) Any foreign defense article or defense service enumerated in part 121 of this subchapter (see § 120.39 of this subchapter, and § 129.5 for exemptions) and those foreign origin items on the U.S. Munitions Import List (*see* 27 CFR 447.21); or

(2) Any of the following U.S. origin defense articles or defense services:

(i) Firearms and other weapons of a nature described by Category I(a) through (d), Category II(a) and (d), and Category III(a) of § 121.1 of this subchapter or Category I(a) through (c), Category II(a), and Category III(a) of the U.S. Munitions Import List (*see* 27 CFR 447.21);

(ii) Rockets, bombs, and grenades as well as launchers for such defense articles of a nature described by Category IV(a), and launch vehicles and missile and anti-missile systems of a nature described by Category IV(b) of § 121.1 of this subchapter (including man-portable air-defense systems);

(iii) Vessels of war described by Category VI of § 121.1 of this subchapter;

(iv) Tanks and military vehicles described by Category VII of § 121.1 of this subchapter;

(v) Aircraft and unmanned aerial vehicles described by Category VIII of § 121.1 of this subchapter;

(vi) Night vision-related defense articles and inertial platform, sensor, and guidance-related systems of a nature described by Category XII(c) and (d) of § 121.1 of this subchapter;

(vii) Chemical agents and precursors described by Category XIV(a), (c), and (e) of § 121.1 of this subchapter, biological agents and biologically derived substances described by Category XIV(b) of § 121.1 of this subchapter, and equipment described by Category XIV(f) of § 121.1 of this subchapter for dissemination of the chemical agents and biological agents described by Category XIV(a), (b), and (e) of § 121.1 of this subchapter;

(viii) Submersible vessels described by Category XX of § 121.1 of this subchapter; and

(ix) Miscellaneous articles of a nature described by Category XXI of § 121.1 of this subchapter.

(b) [Reserved]

[78 FR 52691, Aug. 26, 2013, as amended at 85 FR 3833, Jan 23, 2020; 87 FR 16426, Mar. 23, 2022]

129.5 Exemption from requirement for approval.

(a) Unless paragraph (c) of this section applies, brokering activities undertaken for an agency of the U.S. Government pursuant to a contract between the broker and that agency are exempt from the requirement for approval provided that:

(1) The brokering activities concern defense articles or defense services solely for the use of the agency; or

(2) The brokering activities are undertaken for carrying out a foreign assistance or sales program authorized by law and subject to control by the President by other means, as demonstrated by one of the following conditions being met:

(i) The U.S. Government agency contract with the broker contains an explicit provision stating the contract supports a foreign assistance or sales program authorized by law and the contracting agency has established control of the activity

covered by the contract by other means equivalent to that established under this subchapter; or

(ii) The Directorate of Defense Trade Controls provides written concurrence in advance that the condition is met.

(b) Unless paragraph (c) of this section applies, brokering activities regarding a foreign defense article or defense service (see § 120.39 of this subchapter) are exempt from the requirement for approval when 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 § 129.4(a)(2), for which approval is required.

(c) Brokers engaging in brokering activities described in paragraph (a) or (b) of this section are not exempt from obtaining approval from the Directorate of Defense Trade Controls if:

(1) The broker is not registered as required by § 129.3;

(2) The broker or any person who has a direct or indirect interest in or may benefit from the brokering activities, including any related defense article or defense service transaction, is ineligible as defined in § 120.16(c) of this subchapter; or

(3) A country or person referred to in § 126.1 of this subchapter is involved in the brokering activities or such activities are otherwise subject to § 129.7.

(d) Brokers who use the exemptions in this section must comply with all other provisions of this part 129.

[78 FR 52691, Aug. 26, 2013, as amended at 87 FR 16426, Mar. 23, 2022]

129.6 Procedures for obtaining approval.

(a) All requests for approval of brokering activities must be made to the Directorate of Defense Trade Controls, be signed by an empowered official, and include the following information:

(1) The applicant's name, address and registration code;

(2) A certification on whether:

(i) The applicant or the chief executive officer, president, vice presidents, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel), or any member of the board of directors is the subject of an indictment or has been otherwise charged (e.g., by criminal information in lieu of

indictment) for, or has been convicted of, violating any of the U.S. criminal statutes enumerated in § 120.6 of this subchapter;

(ii) The applicant or the chief executive officer, president, vice presidents, secretary, partner, member, 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; and

(iii) To the best of the applicant's knowledge, any other person involved in the brokering activities enumerated in the request for approval as defined in § 129.2 is the subject of an indictment or has been otherwise charged (e.g., charged by criminal information in lieu of indictment) for or has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.6 of this subchapter, 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.

(b) The request for approval shall describe fully the brokering activities that will be undertaken, including:

(1) The action to be taken by the applicant to facilitate the manufacture, export, import, or transfer of a defense article or defense service (which may be referred to as a “defense article or defense service transaction”);

(2) The name, nationality, address, and place of business of all persons who may participate in the brokering activities;

(3) A description of each defense article or defense service that may be involved, including:

(i) The U.S. Munitions List (*see* § 121.1 of this subchapter) or U.S. Munitions Import List (*see* 27 CFR 447.21) category and sub-category for each article;

(ii) The name or military nomenclature of each defense article;

(iii) Whether the defense article is significant military equipment;

(iv) Estimated quantity of each defense article;

(v) Estimated U.S. dollar value of defense articles and defense services;

(vi) Security classification; and

(vii) End-user and end-use; and

(4) A statement whether the brokering activities are related to a sale through direct commercial sale or under the U.S. Foreign Military Sales program or other activity in support of the U.S. Government.

(c) The empowered official signing the request for approval shall include a certification that the request is complete and accurate.

(d) If at the time of submission certain information required by paragraph (b) of this section is not yet available, this fact must be stated and explained in the certification required by paragraph (c) of this section. The Directorate of Defense Trade Controls will take any such explanation into account in deciding whether to approve the request.

(e) The period of validity for an approval may not exceed four years.

[78 FR 52691, Aug. 26, 2013, as amended at 85 FR 3833, Jan. 23, 2020; 87 FR 16426, Mar. 23, 2022]

129.7 Policy on embargoes and other proscriptions.

(a) This section applies to brokering activities defined in § 129.2, regardless of whether the person involved in such activities has registered or is exempt from registration under § 129.3. The exemptions in § 129.5 from the requirement for approval are not applicable to brokering activities subject to this section.

(b) No person may engage in or make a proposal to engage in brokering activities that involve any country, area, or person referred to in § 126.1 of this subchapter without first obtaining the approval of the Directorate of Defense Trade Controls.

(c) No person may engage in or make a proposal to engage in brokering activities without first obtaining approval of the Directorate of Defense Trade Controls if such activities involve countries or persons identified by the Department of State through notice in the Federal Register, with respect to which certain limitations on defense articles or defense services are imposed for reasons of U.S. national security, foreign policy, or law enforcement interests (e.g., an individual subject to debarment pursuant to § 127.7 of this subchapter). (*See* § 127.1(c) of this subchapter for additional disclosure and approval requirements applicable to brokering activities.)

(d) It is the policy of the Department of State to deny requests for approval of brokering activities or proposals to engage in brokering activities involving the countries or persons referred to in paragraph (b) or (c) of this section. 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.

[78 FR 52692, Aug. 26, 2013]

129.8 Submission of Statement of Registration, registration fees, and notification of changes in information furnished by registrants.

(a) An intended registrant must submit a Department of State form DS-2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by following the submission guidelines available on the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov*. The Statement of Registration must be signed by a U.S. person 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, with the exception that a foreign senior officer may sign the Statement of Registration if the intended registrant seeks only to register as a foreign broker. The Statement of Registration may include subsidiaries and affiliates when more than 50 percent of the voting securities are owned by the registrant or the subsidiaries and affiliates are otherwise controlled by the registrant (see § 120.66 of this subchapter). 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 (form DS-2032) is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package.

(b)

(1) ***Frequency of registration and fee.*** A person who is required to register must do so on an annual basis by submitting a completed Statement of Registration (form DS-2032) and the Tier 1 fee specified in § 122.3(a)(1) of this subchapter, regardless of how many favorable determinations the person received during the 12-month period ending 90 days prior to the expiration of their current registration. Registrants are not required to submit a separate statement of registration and pay an additional fee when provisions in § 129.3(d) are met.

(2) ***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.

(3) ***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 brokering defense articles or defense services.

(c) ***Statement of Registration Certification.*** The Statement of Registration (form DS-2032) of the intended registrant shall include a certification by an authorized senior officer of the following:

(1) Whether the intended registrant or its parent, subsidiary, or other affiliate listed in the Statement of Registration, or any of its chief executive officers, presidents, vice presidents, secretaries, partners, members, other senior officers or officials (e.g., comptroller, treasurer, general counsel), or any member of the board of directors of the intended registrant, or of any parent, subsidiary, or other affiliate listed in the Statement of Registration:

(i) Has ever been indicted or otherwise charged (e.g., charged by criminal information in lieu of indictment) for or has been convicted of violating any U.S. criminal statutes enumerated in § 120.6 of this subchapter or violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than 1 year; 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; and

(2) Whether the intended registrant is foreign owned or foreign controlled (see § 120.65 of this subchapter). If the intended registrant is foreign owned or foreign controlled, the certification shall include an explanation of such ownership or control, including the identities of the foreign person or persons who ultimately own or control the registrant. This requirement applies to a registrant who is a U.S. person and is owned or controlled by a foreign person. It also applies to a registrant who is a foreign person and is owned or controlled by a foreign person from the same country or a foreign person from another country.

(d) A registrant must, within five days of the event, provide to the Directorate of Defense Trade Controls a written notification, signed by a senior officer (e.g., chief executive officer, president, secretary, partner, member, treasurer, general counsel), if:

(1) Any of the persons referred to in § 129.8(c) is indicted or otherwise charged (e.g., charged by criminal information in lieu of indictment) for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.6 of this subchapter or violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than 1 year; or becomes ineligible to contract with, or to receive a license or other approval to export or import defense articles or defense services from, any agency of the U.S.Government; or

(2) There is a change in the following information contained in the Statement of Registration (form DS-2032):

(i) Registrant's name;

(ii) Registrant's address;

(iii) Registrant's legal organization structure;

(iv) Ownership or control;

(v) The establishment, acquisition or divestment of a U.S. or foreign subsidiary or other affiliate who is engaged in brokering activities or otherwise required to be listed in registrant's Statement of Registration; or

(vi) Board of directors, senior officers, partners and owners.

Note 1 to paragraph (d):

All other changes in the Statement of Registration must be provided as part of annual registration renewal.

Note 2 to paragraph (d):

For one year from October 25, 2013, “Amendment to the International Traffic in Arms Regulations: Registration and Licensing of Brokers, Brokering Activities, and Related Provisions,” RIN 1400-AC37, the following changes must be provided as part of the annual registration renewal: pursuant to § 129.3(d), changes to combine an existing broker registration with an existing manufacturer/exporter registration, and pursuant to § 129.8(a), changes to an existing registration to remove partially owned and not otherwise controlled subsidiaries or affiliates, which are not the subject of an internal reorganization, merger, acquisition, or divestiture.

(e) A U.S. or foreign registrant must provide written notification to the Directorate of Defense Trade Controls at least sixty (60) days in advance of any intended sale or transfer to a foreign person of ownership or control of the registrant or any parent, subsidiary, or other affiliate listed and covered in its Statement of Registration. Such notice does not relieve the registrant from obtaining any prior approval required under this subchapter.

(f) 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;

(2) The registration number that will continue and those that are to be discontinued (if any); and

(3) The numbers of all approvals for brokering activities under the continuing registration number, since any approval not the subject of notification will be considered invalid.

(g) A registrant whose registration lapses because of failure to renew 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 brokering activities.

[78 FR 52692, Aug. 26, 2013, as amended at 87 FR 16426, Mar. 23, 2022; 89 FR 99085, Dec. 10, 2024]

129.9 Guidance.

(a) Any person desiring guidance on whether an activity constitutes a brokering activity within the scope of this part 129 may request in writing guidance from the Directorate of Defense Trade Controls. The request for guidance shall identify the applicant and registrant code (if applicable) and describe fully the activities that will be undertaken, including:

(1) The specific activities to be undertaken by the applicant and any other U.S. or foreign person;

(2) The name, nationality, and geographic location of all U.S. and foreign persons who may participate in the activities;

(3) A description of each defense article or defense service that may be involved, including:

(i) The U.S. Munitions List category and sub-category for each article;

(ii) The name or military nomenclature of each defense article;

(iii) Whether the defense article is significant military equipment;

(iv) Estimated quantity of each defense article;

(v) Estimated U.S. dollar value of defense articles and defense services; and

(vi) Security classification;

(4) End-user and end-use; and

(5) A copy of any agreement or documentation, if available, between or among the requester and other persons who will be involved in the activity or related transactions that describes the activity to be taken by such persons.

(b) If at the time of submission certain information is not yet available, this circumstance must be stated and explained. The Directorate of Defense Trade Controls will take the completeness of the information into account in providing guidance on whether the activities constitute brokering activities. The guidance will constitute an official determination by the Department of State. The guidance shall not substitute for approval when required under § 129.4.

(c) Persons desiring guidance on other aspects of this part may also request guidance from the Directorate of Defense Trade Controls in a similar manner by submitting a description of the relevant facts or copies of relevant documentation.

[78 FR 52693, Aug. 26, 2013]

129.10 Reports.

(a) Any person required to register under this part (including those registered in accordance with § 129.3(d)) shall provide to the Directorate of Defense Trade Controls on an annual basis a report of its brokering activities in the previous twelve months. Such report shall be submitted along with the registrant's annual renewal submission or, if not renewing, within 30 days after expiration of registration.

(b) The report shall include brokering activities that received or were exempt from approval as follows:

(1) The report shall identify the broker's name, address, and registration code and be signed by an empowered official who shall certify that the report is complete and accurate. The report shall describe each of the brokering activities, including the number assigned by the Directorate of Defense Trade Controls to the approval or the exemption claimed; and

(2) For each of the brokering activities, the report shall identify all persons who participated in the activities, including each person's name, address, nationality, and country where located and role or function; the quantity, description, and U.S. dollar value of the defense articles or defense services; the type and U.S. dollar value of any consideration received or expected to be received, directly or indirectly, by any person who participated in the brokering activities, and the source thereof.

(c) If there were no brokering activities, the report shall certify that there were no such activities.

[78 FR 52694, Aug. 26, 2013]

129.11 Maintenance of brokering records by registrants.

A person who is required to register pursuant to this part (including those registered in accordance with § 129.3(d)) must maintain records concerning brokering activities in accordance with § 122.5 of this subchapter.

[78 FR 52694, Aug. 26, 2013]

PART 130—POLITICAL CONTRIBUTIONS, FEES AND COMMISSIONS

Authority: Sec. 39, Pub. L. 94-329, 90 Stat. 767 (22 U.S.C. 2779); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.
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, reexport, or retransfer 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.

[81 FR 62008, Sept. 8, 2016]

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 §§ 120.31 and 120.32 of this subchapter apply.

[58 FR 39323, July 22, 1993, as amended at 87 FR 16426, Mar. 23, 2022]

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.

[58 FR 39323, July 22, 1993, as amended at 71 FR 20554, 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 § 120.45 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; 79 FR 61236, Oct. 10, 2014]

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 Director of the Office of Defense Trade Controls Licensing 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; 79 FR 8089, Feb. 11, 2014]

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, 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 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 § 130.10with 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 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.

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]