ITAR PRACTITIONER’S HANDBOOK

2015 Second Edition

Current through 80 FR 37974, July 2, 2015

Includes:

Codified International Traffic in Arms Regulations
Commerce Control List 600 Series
Summary of ITAR and EAR Exemptions
Primer for Export Controls Compliance
and more
FOREWORD

SCOPE AND USE OF THIS HANDBOOK

This publication of the International Traffic in Arms Regulations (ITAR) is intended to be a convenient reference guide for the reader. The official versions of the regulations contained herein are set forth in the annual printings of Title 22 of the Code of Federal Regulations (CFR), as amended in the Federal Register (FR). This publication was taken from the Electronic Code of Federal Regulations (e-CFR) published by the U.S. Government Printing Office. This publication contains changes to the ITAR through Federal Register Notice Volume 80, Number 127, July 2, 2015 (80 FR 30615), concerning corrections and updates to the United States Munitions List (USML) for Category XI. This publication also includes changes due to Export Control Reform (ECR). The first five rules of ECR have been incorporated and are effective at this time.

The tables of contents, Editorial Notes and appendices have been added to this publication for the reader’s convenience and reference. This Handbook includes an index of export controls acronyms, an index and summary of license exemptions provided for in the ITAR, a DDTC phone directory, DDTC license processing times table, a list of DTrade country codes, and a primer on the ITAR that covers:

- Getting started with the ITAR
- Determining the export jurisdiction and classification for products and technology
- Export licensing under the ITAR
- Employment of foreign persons
- Technical collaboration with foreign persons
- Essential elements of compliance programs
- Penalties

In addition, this publication contains an appendix with the new 600 series Groups A and E of the Export Administration Regulations (EAR). The appendix gives a basic understanding of how the 600-Series hardware and technology have moved from the USML to the Commerce Control List (CCL) and is not intended to be a complete listing of all items that have moved over. This publication contains changes to the EAR 600-Series through Federal Register Notice Volume 80, Number 133, July 13, 2015 (80 FR 39950), concerning corrections and updates to the ECCN 3A611, 9A5154 and 9E515.

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ACKNOWLEDGEMENTS

This Handbook is the result of efforts by the many of us at Squire Patton Boggs, but we particularly wish to acknowledge the extensive contributions of the following:

Kevin A. Hoppin        Christopher H. Skinner

We hope you find this publication useful,

George N. Grammas
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<tr>
<td>of ground vehicles and related commodities in 0A606, 0B606, 0C606,</td>
<td></td>
</tr>
<tr>
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</tr>
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<td>0E617 “Technology” “required” for the “development,” “production,”</td>
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<tr>
<td>operation, installation, maintenance, repair, overhaul, or refurbishing</td>
<td></td>
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<tr>
<td>of commodities controlled by ECCN 0A617, “equipment controlled by</td>
<td></td>
</tr>
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<td>1A613 Armored and protective “equipment” and related commodities, as</td>
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</tr>
<tr>
<td>operation, installation, maintenance, repair, overhaul, or refurbishing</td>
<td></td>
</tr>
<tr>
<td>of commodities controlled by 1A613 or 1B613 or “software” controlled</td>
<td></td>
</tr>
<tr>
<td>by 1D613, as follows (see list of items controlled)</td>
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<tr>
<td>operation, installation, maintenance, repair, overhaul, or refurbishing</td>
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<td>8A620</td>
<td>Submersible vessels, oceanographic and associated commodities (see List of Items Controlled)</td>
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<tr>
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<td>“Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 8A620 or 8B620, or “software” controlled by 8D620 (see List of Items Controlled)</td>
</tr>
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<td>9A515</td>
<td>“Spacecraft” and related commodities, as follows (see List of Items Controlled)</td>
</tr>
<tr>
<td>9E515</td>
<td>“Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of “spacecraft” and related commodities, as follows (see List of Items Controlled)</td>
</tr>
<tr>
<td>9A604</td>
<td>Commodities related to launch vehicles, missiles, and rockets (see list of items controlled)</td>
</tr>
<tr>
<td>9E604</td>
<td>“Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 9A604 or 9B604, or “software” controlled by ECCN 9D604</td>
</tr>
<tr>
<td>9A610</td>
<td>Military aircraft and related commodities, other than those enumerated in 9A991.a (see List of Items Controlled)</td>
</tr>
<tr>
<td>9E610</td>
<td>Technology “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of military aircraft and related commodities controlled by 9A610, equipment controlled by 9B610, materials controlled by 9C610, or software controlled by 9D610 (see List of Items Controlled)</td>
</tr>
<tr>
<td>9A619</td>
<td>Military gas turbine engines and related commodities (see List of Items Controlled)</td>
</tr>
<tr>
<td>9E619</td>
<td>“Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of military gas turbine engines and related commodities controlled by 9A619, equipment controlled by 9B619, materials controlled by 9C619, or software controlled by 9D619 (see List of Items Controlled)</td>
</tr>
<tr>
<td>9A620</td>
<td>Cryogenic and “superconductive” equipment, as follows (see list of items controlled)</td>
</tr>
<tr>
<td>9E620</td>
<td>Technology &quot;required&quot; for cryogenic and &quot;superconductive&quot; equipment, as follows (see List of Items Controlled).</td>
</tr>
<tr>
<td></td>
<td>ANNEX G DTrade Country Codes</td>
</tr>
</tbody>
</table>
§ 120.1 General authorities, receipt of licenses, and ineligibility.

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778), as amended, authorizes the President to control the export and import of defense articles and defense services. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services 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.). By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Deputy Assistant Secretary of State for Defense Trade Controls, Bureau of Political-Military Affairs.

(b)(1) Authorized officials. 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 parts 120, 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 that portion under 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 parts 120 and 126 of this subchapter, and the commodity jurisdiction procedure under part 120 of this subchapter.

(c) Receipt of licenses and eligibility.

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

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

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

(iii) A foreign person may receive a prior approval for brokering activities.

A request for a license or other approval by a U.S. person or by a person referred to in paragraphs (c)(1)(i) and (c)(1)(ii) of this section will be considered only if the applicant has registered with the Directorate of Defense Trade Controls pursuant to part 122 or 129 of this subchapter, as appropriate.

(2) Persons who have been convicted of violating the U.S. criminal statutes enumerated in §120.27, 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 §120.27, who are ineligible to contract with or to receive a license or other form of authorization to import defense articles or defense services from any agency of the U.S. Government, who are ineligible to receive an export license or other approval from any other agency of the U.S. Government, or who are subject to a Department
of State policy of denial, suspension, or revocation under §126.7(a) of this subchapter, are generally ineligible to be involved in activities regulated under the subchapter.

(d) The exemptions provided in this subchapter do not apply to transactions in which the exporter, any party to the export (see §126.7(e) of this subchapter), any source or manufacturer, broker or other participant in the brokering activities, is generally ineligible as set forth in paragraph (c)(2) of this section, unless prior written authorization has been granted by the Directorate of Defense Trade Controls.


§ 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 specified in part 121 of this subchapter. Defense articles on the U.S. Munitions List 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 are made by the Department of State with the concurrence of the Department of Defense. The scope of the U.S. Munitions List shall be changed only by amendments made pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778). For a designation or determination on whether a particular item is enumerated on the U.S. Munitions List, see §120.4 of this subchapter.

[78 FR 22752, Apr. 16, 2013]

§ 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 §120.6 of this subchapter) or defense service (see §120.9 of this subchapter) if it:

(1) Meets the criteria of a defense article or defense service on the U.S. Munitions List; or

(2) Provides the equivalent performance capabilities of a defense article on the U.S. Munitions List.

(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 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 U.S. Munitions List, will be placed in U.S. Munitions List Category XXI until the appropriate U.S. Munitions List category 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 of this subchapter) pursuant to a commodity jurisdiction determination (see §120.4 of this subchapter) unless superseded by changes to the U.S. Munitions List or by a subsequent commodity jurisdiction determination; or

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

NOTE 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.

[78 FR 22753, Apr. 16, 2013]
§ 120.4 Commodity jurisdiction.

(a) The commodity jurisdiction procedure is used with the U.S. Government if doubt exists as to whether an article or service is covered by the U.S. Munitions List. It may also be used for consideration of a redesignation of an article or service currently covered by the U.S. Munitions List. The Department must provide notice to Congress at least 30 days before any item is removed from the U.S. Munitions List. Upon electronic submission of a Commodity Jurisdiction (CJ) Determination Form (Form DS-4076), the Directorate of Defense Trade Controls shall provide a determination of whether a particular article or service is covered by the U.S. Munitions List. The determination, consistent with §§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.

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

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

(d)(1) [Reserved]

(2) A designation 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 set forth in this subchapter, is made on a case-by-case basis by the Department of State, taking into account:

(i) The form and fit of the article; and

(ii) The function and performance capability of the article.

(3) A designation that an article or service has a critical military or intelligence advantage such that it warrants control under this subchapter is made, on a case-by-case basis, by the Department of State, taking into account:

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

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

NOTE 1 TO PARAGRAPH (d): The form of a commodity is defined by its configuration (including the geometrically measured configuration), material, and material properties that uniquely characterize it. The fit of a commodity is defined by its ability to physically interface or connect with or become an integral part of another commodity. The function of a commodity is the action or actions it is designed to perform. 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).

NOTE 2 TO PARAGRAPH (d): For software, the form means the design, logic flow, and algorithms. The fit is defined by its ability to interface or connect with a defense article. The function means the action or actions the software performs directly related to a defense article or as a standalone application. Performance capability means the measure of the software's effectiveness to perform a designated function.

(e) The Directorate of Defense Trade Controls will provide a preliminary response within 10 working days of receipt of a complete request for commodity jurisdiction. If after 45 days the Directorate of Defense Trade Controls has not provided a final commodity jurisdiction determination, the applicant may request in writing to the Director, Office of Defense Trade Controls Policy that this determination be given expedited processing.

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

(g) A person may appeal a commodity jurisdiction determination by submitting a written request for reconsideration to the 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 for Political-Military Affairs.

§ 120.5 Relation to regulations of other agencies.

(a) If a defense article or service is covered by the U.S. Munitions List set forth in this subchapter, its export and temporary import is regulated by the Department of State (see also §120.2 of this subchapter). The President has delegated the authority to control defense articles and services for purposes of permanent import 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 (AECA). 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 AECA, the Attorney General shall be guided by the views of the Secretary of State on matters affecting world peace and the external security and foreign policy of the United States. The Department of Commerce regulates the export, reexport, and in-country transfer of items on the Commerce Control List and other items subject to its jurisdiction, as well as the provision of certain proliferation activities, under the Export Administration Regulations (EAR) (15 CFR parts 730 through 774). For the relationship of this subchapter to regulations of the Department of Energy and the Nuclear Regulatory Commission, see §123.20 of this subchapter.

(b) A license or other approval from the Department of State granted in accordance with this subchapter may also authorize the export of items subject to the EAR (see §120.42 of this subchapter). Separate approval from the Department of Commerce is not required for these items when approved for export under a Department of State license or other approval. 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 approval does not change the jurisdiction of the items. (See §123.1(b) of this subchapter for guidance on identifying items subject to the EAR in a license application to the Department of State.)


§ 120.6 Defense article.

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

[79 FR 61227, Oct. 10, 2014]

§ 120.7 Significant military equipment.

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

(b) Significant military equipment includes:

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

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

§ 120.8 Major defense equipment.

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

§ 120.9 Defense service.

(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 (see §120.10), whether in the United States or abroad; or

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

(b) [Reserved]


§ 120.10 Technical data.

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

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

(2) Classified information relating to defense articles and defense services 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 §120.45(f)) 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 § 120.11 of this subchapter or telemetry data as defined in note 3 to Category XV(f) of part 121 of this subchapter. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.


§ 120.11 Public domain.

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

(1) Through sales at newsstands and bookstores;

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

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

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

(5) Through patents 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);

(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]

§ 120.12 Directorate of Defense Trade Controls.


[71 FR 20537, Apr. 21, 2006]

§ 120.13 United States.

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

§ 120.14 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 (§120.16) or U.S. person (§120.15), then it refers to both.

§ 120.15 U.S. person.

U.S. person means a person (as defined in §120.14 of this part) who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) 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 §120.16 of this part.

[71 FR 20537, Apr. 21, 2006]

§ 120.16 Foreign person.

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

[71 FR 20537, Apr. 21, 2006]

§ 120.17 Export.

(a) Export means:
(1) Sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a person whose personal knowledge includes technical data; or
(2) Transferring registration, control or ownership to a foreign person of any aircraft, vessel, or satellite covered by the U.S. Munitions List, whether in the United States or abroad; or
(3) Disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); or
(4) Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad; or
(5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.
(6) A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. However, for certain limited purposes (see §126.1 of this subchapter), the controls of this subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.

(b) [Reserved]

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

[71 FR 20537, Apr. 21, 2006]

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

[77 FR 16597, Mar. 21, 2012]

§ 120.20 License or other approval.
License means a document bearing the word “license” issued by the Deputy Assistant Secretary of State for Defense Trade Controls, or his authorized designee, that permits the export, temporary import, or brokering of a specific defense article or defense service controlled by this subchapter.

Other approval means a document issued by the Deputy Assistant Secretary of State for Defense Trade Controls, or his 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.


§ 120.21 Manufacturing license agreement.
An agreement (e.g., contract) whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates:
(a) The export of technical data (as defined in §120.10) or defense articles or the performance of a defense service; or
(b) The use by the foreign person of technical data or defense articles previously exported by the U.S. person. (See part 124 of this subchapter).
§ 120.22 Technical assistance agreement.
An agreement (e.g., contract) for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included under this section, provided production rights or manufacturing know-how are not conveyed. Should such rights be transferred, §120.21 is applicable. (See part 124 of this subchapter).

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

§ 120.24 Port Directors.
Port Directors of U.S. Customs and Border Protection 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).
[70 FR 50959, Aug. 29, 2005]

§ 120.25 Empowered Official.
(a) Empowered Official means a U.S. person who:
(1) Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and
(2) Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and
(3) Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and
(4) Has the independent authority to:
   (i) 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.

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

§ 120.27 U.S. criminal statutes.
(a) For purposes of this subchapter, the phrase U.S. criminal statutes means:
(1) Section 38 of the Arms Export Control Act (22 U.S.C. 2778);
(2) Section 11 of the Export Administration Act of 1979 (50 U.S.C. app. 2410);
(3) 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);
(4) Section 16 of the Trading with the Enemy Act (50 U.S.C. app. 16);
(5) Section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. 1705);


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

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

(9) 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);

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

(11) [Reserved]

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

(13) Sections 3, 4, 5, and 6 of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458 sections 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);

(14) 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);

(15) 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 or International Traffic in Arms Regulations;

(16) 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 Arms Export Control Act or International Traffic in Arms Regulations;

(17) 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 Arms Export Control Act or International Traffic in Arms Regulations; and

(18) 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 Arms Export Control Act or International Traffic in Arms Regulations.

(b) [Reserved]


§ 120.28 Listing of forms referred to in this subchapter.

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

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

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

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

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

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

(5) Non-transfer and use certificate (Form DSP-83).
(6) Application/License for permanent/temporary export or temporary import of classified defense articles and related classified technical data (Form DSP-85).

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

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

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

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

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


§ 120.29 Missile Technology Control Regime.

(a) For purposes of this subchapter, Missile Technology Control Regime (MTCR) means 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.

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

(c) List of all items on the MTCR Annex. Section 71(a) of the Arms Export Control Act (22 U.S.C. 2797) refers to the establishment as part of the U.S. Munitions List of a list of all items on the MTCR Annex, the export of which is not controlled under Section 6(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(1)), as amended. MTCR Annex items specified in the U.S. Munitions List shall be identified in §121.16 of this subchapter or annotated by the parenthetical “(MT)” at the end of each applicable paragraph.


§ 120.30 The Automated Export System (AES).

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

[68 FR 61100, Oct. 27, 2003]

§ 120.31 North Atlantic Treaty Organization.

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

[77 FR 22670, Apr. 17, 2012]

§ 120.32 Major non-NATO ally.

Major non-NATO ally, 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. 2321(k)) 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.). The following countries are designated as major non-NATO allies: Afghanistan (see § 126.1(g) of this subchapter), Argentina, Australia, Bahrain, Egypt, Israel, Japan, Jordan, Kuwait, Morocco, New Zealand, Pakistan, the Philippines, Thailand, and Republic of Korea. Taiwan shall be treated as though it were designated a major non-NATO ally.
§ 120.33 Defense Trade Cooperation Treaty between the United States and Australia.

Defense Trade Cooperation Treaty between the United States and Australia means 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.

[78 FR 21526, Apr. 11, 2013, as enacted with 78 FR 32362, May 30, 2013]

§ 120.34 Defense Trade Cooperation Treaty between the United States and the United Kingdom.


[77 FR 16597, Mar. 21, 2012]

§ 120.35 Australia Implementing Arrangement.

Australia Implementing Arrangement means 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.

[78 FR 21526, Apr. 11, 2013, as enacted with 78 FR 32362, May 30, 2013]

§ 120.36 United Kingdom Implementing Arrangement.

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

[77 FR 16597, Mar. 21, 2012]

§ 120.37 Foreign ownership and foreign control.

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

[76 FR 45197, July 28, 2011]

§ 120.38 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 (MTBF)) 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 (MTBF)) 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 (MTBF)) and does not enhance the basic performance or capability of the defense article.

[78 FR 40927, Jul. 8, 2013]

§ 120.39 Regular employee.

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

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

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

(b) [Reserved]

[76 FR 28177, May 16, 2011]

§ 120.40 Affiliate.

An affiliate of a registrant is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such registrant.

NOTE TO §120.40: 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.

[78 FR 52686, Aug. 26, 2013]

§ 120.41 Specially designed.

(a) Except for commodities or software described in paragraph (b) of this section, a commodity or software (see § 120.45(f)) 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 paragraph; or

(2) Is a part (see § 120.45(d)), component (see § 120.45(b)), accessory (see § 120.45(c)), attachment (see § 120.45(c)), 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 U.S. Munitions List;

(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 U.S. Munitions List and also commodities not on the U.S. Munitions List; 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 TO PARAGRAPHS (a) and (b): The term “commodity” refers to any article, material, or supply, except technology/technical data or software.

NOTE 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 U.S. Munitions List category would be a swimmer delivery vehicle specially designed to dock with a submarine to provide submerged transport for swimmers or divers from submarines.

NOTE TO PARAGRAPH (b): The term “enumerated” refers to any article on the U.S. Munitions List or the Commerce Control List and not in a “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.

NOTE 1 TO PARAGRAPH (b)(3): For the purpose of this definition, “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.

NOTE 2 TO PARAGRAPH (b)(3): For the purpose of this definition, “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, layouts.

NOTE 3 TO PARAGRAPH (b)(3): 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 (MTBF)), 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.”

NOTE 4 TO PARAGRAPH (b)(3): The form of a commodity is defined by its configuration (including the geometrically measured configuration), material, and material properties that uniquely characterize it. The fit of a commodity is defined by its ability to physically interface or connect with or become an integral part of another commodity. The function of a commodity is the action or actions it is designed to perform. 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, the form means the design, logic flow, and algorithms. The fit is defined by its ability to interface or connect with a defense article. The function means the action or actions the software performs directly related to a defense article or as a standalone application. Performance capability means the measure of the software’s effectiveness to perform a designated function.

NOTE 5 TO PARAGRAPH (b)(3): With respect to a commodity, “equivalent” means its form has been modified solely for fit purposes.

NOTE 1 TO PARAGRAPHS (b)(4) AND (5): 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 2 TO PARAGRAPHS (b)(4) AND (5): For the purpose of this definition, “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.

§ 120.42 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 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.
[78 FR 22755, Apr. 16, 2013]

§ 120.43 [Reserved]

§ 120.44 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.
[78 FR 52686, Aug. 26, 2013]

§ 120.45 End-items, components, accessories, attachments, parts, firmware, software, systems, and equipment.

(a) 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.

(b) A component is an item that is useful only when used in conjunction with an end-item. A major component includes any assembled element that forms a portion of an end-item without which the end-item is inoperable. A minor component includes any assembled element of a major component.

(c) 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.

(d) A part is any single unassembled element of a major or a minor component, accessory, or attachment which is not normally subject to disassembly without the destruction or the impairment of designed use.

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

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

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

Note to paragraph (g): The industrial standards established by INCOSE and NASA provide examples for when commodities and software operate together to perform a function as a system. References to these standards are included in this note to provide examples for when commodities or software operate together to perform a function as a system. See the INCOSE standards for what constitutes a system at: http://g2sebok.incose.org/app/mss/asset.cfm?ID=INCOSE%20G2SEBOK%202.00&ST=F, and in INCOSE SE Handbook v3.1 2007; ISO/IEC 15288:2008. See the NASA standards for examples of what constitutes a system in NASA SE Handbook SP-2007-6105 Rev 1.

(h) 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 is an end-item. Equipment that does not meet the definition of an end-item is a component, accessory, attachment, firmware, or software.
§ 121.1 The United States Munitions List.

(a) The following articles, services, and related technical data are designated as defense articles and defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act. Changes in designations will be published in the FEDERAL REGISTER. Information and clarifications on whether specific items are defense articles and services under this subchapter may appear periodically through the Internet Web site of the Directorate of Defense Trade Controls.

(b)(1) Order of review. In order to classify your article on the U.S. Munitions List, you should begin with a review of the general characteristics of your item. This will usually guide you to the appropriate category on the U.S. Munitions List. Once the appropriate category is identified, you should match the particular characteristics and functions of your article to a specific entry within the appropriate category.

(2) Composition of an entry. Within each U.S. Munitions List category, defense articles are described by an alpha paragraph designation. These designations may include subparagraph(s) to further define the described defense article. Each U.S. Munitions List category starts with end-platform designations followed by major systems and equipment, and parts, components, accessories, and attachments. Most U.S. Munitions List categories contain an entry on technical data (see § 120.10 of this subchapter) and defense services (see § 120.9 of this subchapter) related to the defense articles described in that U.S. Munitions List category.

(3) Significant military equipment. An asterisk may precede an entry in a U.S. Munitions List category. The asterisk means the enumerated defense article is deemed to be “Significant Military Equipment” to the extent specified in § 120.7 of this subchapter. Note that technical data directly related to the manufacture or production of any defense articles enumerated in any category designated as Significant Military Equipment (SME) is also designated as SME.

(c) Missile Technology Control Regime (MTCR) Annex. Inclusion in § 121.16 of this subchapter, or annotation with the parenthetical “(MT)” at the end of a U.S. Munitions List paragraph, indicates those defense articles and defense services that are on the MTCR Annex. See § 120.29 of this subchapter.

(d) Specially designed. When applying the definition of specially designed (see § 120.41 of this subchapter), follow the sequential analysis set forth as follows:

1. if your commodity or software is controlled for reasons other than having a specially designed control parameter on the U.S. Munitions List, no further review of the definition of specially designed is required.

2. if your commodity or software is not enumerated on the U.S. Munitions List, it may be controlled because of a specially designed control parameter. If so, begin any analysis with § 120.41(a) and proceed through each subsequent paragraph. If a commodity or software would not be controlled as a result of the application of the standards in § 120.41(a), then it is not necessary to work through § 120.41(b).

3. if a commodity or software is controlled as a result of § 120.41(a), then it is necessary to continue the analysis and to work through each of the elements of § 120.41(b).

4. commodities or software described in any § 120.41(b) subparagraph are not specially designed commodities or software controlled on the U.S. Munitions List, but may be subject to the jurisdiction of another U.S. Government regulatory agency (see § 120.5 of this subchapter).

(e) Classified. For the purpose of this subchapter, “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.
Category I

Category I – Firearms, Close Assault Weapons and Combat Shotguns

*(a) Nonautomatic and semi-automatic firearms to caliber .50 inclusive (12.7 mm).
*(b) Fully automatic firearms to .50 caliber inclusive (12.7 mm).
*(c) Firearms or other weapons (e.g., insurgency-counterinsurgency, close assault weapons systems) having a special military application regardless of caliber.
*(d) Combat shotguns. This includes any shotgun with a barrel length less than 18 inches.
*(e) Silencers, mufflers, sound and flash suppressors for the articles in (a) through (d) of this category and their specifically designed, modified or adapted components and parts.
*(f) Riflescopes manufactured to military specifications (See category XII(c) for controls on night sighting devices.)
*(g) Barrels, cylinders, receivers (frames) or complete breech mechanisms for the articles in paragraphs (a) through (d) of this category.
*(h) Components, parts, accessories and attachments for the articles in paragraphs (a) through (g) of this category.
*(i) Technical data (as defined in §120.10 of this subchapter) and defense services (as defined in §120.9 of this subchapter) directly related to the defense articles described in paragraphs (a) through (h) of this category. Technical data directly related to the manufacture or production of any defense articles described elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.
*(j) The following interpretations explain and amplify the terms used in this category and throughout this subchapter:

1. A firearm is a weapon not over .50 caliber (12.7 mm) which is designed to expel a projectile by the action of an explosive or which may be readily converted to do so.
2. A rifle is a shoulder firearm which can discharge a bullet through a rifled barrel 16 inches or longer.
3. A carbine is a lightweight shoulder firearm with a barrel under 16 inches in length.
4. A pistol is a hand-operated firearm having a chamber integral with or permanently aligned with the bore.
5. A revolver is a hand-operated firearm with a revolving cylinder containing chambers for individual cartridges.
6. A submachine gun, “machine pistol” or “machine gun” is a firearm originally designed to fire, or capable of being fired, fully automatically by a single pull of the trigger.

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

[EDITORIAL NOTE: Category I has not been changed due to Export Control Reform. However, it was modified in 79 FR 61228, Oct. 10, 2014.]

Category II

Category II – Guns and Armament

*(a) Guns over caliber .50 (i.e., 12.7mm), whether towed, airborne, self-propelled, or fixed, including but not limited to, howitzers, mortars, cannons, recoilless rifles, and grenade launchers.
(b) Flame throwers specifically designed or modified for military application.
(c) Apparatus and devices for launching or delivering ordnance, other than those articles controlled in Category IV.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[EDITORIAL NOTE: Category II has not been changed due to Export Control Reform. However, it was modified in 79 FR 61228, Oct. 10, 2014.]

Category III

Category III – Ammunition/Ordnance

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

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

(c) Equipment and tooling specifically designed or modified for the production of defense articles controlled by this category.
(d) Components, parts, accessories, attachments and associated equipment specifically designed or modified for the articles in this category:

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

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

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

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

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

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

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

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

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

[EDITORIAL NOTE: Category III has not been changed due to Export Control Reform. However, it was modified in 79 FR 61228, Oct. 10, 2014.]

Category IV

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 x 106 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 x 105 N·s, but less than 1.1 x 106 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)(4) through (d)(6) of this category or USML Category XIX.

NOTE 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.

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.

NOTE TO PARAGRAPH (h)(30): “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.

(i) Technical data (see § 120.10 of this subchapter) and defense services (see § 120.9 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 (see §120.42 of this subchapter) 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 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.

[EDITORIAL NOTE: Category IV has been changed several times since the beginning of Export Control Reform, to include 79 FR 39, Jan. 2, 2014; 79 FR 27180, May 13, 2014; 79 FR 36393, Jun. 27, 2014; and 79 FR 61228, Oct. 10, 2014.]

Category V

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 1630-09-8);
(8) DDFP (1,4-dinitrodifurazanopiperazine);
(9) DDPO (2,6-diamo-no-5,5-dinitropyrazine-1-oxide, PZO) (CAS 194486-77-6);
(10) DIPAM (3,3’-Diamino-2,2’,4,4’,6,6’-hexanitrophenyl or dipicramide) (CAS 17215-44-0);
(11) DNAN (2,4-Dinitroanisole) (CAS 119-27-7);
(12) DNGU (DINGU or dinitroglyculuril) (CAS 55510-04-8);
(13) Furazans, as follows:
    (i) DAAOF (DAAF, DAAFex, 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-oxadiazo-3-amine; or 4-Nitro-3-furazanamine; CAS 66328-69-6); or
    (iv) ANAzF (Aminonitroazofurazan or 1,2,5-Oxadiazo-3-amine, 4-[2-(4-nitro-1,2,5-oxadiazo-3-yl) diazenyl] or 1,2,5-Oxadiazo-3-amine, 4-{[4-nitro-1,2,5-oxadiazo-3-yl]azo}- (9CI); or Furazanamine, 4-[(nitrofuranylamino)azo], or 4-{[4-Nitro-1,2,5-oxadiazo-3-yl]azo}-1,2,5-oxadiazo-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-3,2-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) NNTNMH (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 (nitrotetrazolaminotetrazole); or
   (ii) NTNT (1-N-(2-nitrotetrazolo)-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-tetraaza-decalin) (CAS 135877-16-6);
(32) TNAZ (1,3,3-trinitroazetidine) (CAS 97645-24-4);
(33) TNGU (SORGUIYUL 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-nitrotiazole;
   (ii) ADHTDN (4-amino-3,5-dihyrazino-1,2,4-triazole dinitramide) (CAS 1614-08-0);
   (iii) ADNT (1-amino-3,5-dinitro-1,2,4-triazole);
   (iv) BDNTA (Bis(dinitrotiazole)amine);
   (v) DNT (3,3′-dinitro-5,5-bis-1,2,4-triazole) (CAS 30003-46-4);
   (vi) DNB (dinitrobistriazole) (CAS 70890-46-9);
   (vii) NTDNT (1-N-(2-nitrotiazolo) 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 ºC 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 (nitratooethylnitramine compounds), as follows:

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

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

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

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

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

(10) Poly-NIMMO (poly nitratomethylmethyloxetane, poly-NMOM, (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) Polynitroorthocarbonates;

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

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

(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) Pentylerrocene (CAS 1274-00-6);
   (viii) Dicyclopentylferrocene;
   (ix) Dicyclocxyferrocene;
   (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 [diocyl] phosphatotitanate (CAS 103850-22-2); also known
        as titanium IV, 2,2[bis 2-propanolato-methyl, butanolato, tris (diocyl) phosphato]
        (CAS 110438-25-0), or LICA 12 (CAS 103850-22-2);
   (ii) Titanium IV, [[2-propanolato-1] methyl, n-propanolatomethyl] butanolato-1, tris(diocyl)pyrophosphate, or KR3538; or
   (iii) Titanium IV, [[2-propanolato-1]methyl, propanolatomethyl] butanolato-1, tris(diocyl)
        phosphate;
(15) PCDE (Polycyanodifluoroamoethylen 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) Polynuclear aziridine amides with isophthalic, trimesic, isocyanuric, or
        trimethylldipic 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 (Fe2O3, hematite) with a specific surface area more than 250 m²/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) (tetraethylenepentaamineacrylonitrileglycidol) (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 (hexabenzyhexaazaisowurtzitane), TAIW (tetraacetyldibenzyhexa-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 (see § 120.10(a)(2) of this subchapter).

Note to paragraph (h): “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.

(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 (see § 120.4 of this subchapter), 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.

[EDITORIAL NOTE: 79 FR 61228, Oct. 10, 2014, §121.1 was amended by removing the word “enumerated” and adding in its place the word “described” in one place in Note 1 to paragraph (i) of Category VI; however, the amendment could not be incorporated into the eCFR version of the ITAR due to inaccurate amendatory instruction. We expect that DDTC intended to make this change in Note 2 to paragraph (i) of Category V.]

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 (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles described in paragraphs (a) through (i) of this category (see also § 123.20 of this subchapter) (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 \(I_{sp}\) 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 \((\text{lbf-s/lbm})\) 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 (see §120.42 of this subchapter) 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 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.

[EDITORIAL NOTE: Category V has been changed several times since the beginning of Export Control Reform, to include 79 FR 41, Jan. 2, 2014; 79 FR 36393, Jun. 27, 2014; and 79 FR 61228, Oct. 10, 2014.]

Category VI

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 §120.45(g) 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 (see §120.4 of this subchapter), 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 §123.20 of this subchapter).

(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 onboard, 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 §123.20 of this subchapter);

(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. “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.

NOTE 1 TO PARAGRAPH (f): Parts, components, accessories, attachments, associated
equipment, and systems specially designed for vessels enumerated 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 §120.10 of this subchapter) and defense services (see §120.9 of
this subchapter) directly related to the defense articles enumerated 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 (see §120.42 of this
subchapter) 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 technical data subject to the EAR (see §123.1(b) of this subchapter).

[EDITORIAL NOTE: Category VI has been changed several times since the beginning of
Export Control Reform, to include 78 FR 40929, Jul. 8, 2013; 79 FR 27, Jan. 2, 2014; and
79 FR 61228, Oct. 10, 2014.]

Category VII

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 §120.45(g) 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 thereof;
(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 thereof;

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 thereof;
(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 processors, 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.

“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.

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) 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 (see §120.42 of this subchapter) 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 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.

[EDITORIAL NOTE: Category VII has been changed several times since the beginning of Export Control Reform, to include 78 FR 40929, Jul. 8, 2013 and 79 FR 61228, Oct. 10, 2014.]

Category VIII

Category VIII – Aircraft and Related Articles

(a) Aircraft, as follows:
*(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) Unarmed military unmanned aerial vehicles (UAVs) (MT if the UAV has a range equal to or greater than 300km);
*(6) Armed unmanned aerial vehicles (UAVs) (MT if the UAV has a range equal to or greater than 300km);
*(7) Military intelligence, surveillance, and reconnaissance aircraft;
*(8) Electronic warfare, airborne warning and control aircraft;
(9) Air refueling aircraft;
(10) Target drones (MT if the drone has a range equal to or greater than 300km);
(11) Aircraft incorporating any mission system controlled under this subchapter;

NOTE 1 TO PARAGRAPH (a)(11): “Mission systems” are defined as “systems” (see §120.45(g) 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 2 TO PARAGRAPH (a)(11): This does not include tethered aerostats. Mission systems incorporated on otherwise EAR-controlled aerostats are controlled as the mission systems themselves just as if they were mounted, for example, on a tower or a pole.

(12) Aircraft capable of being refueled in flight including hover-in-flight refueling (HIFR);
*(13) Optionally Piloted Vehicles (OPV) (i.e. aircraft specially designed to operate with and without a pilot physically located in the aircraft) (MT if the OPV has a range equal to or greater than 300km).

(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;
*(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) 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 unarmed military aircraft, regardless of origin or designation, manufactured prior to 1956 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.

(b)-(c) [Reserved]

(d) Ship-based launching and recovery equipment specially designed for defense articles described in paragraph (a) of this category and land-based variants thereof (MT if the ship-based launching and recovery equipment is for an unmanned aerial vehicle, drone, or missile that has a range equal to or greater than 300 km).

NOTE TO PARAGRAPH (d): Fixed land-based arresting gear is not included in this paragraph. For the definition of “range,” see NOTE TO PARAGRAPH (a) of this category.

*(e) Inertial navigation systems (INS), aided or hybrid inertial navigation systems, Inertial Measurement Units (IMUs), and Attitude and Heading Reference Systems (AHRS) specially designed for aircraft controlled in this category or controlled in ECCN 9A610 and all specially designed components, parts, and accessories thereof (MT if the INS, IMU, or AHRS is for an unmanned aerial vehicle, drone, or missile that has a “range” equal to or greater than 300 km). For other inertial reference systems and related components refer to USML Category XII(d).
(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): Paragraph (f) 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 (see §120.4 of this subchapter), 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 provision is applicable to those contracts or other funding authorizations that are dated April 16, 2014, or later.

(g) [Reserved]

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

(1) Parts, components, accessories, attachments, and equipment specially designed for the following U.S.-origin aircraft: the B-1B, B-2, F-15SE, F/A-18 E/F/G, F-22, F-35 and future variants thereof; or the F-117 or U.S. Government technology demonstrators. Parts, components, accessories, attachments, and equipment of the F-15SE and F/A-18 E/F/G 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): Specially designed (see §120.4(b)(3)(ii) of this subchapter) does not control parts, components, accessories, and attachments that are common to aircraft described in paragraph (a) of this category but not identified in paragraph (h)(1), and those identified in paragraph (h)(1). For example, a part common to only the F-14 and F-35 is not specially designed for purposes of the ITAR. A part common to only the F-22 and F-35 – two aircraft models identified in paragraph (h)(1) – is specially designed.

(2) Face gear gearboxes, split-torque gearboxes, variable speed gearboxes, synchronization shafts, interconnecting drive shafts, or rotorcraft gearboxes with internal pitch line velocities exceeding 20,000 feet per minute and able to operate 30 minutes with loss of lubrication, and specially designed parts and components therefor;

(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 powered by gas turbine engines with any of the following characteristics:

(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 are capable of in-flight ejection; or
(F) The aircraft is designed to withstand maximum vertical maneuvering accelerations greater than +3.5g/-1.5g.

(5) Tail hooks and arresting gear, and specially designed parts and components therefor;

(6) Bomb racks, missile 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 a UAV, drone, or missile that has a “range” equal to or greater than 300 km);

(7) Damage or failure-adaptive flight control systems specially designed for aircraft controlled in this category or controlled in ECCN 9A610;

(8) Threat-adaptive autonomous flight control systems;

(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 or signal modulation (i.e., frequency hopping, chirping, direct sequence-spectrum spreading) LPI (low probability of intercept) capabilities (MT if for an unmanned aerial vehicle, drone, 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 interact with each other to avoid collisions and stay together, or, if weaponized, coordinate targeting) (MT if for a UAV, drone or missile that has a “range” equal to or greater than 300 km);

(13) Aircraft Lithium-ion batteries that provide greater than 38VDC nominal;

(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, 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 processors specially designed for aircraft controlled in this category or controlled in ECCN 9A610;

(18) Drive systems and flight control systems 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 or controlled in ECCN 9A610;

*(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 (see § 120.10(a)(2) of this subchapter).

“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;

(21)-(22) [Reserved]

(23) Electricity-generating fuel cells specially designed for aircraft controlled in this category or controlled in ECCN 9A610;

(24) Thermal engines specially designed for aircraft controlled in this category or controlled in ECCN 9A610;

(25) Thermal batteries specially designed for aircraft controlled in this category or controlled in ECCN 9A610 (MT if the thermal battery is for an unmanned aerial vehicle, drone, or missile that has a “range” equal to or greater than 300 km); or

(26) Thermionic generators specially designed for aircraft controlled in this category or controlled in ECCN 9A610.

(i) Technical data (see § 120.10 of this subchapter) and defense services (see § 120.9 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 technical data subject to the EAR (see § 120.42 of this subchapter) 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 technical data subject to the EAR (see § 123.1(b) of this subchapter).

NOTE: Inertial navigation systems, aided or hybrid inertial navigation systems, Inertial Measurement Units, and Attitude and Heading Reference Systems in paragraph (e) and parts, components, accessories, and attachments in paragraphs (h)(2)-(5), (7), (13), (14), (17)-(19), and (21)-(26) are licensed by the Department of Commerce when incorporated in a military 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.

[EDITORIAL NOTE: Category VIII has been changed several times since the beginning of Export Control Reform, to include 78 FR 22758, Apr. 16, 2013; FR 61754, Oct. 3, 2013; 79 FR 37542, Jul. 1, 2014; and 79 FR 61228, Oct. 10, 2014.]

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)(11): “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.

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.

NOTE TO PARAGRAPH (b)(5): “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.

(c)-(d) [Reserved]

(e) Technical data (see Sec. 120.10 of this subchapter) and defense services (see §120.9 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, §120.9(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 (see §120.42 of this subchapter) 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 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.

[EDITORIAL NOTE: Category IX has been changed several times since the beginning of Export Control Reform, to include 79 FR 44, Jan. 2, 2014; 79 FR 36393, Jun. 27, 2014; and 79 FR 61230, Oct. 10, 2014.]

Category X

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 (see §120.4 of this subchapter), 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 PARAGRAPH (d)(4): “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 government.

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 §120.10 of this subchapter) and defense services (see §120.9 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 (see §120.42 of this subchapter) 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 technical data subject to the EAR (see §123.1(b) of this subchapter).

>[EDITORIAL NOTE: Category X has been changed several times since the beginning of Export Control Reform, to include 79 FR 45, Jan. 2, 2014 and 79 FR 36393, Jun. 27, 2014.]

**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;

(ii) Synthetic Aperture Radar (SAR) incorporating image resolution less than (better than) 0.3 m, or incorporating Coherent Change Detection (CCD) with georegistration 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 0.5 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 Wm²;
(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 \(\frac{1}{4}\) 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) Air surveillance radar with multiple elevation beams, phase or amplitude monopulse estimation, or 3D height-finding;

(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 \(\frac{1}{3}\) 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 250 watts, and employing a design determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter).

(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);

(xxii) 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)(xxii): 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 (see § 120.4 of this subchapter), 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 0.5 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.*
Effective Date: December 29, 2015

USML Category XI, Paragraph (b) is revised to read as follows:

"(b) Electronic systems or equipment, not elsewhere enumerated in this subchapter, specially designed for intelligence purposes that collect, survey, monitor, or exploit 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 CONTROLED 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 SPICY DESIGNED FOR 600 SERIES ITEMS ARE CONTROLED 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 or transmit modules that have any two perpendicular sides, with either length d (in cm) equal to or less than 15 divided by the lowest operating frequency in GHz \[d<=15\text{cm}^*\text{GHz}/\text{GHz}\], with an electronically variable phase shifter or phasers that are a Monolithic Microwave Integrated Circuit (MMIC), or incorporate a MMIC or discrete RF power transistor;

(5) High-energy storage capacitors with a repetition rate of 6 discharges or more per minute and full energy life greater than or equal to 10,000 discharges, at greater than 0.2 Amps per Joule peak current, that have any of the following:

(i) Volumetric energy density greater than or equal to 1.5 J/cc; or

(ii) Mass energy density greater than or equal to 1.3 kJ/kg;

(6) Radio frequency circulators of any dimension equal to or less than one quarter \((\frac{1}{4})\) 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 $4.184 \times 10^6 \text{ J/m}^2$ 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 (see § 120.10(a)(2) of this subchapter).

NOTE TO PARAGRAPH (c)(19): “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.

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 § 121.8(f) of this subchapter).

(d) Technical data (see § 120.10 of this subchapter) and defense services (see § 120.9 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 (see § 120.42 of this subchapter) 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).

[EDITORIAL NOTE: Category XI has been changed several times since the beginning of Export Control Reform, to include 79 FR 37542, Jul. 1, 2014; 79 FR 77884, Dec. 29, 2014; and 80 FR 37975-6, Jul. 2, 2015.]

Category XII

Category XII – Fire Control, Range Finder, Optical and Guidance and Control Equipment

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

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

*(c) Infrared focal plane array detectors specifically designed, modified, or configured for military use; image intensification and other night sighting equipment or systems specifically designed, modified or configured for military use; second generation and above military image intensification tubes (defined below) specifically designed, developed, modified, or configured
for military use, and infrared, visible and ultraviolet devices specifically designed, developed, modified, or configured for military application. Military second and third generation image intensification tubes and military infrared focal plane arrays identified in this subparagraph are licensed by the Department of Commerce (ECCN 6A002A and 6A003A) when part of a commercial system (i.e., those systems originally designed for commercial use). This does not include any military system comprised of non-military specification components. Replacement tubes or focal plane arrays identified in this paragraph being exported for commercial systems are subject to the controls of the ITAR.

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

(A) An S-20, S-25 or multialkali photocathode; or
(B) A GaAs, GaInAs, or other compound semiconductor photocathode.

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

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

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

[EDITORIAL NOTE: Category XII has not been changed due to Export Control Reform.]

Category XIII

Category XIII – Materials and Miscellaneous Articles

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

(b) 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 x 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 x 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 (see §120.4 of this subchapter), 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.

[NOTE TO PARAGRAPH (f)] "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.

*(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 §125.4(c)(4) 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 §120.10 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 §120.9 of this subchapter) directly related to the defense articles described in this category. (See also §123.20 of this subchapter.) (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:

$$E_m = \frac{\rho_{RHA} (P_o - P_r)}{AD_{TARGET}}$$

Where:

$\rho_{RHA}$ = density of RHA, (7.85 g/cm$^3$)

$P_o$ = Baseline Penetration of RHA, (mm)

$P_r$ = 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 (see §120.42 of this subchapter) 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 technical data subject to the EAR (see §123.1(b) of this subchapter).

[EDITORIAL NOTE: Category XIII has been changed several times since the beginning of Export Control Reform, to include 78 FR 40929, Jul. 8, 2013; 79 FR 27, Jan. 2, 2014; and 79 FR 66608, Nov. 10, 2014.]

Category XIV

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

*(a) Chemical agents, to include:

(1) Nerve agents:

(i) O-Alkyl (equal to or less than C10, 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 C10, including cycloalkyl) N, N-dialkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphoramidocyanidates, such as: Tabun (GA): O-Ethyl N, N-dimethylphosphoramidocyanidate (CAS 77-81-6) (CWC Schedule 1A);

(iii) O-Alkyl (H or equal to or less than C10, 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) Viscant agents:

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

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

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

(iv) Ethyldichloroarsine (ED);

(v) Methyl dichloroarsine (MD);

(4) Incapacitating agents, such as:

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

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

(iii) Diphenylcyanoarsine (DC);

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

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

(1) Alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphonyldifluoride, such as: DF: Methyl Phosphonyldifluoride (CAS 676-99-3) (CWC Schedule 1B); Methylphosphinylidifluoride;
(2) O-Alkyl (H or equal to or less than C10, including cycloalkyl) O-2-dialkyl (methyl, ethyl, n-Propyl or isopropyl)aminooethyl alkyl (methyl, ethyl, N-propyl or isopropyl)phosphonite and corresponding alkylated and protonated salts, such as: QL: O-Ethyl-2-di-isopropylaminooethyl methylphosphonite (CAS 57856-11-8) (CWC Schedule 1B);
(3) Chlorosarin: O-Isopropyl methylphosphonochloridate (CAS 1445-76-7) (CWC Schedule 1B);
(4) Chlorosoman: O-Pinakoly methylphosphonochloridate (CAS 7040-57-5) (CWC Schedule 1B);
(5) DC: Methylphosphonyl dichloride (CAS 676-97-1) (CWC Schedule 2B); Methylphosphinyldichloride;
(d) Tear gases and riot control agents including:
(1) Adamsite (Diphenylamine chloroarsine or DM) (CAS 578-94-9);
(2) CA (Bromobenzyl cyanide) (CAS 5798-79-8);
(3) CN (Phenylacyl chloride or w-Chloroacetophenone) (CAS 532-27-4);
(4) CR (Dibenz-(b,f)-1,4-oxazepine) (CAS 257-07-8);
(5) CS (o-Chlorobenzylidenemalononitrile or o-Chlorobenzalmalononitrile) (CAS 2698-41-1);
(6) Dibromodimethyl ether (CAS 4497-29-4);
(7) Dichlorodimethyl ether (ClCi) (CAS 542-88-1);
(8) Ethyldibromoarsine (CAS 683-43-2);
(9) Bromo acetone;
(10) Bromo methyl ethyl ketone;
(11) Iodo acetone;
(12) Phenylcarbonylamine chloride;
(13) Ethyl iodo acetate;
(e) Defoliants, as follows:
(1) Agent Orange (2,4,5-Trichlorophenoxyacetic acid mixed with 2,4-dichlorophenoxyacetic acid);
(2) LNF (Butyl 2-chloro-4-fluorophenoxyacetate)
*(f) Equipment and its components, parts, accessories, and attachments specifically designed or modified for military operations and compatibility with military equipment as follows:
(1) The dissemination, dispersion or testing of the chemical agents, biological agents, tear gases and riot control agents, and defoliants listed in paragraphs (a), (b), (d), and (e), respectively, of this category;
(2) The detection, identification, warning or monitoring of the chemical agents and biological agents listed in paragraph (a) and (b) of this category;
(3) Sample collection and processing of the chemical agents and biological agents listed in paragraph (a) and (b) of this category;
(4) Individual protection against the chemical and biological agents listed in paragraphs (a) and (b) of this category.
(5) Collective protection against the chemical and biological agents listed in paragraph (a) and (b) of this category.
(6) Decontamination or remediation of the chemical agents and biological agents listed in paragraph (a) and (b) of this category.
(g) Antibodies, polynucleoids, biopolymers or biocatalysts specifically designed or modified for use with articles controlled in paragraph (f) of this category.
(h) Medical countermeasures, to include pre- and post-treatments, vaccines, antidotes and medical diagnostics, specifically designed or modified for use with the chemical agents listed in paragraph (a) of this category and vaccines with the sole purpose of protecting against biological agents identified in paragraph (b) of this category. Examples include: barrier creams specifically designed to be applied to skin and personal equipment to protect against vesicant agents controlled in paragraph (a) of this category; atropine auto injectors specifically designed to counter nerve agent poisoning.
(i) Modeling or simulation tools specifically designed or modified for chemical or biological weapons design, development or employment. The concept of modeling and simulation includes software covered by paragraph (m) of this category specifically designed to reveal susceptibility or vulnerability to biological agents or materials listed in paragraph (b) of this category.

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

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

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

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

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

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

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

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

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

(A) Integral to the device;
(B) Inseparable from the device; and,
(C) Incapable of replacement without compromising the effectiveness of the device.

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

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

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

(7) The resulting product of the combination of any controlled or non-controlled substance compounded or mixed with any item controlled by this subchapter is also subject to the controls of this category.
NOTE 1: This Category does not control formulations containing 1% or less CN or CS or individually packaged tear gases or riot control agents for personal self-defense purposes.

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

1. Cyanogen chloride;
2. Hydrocyanic acid;
3. Chlorine;
4. Carboxyl chloride (Phosgene);
5. Ethyl bromoacetate;
6. Xylyl bromide;
7. Benzyl bromide;
8. Benzyl iodide;
9. Chloro acetone;
10. Chloropicrin (trichloronitromethane);
11. Fluorine;
12. Liquid pepper.

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

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

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

1. The drug is in the form of a final medical product; or
2. The reference standard contains salts of HN2 [bis(2-chloroethyl) methylamine], the quantity to be shipped is 150 milligrams or less, and individual shipments do not exceed twelve per calendar year per end user.

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

[EDITORIAL NOTE: Category XIV has not been changed due to Export Control Reform.]

**Category XV**

**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 track ground, airborne, missile, or space objects 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 0.35 meters;

(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 $\Delta\lambda$ less than or equal to 20nm full width at half maximum (FWHM) or having a wide spectral bandwidth with $\Delta\lambda$ 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 $\Delta\lambda$ less than or equal to 50nm FWHM or having a wide spectral bandwidth with $\Delta\lambda$ 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., $\Delta\lambda$) that can be distinguished at full width at half maximum (FWHM) of wavelength $\lambda$.

NOTE 3 TO PARAGRAPH (a)(7): An optical satellite or spacecraft is not Significant Military Equipment (see § 120.7 of this subchapter) 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) Provide space-based logistics, surveillance, assembly, repair, or servicing of any spacecraft (e.g., refueling) and have integrated propulsion other than that required for attitude control;

(11) Provide for sub-orbital or in-space human habitation and have integrated propulsion other than that required for attitude control;

(12) That are not commercial communications satellites and that have integrated propulsion other than for attitude control or achieving initial orbit; or

*(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). "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.

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 (see § 120.4 of this subchapter). 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): Attitude control is the exercise of control over spacecraft orientation (e.g., pointing) within an orbital plane, which may include orbit maintenance using the attitude control thrusters.

(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) Global Positioning System (GPS) receiving equipment specially designed for military application, or GPS receiving equipment with any of the following characteristics, and specially designed parts and components therefor:

(1) Specially designed for encryption or decryption (e.g., Y-Code) of GPS precise positioning service (PPS) signals (MT if designed or modified for airborne applications);

(2) [Reserved]

(3) Specially designed for use with a null steering antenna, an electronically steerable antenna, or including a null steering antenna designed to reduce or avoid jamming signals (MT if designed or modified for airborne applications);

NOTE TO PARAGRAPH (c)(3): 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. 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.

(4) 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 if designed or modified for rockets, missiles, SLVs, drones, or unmanned air vehicle systems controlled in this subchapter).

NOTE TO PARAGRAPH (c)(4): "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 to paragraph (a) of USML Category VIII.

(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 or mirror), including optical coating, having active properties (e.g., adaptive, deformable) with a largest lateral clear aperture dimension greater than 0.35 meters;

(3) Space-qualified focal plane arrays (FPA) having a peak response in the wavelength range exceeding 900 nm and readout integrated circuit (ROIC), whether separate or integrated, specially designed therefor;

(4) Space-qualified mechanical (i.e., active) cryocooler or active cold finger, and associated control electronics specially designed therefor;

(5) Space-qualified active vibration suppression, including active isolation and active dampening, and associated control electronics 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) Plasma based propulsion systems;

(12) Thrusters (e.g., rocket engines) 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 8.41x10^5 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), $P_{\text{sat}}$, greater than 200 divided by the maximum operating frequency (in GHz) squared [$P_{\text{sat}} > 200 \text{ W} \times \text{GHz}^2 / \text{GHz}^2$]; 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.

*(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 (see § 120.4 of this subchapter), 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 contain propulsion other than that required for attitude control and can be separated or jettisoned from another spacecraft (see note 3 to paragraph (a) of this category); 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 TO PARAGRAPH (e)(21):** "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.

**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 § 120.10 of this subchapter) and defense services (see § 120.9 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) 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) 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.)

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., suborbital, 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): Neither paragraph (f) nor ECCN 9E515 controls the data transmitted to or from a satellite or spacecraft, whether real or simulated, when limited to information about the health, operational status, or function of, or measurements or raw sensor output from, the spacecraft, spacecraft payload(s), or their associated subsystems or components. Such data or technology is subject to the EAR and is designated EAR99. Examples of such data and technology, which are commonly referred to as "housekeeping data," include (a) system, hardware, component configuration, and operation status information pertaining to temperatures, pressures, power, currents, voltages, and battery charges; (b) spacecraft or payload orientation or position information, such as state vector or ephemeris information; (c) payload raw mission or science output, such as images, spectra, particle measurements, or field measurements; (d) command responses; (e) accurate timing information; and (f) 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. All classified technical data directly related to items controlled in USML Category XV or ECCNs 9A515, and defense services using the classified technical data, remain subject to the ITAR. This note does not affect controls in paragraph (f), ECCN 9D515, or ECCN 9E515 on software source code or commands that control a spacecraft, payload, or associated subsystem.

(g)-(w) [Reserved]
(x) Commodities, software, and technology subject to the EAR (see § 120.42 of this subchapter) 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 also includes commodities, software, or technology subject to the EAR (see § 123.21(b) of this subchapter).

[EDITORIAL NOTE: Category XV has been changed several times since the beginning of Export Control Reform, to include 79 FR 27180, May 13, 2014 and 79 FR 66608, Nov. 10, 2014.]

Category XVI

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 §120.10 of this subchapter) and defense services (see §120.9 of this subchapter) directly related to the defense articles described in paragraph (b) of this category. (See §123.20 of this subchapter for nuclear related controls.)

(f)-(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR (see §120.42 of this subchapter) 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 technical data subject to the EAR (see §123.1(b) of this subchapter).

[EDITORIAL NOTE: Category XVI has been updated due to Export Control Reform, to include 79 FR 46, Jan. 2, 2014.]

Category XVII

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

*(a) All articles, and technical data (see § 120.10 of this subchapter) and defense services (see § 120.9 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.

[EDITORIAL NOTE: Category XVII has been updated due to Export Control Reform, to include 78 FR 22757, Apr. 16, 2013.]

Category XVIII

Category XVIII – Directed Energy Weapons

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

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

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

(3) Particle beam systems;
(4) Particle accelerators that project a charged or neutral particle beam with destructive power;
(5) High power radio-frequency (RF) systems;
(6) High pulsed power or high average power radio frequency beam transmitters that produce fields sufficiently intense to disable electronic circuitry at distant targets;
(7) Prime power generation, energy storage, switching, power conditioning, thermal management or fuel-handling equipment;
(8) Target acquisition or tracking systems;
(9) Systems capable or assessing target damage, destruction or mission-abort;
(10) Beam-handling, propagation or pointing equipment;
(11) Equipment with rapid beam slew capability for rapid multiple target operations;
(12) Negative ion beam funneling equipment; and,
(13) Equipment for controlling and slew ing a high-energy ion beam.
*(b) Equipment specifically designed or modified for the detection or identification of, or defense against, articles controlled in paragraph (a) of this category.
(c) Tooling and equipment specifically designed or modified for the production of defense articles controlled by this category.
(d) Test and evaluation equipment and test models specifically designed or modified for the defense articles controlled by this category. This includes, but is not limited to, diagnostic instrumentation and physical test models.
(e) Components, parts, accessories, attachments and associated equipment specifically designed or modified for the articles in paragraphs (a) through (d) of this category.
(f) Technical data (as defined in §120.10 of this subchapter) and defense services (as defined in §120.9 of this subchapter) directly related to the defense articles described in paragraphs (a) through (e) of this category. Technical data directly related to the manufacture or production of any defense articles described in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.
(g) The following interpretations explain and amplify terms used in this category and elsewhere in this subchapter:
(1) The components, parts, accessories, attachments and associated equipment include, but are not limited to adaptive optics and phase conjugators components, space-qualified accelerator components, targets and specifically designed target diagnostics, current injectors for negative hydrogen ion beams, and space-qualified foils for neutralizing negative hydrogen isotope beams.
(2) The particle beam systems in paragraph (a)(3) of this category include devices embodying particle beam and electromagnetic pulse technology and associated components and subassemblies (e.g., ion beam current injectors, particle accelerators for neutral or charged particles, beam handling and projection equipment, beam steering, fire control, and pointing equipment, test and diagnostic instruments, and targets) which are specifically designed or modified for directed energy weapon applications.
(3) The articles controlled in this category include any end item, component, accessory, attachment, part, firmware, software or system that has been designed or manufactured using technical data and defense services controlled by this category.
(4) The articles specifically designed or modified for military application controlled in this category include any articles specifically developed, configured, or adapted for military application.

[EDITORIAL NOTE: Category XVIII has not been changed due to Export Control Reform.]

Category XIX

Category XIX – Gas Turbine Engines and Associated Equipment

*(a) Turbofan and Turbojet engines (including technology demonstrators) 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 technology demonstrators) capable of 1500 mechanical shp (1119 kW) or greater and are specially designed with oil sump sealing when the engine is in the vertical position.

*(c) Engines (including technology demonstrators) specially designed for armed or military unmanned aerial vehicle systems, cruise missiles, or target drones (MT if for an engine used in an unmanned aerial vehicle, drone, or missile that has a “range” equal to or greater than 300 km).

*(d) GE38, AGT1500, CTS800, TF40B, T55, TF60, and T700 engines.

*(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 unmanned aerial vehicle, drone, 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 shutdown, in both normal and fault conditions. For the definition of “range,” see NOTE TO PARAGRAPH (a) of USML Category VIII.

(f) Parts, components, accessories, attachments, and systems as follows:


NOTE TO PARAGRAPH (f)(1): Specially designed (see § 120.41(b)(3)(ii) of this subchapter) 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 the ITAR. A part common to only the F119 and F135--two engine models identified in paragraph (f)(1)--is specially designed.

*(2) Hot section components (i.e., combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles) 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 (see § 120.10(a)(2) of this subchapter).

“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; or

(7) [Reserved]

(g) Technical data (see §120.10 of this subchapter) and defense services (see §120.9 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 technical data subject to the EAR (see §120.42 of this subchapter) 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 technical data subject to the EAR (see §123.1(b) of this subchapter).

[EDITORIAL NOTE: Category XIX has been changed several times since the beginning of Export Control Reform, to include 78 FR 22757, Apr. 16, 2013; 78 FR 61755, Oct. 3, 2013; 79 FR 37545, Jul. 1, 2014; and 79 FR 61228, Oct. 10, 2014.]

Category XX

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 §120.45(g) 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 (see §120.4 of this subchapter) 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 thereof (see § 123.20 of this subchapter);

(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 §120.10 of this subchapter) and defense services (see §120.9 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 (see §120.42 of this subchapter) 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 technical data subject to the EAR (see §123.1(b) of this subchapter).

[EDITORIAL NOTE: Category XX has been changed several times since the beginning of Export Control Reform, to include 78 FR 40931, Jul. 8, 2013; 79 FR 27, Jan. 2, 2014; and 79 FR 61228, Oct. 10, 2014.]

Category XXI

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 (see §120.7 of this subchapter), shall be made by the Director, Office of Defense Trade Controls Policy.

(b) Technical data (see §120.10 of this subchapter) and defense services (see §120.9 of this subchapter) directly related to the defense articles covered in paragraph (a) of this category.

[EDITORIAL NOTE: Category XXI has not been changed due to Export Control Reform.]

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[EDITORIAL NOTE: 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.fdsys.gov.]

§§ 121.2-121.15 [Reserved]


§ 121.16 Missile Technology Control Regime Annex.

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

**ITEM 1 – CATEGORY I**

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

**ITEM 2 – CATEGORY I**

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

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

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

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

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

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

(c) Solid or liquid propellant rocket engines, having a total impulse capacity of 1.1x10 N·sec (2.5x10 lb·sec) or greater (see §121.1, Cat. IV, (h)).

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

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

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

**NOTES TO ITEM 2**

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

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

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

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

(i) Flexible nozzle;

(ii) Fluid or secondary gas injection;

(iii) Movable engine or nozzle; Deflection of exhaust gas stream (jet vanes or probes);

or

(iv) Use of thrust tabs.

**ITEM 3 – CATEGORY II**

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

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

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

(c) Rocket motor cases, “interior lining”, “insulation” and nozzles therefor (see §121.1, Cat. IV(h) and Cat. V(c));
(d) Staging mechanisms, separation mechanisms, and interstages therefor (see §121.1, Cat. IV(c) and (h));

(e) Liquid and slurry propellant (including oxidizers) control systems, and specially designed components therefor, designed or modified to operate in vibration environments of more than 100 g RMS between 20 Hz and 0.000 Hz (see §121.1, Cat. IV(c) and (h));

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

**NOTES TO ITEM 3**

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

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

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

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

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

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

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

**ITEM 4 – CATEGORY II**

Propellants and constituent chemicals for propellants as follows:

(a) Propulsive substances:

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

   (2) Unsymmetric dimethylhydrazine (UDHM);

   (3) Ammonium perchlorate;

   (4) Spherical aluminum powder with particle of uniform diameter of less than $500 \times 10^{-6} M$ (500 microns) and an aluminum content of 97 percent or greater;

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

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

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

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

   (9) Liquid oxidizers, as follows:

      (i) Nitrogen dioxide/dinitrogen tetroxide;

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

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

   (b) Polymeric substances:

      (1) Hydroxyterminated polybutadiene (HTPB);

      (2) Glycidylazide polymer (GAP).

   (c) Other high energy density propellants such a Boron Slurry having an energy density of $40 \times 10$ joules/kg or greater.

   (d) Other propellants additives and agents:

      (1) Bonding agents as follows:
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(i) Tris (1(2methyl)aziridinyl phosphine oxide (MAPO);
(ii) Trimesol 1(2ethyl)aziridine (HX868, BITA);
(iii) “Tepanol” (HX878), reaction product of tetraethylenepentamine, acrylonitrile and glycidol;
(iv) “Tepan” (HX879), reaction product of tet enepentamine and acrylonitrile;
(v) Polyfunctional aziridene amides with isophthalic, trimesic, isocyanuric, or trimethyladipic backbone also having a 2methyl or 2ethyl aziridine group (HX752, HX872 and HX877).

(2) Curing agents and catalysts as follows:
(i) Triphenyl bismuth (TPB);
(ii) Burning rate modifiers as follows:
(iii) Catocene;
(iv) Nbutylferrocene;
(v) Other ferrocene derivatives.

(3) Nitrate esters and nitrate plasticizers as follows:
(i) 1,2,4butanetriol trinitrate (BTTN).

(4) Stabilizers as follows:
(i) Nmethylpinitroaniline.

ITEM 8 – CATEGORY II

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

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

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

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

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

ITEM 9 – CATEGORY II

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

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

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

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

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

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

(f) Inertial or other equipment using accelerometers described by subitems (c) and (e) above, and systems incorporating such equipment, and specially designed integration software therefor (see §121.1, Category VIII (e) and Category XII(d));
NOTES TO ITEM 9

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

(2) In subitem (d):
   (i) Drift rate is defined as the time rate of output deviation from the desired output. It consists of random and systematic components and is expressed as an equivalent angular displacement per unit time with respect to inertial space.
   (ii) Stability is defined as standard deviation (1 sigma) of the variation of a particular parameter from its calibrated value measured under stable temperature conditions. This can be expressed as a function of time.

ITEM 10 – CATEGORY II

Flight control systems and “technology” as follows; designed or modified for the systems in Item 1.

(a) Hydraulic, mechanical, electro-optical, or electro-mechanical flight control systems (including fly-by-wire systems), (see §121.1, Category IV (h));

(b) Attitude control equipment, (see §121.1, Category IV, (c) and (h));

(c) Design technology for integration of air vehicle fuselage, propulsion system and lifting control surfaces to optimize aerodynamic performance throughout the flight regime of an unmanned air vehicle, (see §121.1, Category VIII (k));

(d) Design technology for integration of the flight control, guidance, and propulsion data into a flight management system for optimization of rocket system trajectory, (see §121.1, Category IV (i)).

NOTE TO ITEM 10

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

ITEM 11 – CATEGORY II

Avionics equipment, “technology” and components as follows; designed or modified for use in the systems in Item 1, and specially designed software therefor:

(a) Radar and laser radar systems, including altimeters (see §121.1, Category XI(a)(3));

(b) Passive sensors for determining bearings to specific electromagnetic sources (direction finding equipment) or terrain characteristics (see §121.1, Category XI(b) and (d));

(c) Global Positioning System (GPS) or similar satellite receivers;

   (1) Capable of providing navigation information under the following operational conditions:
      (i) At speeds in excess of 515 m/sec (1,000 nautical miles/hours); and
      (ii) At altitudes in excess of 18 km (60,000 feet), (see §121.1, Category XV(d)(2)); or

   (2) Designed or modified for use with unmanned air vehicles covered by Item 1 (see §121.1, Category XV(d)(4));

(d) Electronic assemblies and components specifically designed for military use and operation at temperatures in excess of 125 degrees C, (see §121.1, Category XI(a)(7));

(e) Design technology for protection of avionics and electrical subsystems against electromagnetic pulse (EMP) and electromagnetic interference (EMI) hazards from external sources, as follows, (see §121.1, Category XI (b)).

   (1) Design technology for shielding systems;
   (2) Design technology for the configuration of hardened electrical circuits and subsystems;
   (3) Determination of hardening criteria for the above.

NOTES TO ITEM 11

(1) Item 11 equipment may be exported as part of a manned aircraft or satellite or in quantities appropriate for replacement parts for manned aircraft.

(2) Examples of equipment included in this Item:
   (i) Terrain contour mapping equipment;
   (ii) Scene mapping and correlation (both digital and analog) equipment;
   (iii) Doppler navigation radar equipment;
   (iv) Passive interferometer equipment;
(v) Imaging sensor equipment (both active and passive);

(3) In subitem (a), laser radar systems embody specialized transmission, scanning, receiving and signal processing techniques for utilization of lasers for echo ranging, direction finding and discrimination of targets by location, radial speed and body reflection characteristics.

**ITEM 12 – CATEGORY II**

Launch support equipment, facilities and software for the systems in Item 1, as follows:

(a) Apparatus and devices designed or modified for the handling, control, activation and launching of the systems in Item 1, (see §121.1, Category IV(c));

(b) Vehicles designed or modified for the transport, handling, control, activation and launching of the systems in Item 1, (see §121.1, Category VII(d));

(c) Telemetering and telecontrol equipment usable for unmanned air vehicles or rocket systems, (see §121.1, Category XI(a));

(d) Precision tracking systems:

   (1) Tracking systems which use a translb nv installed on the rocket system or unmanned air vehicle in conjunction with either surface or airborne references or navigation satellite systems to provide real-time measurements of in-flight position and velocity, (see §121.1, Category XI(a));

   (2) Range instrumentation radars including associated optical/infrared trackers and the specially designed software therefor with all of the following capabilities (see §121.1, Category XI(a)(3)):
      (i) angular resolution better than 3 milli-radians (0.5 mils);
      (ii) range of 30 km or greater with a range resolution better than 10 meters RMS;
      (iii) velocity resolution better than 3 meters per second.

   (3) Software which processes post-flight, recorded data, enabling determination of vehicle position throughout its flight path (see §121.1, Category IV(i)).

**ITEM 13 – CATEGORY II**

Analog computers, digital computers, or digital differential analyzers designed or modified for use in the systems in Item 1 (see §121.1, Category XI(a)(6), having either of the following characteristics:

(a) Rated for continuous operation at temperature from below minus 45 degrees C to above plus 55 degrees C; or

(b) Designed as ruggedized or “radiation hardened”.

**NOTE TO ITEM 13**

Item 13 equipment may be exported as part of a manned aircraft or satellite or in quantities appropriate for replacement parts for manned aircraft.

**ITEM 14 – CATEGORY II**

Analog-to-digital converters, usable in the system in Item 1, having either of the following characteristics:

(a) Designed to meet military specifications for ruggedized equipment (see §121.1, Category XI(d)); or,

(b) Designed or modified for military use (see §121.1, Category XI(d)); and being one of the following types:

   (1) Analog-to-digital converter “microcircuits,” which are “radiation hardened” or have all of the following characteristics:
      (i) Having a resolution of 8 bits or more;
      (ii) Rated for operation in the temperature range from below minus 54 degrees C to above plus 125 degrees C; and
      (iii) Hermetically sealed.

   (2) Electrical input type analog-to-digital converter printed circuit boards or modules, with all of the following characteristics:
      (i) Having a resolution of 8 bits or more;
      (ii) Rated for operation in the temperature range from below minus 45 degrees C to above plus 55 degrees C; and
(iii) Incorporated “microcircuits” listed in (1), above.

ITEM 16 – CATEGORY II

Specially designed software, or specially designed software with related specially designed hybrid (combined analog/digital) computers, for modeling, simulation, or design integration of the systems in Item 1 and Item 2 (see §121.1, Category IV(i) and Category XI(a)(6)).

NOTE TO ITEM 16

The modelling includes in particular the aerodynamic and thermodynamic analysis of the system.

ITEM 17 – CATEGORY II

Materials, devices, and specially designed software for reduced observables such as radar reflectivity, ultraviolet/infrared signatures on acoustic signatures (i.e., stealth technology), for applications usable for the systems in Item 1 or Item 2 (see §121.1, Category XIII (e) and (k)), for example:

(a) Structural material and coatings specially designed for reduced radar reflectivity;
(b) Coatings, including paints, specially designed for reduced or tailored reflectivity or emissivity in the microwave, infrared or ultraviolet spectra, except when specially used for thermal control of satellites.
(c) Specially designed software or databases for analysis of signature reduction.
(d) Specially designed radar cross section measurement systems (see §121.1, Category XI(a)(3)).

ITEM 18 – CATEGORY II

Devices for use in protecting rocket systems and unmanned air vehicles against nuclear effects (e.g., Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for the systems in Item 1, as follows (see §121.1, Category IV (c) and (h)):

(a) “Radiation Hardened” “microcircuits” and detectors (see §121.1, Category XI(c)(3) NOTE: This commodity has been formally proposed for movement to category XV(e)(2) in the near future).
(b) Radomes designed to withstand a combined thermal shock greater than 1000 cal/sq cm accompanied by a peak over pressure of greater than 50 kPa (7 pounds per square inch) (see §121.1, Category IV(h)).

NOTE TO ITEM 18(A)

A detector is defined as a mechanical, electrical, optical or chemical device that automatically identifies and records, or registers a stimulus such as an environmental change in pressure or temperature, an electrical or electromagnetic signal or radiation from a radioactive material. The following pages were removed from the final ITAR for replacement by DDTC’s updated version §6(l) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(l)), as amended. In accordance with this provision, the list of MTCR Annex items shall constitute all items on the U.S. Munitions List in §121.16.

[58 FR 39287, July 22, 1993, as amended at 71 FR 20539, Apr. 21, 2006]

PART 122 REGISTRATION OF MANUFACTURERS AND EXPORTERS

Source: 58 FR 39298, July 22, 1993, unless otherwise noted.

§ 122.1 Registration requirements.

(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 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.


§ 122.2 Submission of registration statement.

(a) General. 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 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. 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 §120.40 of this subchapter). The intended registrant also shall submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the U.S. The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

(b) Statement of Registration Certification. The Statement of Registration of the intended registrant shall include a certification by an authorized senior officer of the following:

(1) Whether the intended registrant 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 §120.27 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 §120.37 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.
§ 122.3 Registration fees.

(a) 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 payment of a fee following the payment guidelines available on the Directorate of Defense Trade Controls Web site at www.pmddtc.state.gov. For those renewing a registration, notice of the fee due for the next year's registration will be sent to the registrant of record at least 60 days prior to its expiration date.

(b) Expiration of registration. A registrant must submit its request for registration renewal at least 30 days but no earlier than 60 days prior to the expiration date.

(c) Lapse in registration. A registrant who fails to renew a registration and, after an intervening period, seeks to register again must pay registration fees for any part of such intervening period during which the registrant engaged in the business of manufacturing or exporting defense articles or defense services.

§ 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 §120.27 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 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 §§120.10 and 126.1(e) of this subchapter).

(c) The new entity formed when a registrant merges with another company or acquires, or is acquired by, another company or a subsidiary or division of another company shall advise the Directorate of Defense Trade Controls of the following:

(1) The new firm name and all previous firm names being disclosed;
(2) The registration number that will survive and those that are to be discontinued (if any);
(3) 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, within 60 days of this notification, provide to the Directorate of Defense Trade Controls a signed copy of an amendment to each agreement signed by the new U.S. entity, the former U.S. licensor and the foreign licensee. Any agreements not so amended will be considered invalid.

(d) Prior approval by the Directorate of Defense Trade Controls is required for any amendment making a substantive change.

[58 FR 39298, July 22, 1993, as amended at 71 FR 20540, Apr. 21, 2006; 78 FR 52687, Aug. 26, 2013]

§ 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; 79 FR 8084, Feb. 11, 2014]
§ 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 (see § 120.42 of this subchapter) 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 §120.9(a) of this subchapter are contained in part 124 of this subchapter. Provisions for the export or temporary import of technical data and classified defense articles are contained in part 125 of this subchapter.

(e) A request for a license for the export of unclassified technical data (DSP-5) related to a classified defense article should specify any classified technical data or material that subsequently will be required for export in the event of a sale.

§ 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).

§ 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.

§ 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 the Treasury 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 §120.1(c) of this subchapter;
2. At the time of export, the ultimate consignee named on the Electronic Export Information (EEI) must be the same as the foreign consignee or end-user of record named at the time of import;
3. As 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 procedures, the Directorate of Defense Trade Controls (DDTC) registered and eligible exporter, or an agent acting on the filer’s behalf, must electronically file the export information using the Automated Export System (AES), and identify 22 CFR 123.4 as the authority for the export and provide, as requested by U.S. Customs and Border Protection, the entry document number or a copy of the U.S. Customs and Border Protection document under which the article was imported.

§ 123.5 Temporary export licenses.

(a) The Directorate of Defense Trade Controls may issue a license for the temporary export of unclassified defense articles (DSP-73). Such licenses are valid only if the article will be exported for a period of less than 4 years and will be returned to the United States and transfer of title will not occur during the period of temporary export. Accordingly, articles exported pursuant to a temporary export license may not be sold or otherwise permanently transferred to a foreign person while they are overseas under a temporary export license. A renewal of the license or other written approval must be obtained from the Directorate of Defense Trade Controls if the article is to remain outside the United States beyond the period for which the license is valid.

(b) Requirements. Defense articles authorized for temporary export under this section may be shipped only from a port in the United States where a Port Director of U.S. Customs and Border Protection is available, or from a U.S. Post Office (see 39 CFR part 20), as appropriate.
The license for temporary export must be presented to the Port Director of U.S. Customs and Border Protection who, upon verification, will endorse the exit column on the reverse side of the license. In some instances of the temporary export of technical data (e.g., postal shipments), self-endorsement will be necessary (see §123.22(b)). The endorsed license for temporary export is to be retained by the licensee. In the case of a military aircraft or vessel exported under its own power, the endorsed license must be carried on board such vessel or aircraft as evidence that it has been duly authorized by the Department of State to leave the United States temporarily.

(c) Any temporary export license for hardware that is used, regardless of whether the hardware was exported directly to the foreign destination or returned directly from the foreign destination, must be endorsed by the U.S. Customs and Border Protection in accordance with the procedures in §123.22 of this subchapter.

[70 FR 50960, Aug. 29, 2005]

§ 123.6 Foreign trade zones and U.S. Customs and Border Protection bonded warehouses.

Foreign trade zones in the United States and U.S. Customs and Border Protection bonded warehouses are considered integral parts of the United States for the purpose of this subchapter. An export license is therefore not required for shipment between the United States and a foreign trade zone or a U.S. Customs and Border Protection bonded warehouse. In the case of classified defense articles, the provisions of the Department of Defense National Industrial Security Program Operating Manual 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 resale, 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, U.S. or foreign, must incorporate the following statement as an integral part of the bill of lading, air waybill, or other shipping document, and the purchase documentation or invoice whenever defense articles are to be exported, retransferred, or reexported pursuant to a license or other approval under this subchapter: “These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end-user] under [license or other approval number or exemption citation]. They may not be resold, diverted, transferred, or otherwise be disposed of, to any other country or to any person other than the authorized end-user or consignee(s), either in their original form or after being incorporated into other end-items, without first obtaining approval from the U.S. Department of State or use of an applicable exemption.”; and

(2) When exporting items subject to the EAR (see §§120.42 and 123.1(b) of this subchapter) on a Department of State license or other approval, the U.S. exporter must provide to the end-user and consignees in the purchase documentation or other support documentation submitted with the Department of State license or other approval request the appropriate EAR classification information for each item exported pursuant to a U.S. Munitions List “(x)” paragraph. This includes the appropriate 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) [Reserved]

(e) Reexports or retransfers of U.S.-origin components incorporated into a foreign defense article to NATO, NATO agencies, a government of a NATO country, or the governments of
Australia, Israel, Japan, New Zealand, or the Republic of Korea are authorized without the prior written approval of the Directorate of Defense Trade Controls, provided:

(1) The U.S.-origin components were previously authorized for export from the United States, either by a license, written authorization, or an exemption other than those described in either §126.16 or §126.17 of this subchapter;

(2) The U.S.-origin components are not significant military equipment, the items are not major defense equipment sold under [a] 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.


§ 123.10 Non-transfer and use assurances.

(a) A nontransfer and use certificate (Form DSP-83) is required for the export of significant military equipment and classified articles, including classified technical data. A license will not be issued until a completed Form DSP-83 has been received by the Directorate of Defense Trade Controls. This form is to be executed by the foreign consignee, foreign end-user, and the applicant. The certificate stipulates that, except as specifically authorized by prior written approval of the Department of State, the foreign consignee and foreign end-user will not reexport, resell or otherwise dispose of the significant military equipment enumerated in the application outside the country named as the location of the foreign end-use or to any other person.

(b) The Directorate of Defense Trade Controls may also require a DSP-83 for the export of any other defense articles, including technical data, or defense services.

(c) When a DSP-83 is required for an export of any defense article or defense service to a non-governmental foreign end-user, the Directorate of Defense Trade Controls may require as a condition of issuing the license that the appropriate authority of the government of the country of ultimate destination also execute the certificate.

[71 FR 20541, Apr. 21, 2006]

§ 123.11 Movements of vessels and aircraft covered by the U.S. Munitions List outside the United States.

(a) A license issued by the Directorate of Defense Trade Controls is required whenever a privately-owned aircraft or vessel on the U.S. Munitions List makes a voyage outside the United States.

(b) Exemption. An export license is not required when a vessel or aircraft referred to in paragraph (a) of this section departs from the United States and does not enter the territorial waters or airspace of a foreign country if no defense articles are carried as cargo. Such a vessel or aircraft may not enter the territorial waters or airspace of a foreign country before returning to the United States, or carry as cargo any defense article, without a temporary export license (Form DSP-73) from the Department of State. (See §123.5.)

[58 FR 39299, July 22, 1993, as amended at 71 FR 20541, Apr. 21, 2006]

§ 123.12 Shipments between U.S. possessions.

An export license is not required for the shipment of defense articles between the United States, the Commonwealth of Puerto Rico, and U.S. possessions. A license is required, however, for the export of defense articles from these areas to foreign countries.

§ 123.13 Domestic aircraft shipments via a foreign country.

A license is not required for the shipment by air of a defense article from one location in the United States to another location in the United States via a foreign country. The pilot of the
aircraft must, however, file a written statement with the Port Director of U.S. Customs and Border Protection at the port of exit in the United States. The original statement must be filed at the time of exit with the Port Director of U.S. Customs and Border Protection. A duplicate must be filed at the port of reentry with the Port Director of U.S. Customs and Border Protection, who will duly endorse it and transmit it to the Port Director of U.S. Customs and Border Protection at the port of exit. The statement will be as follows:

DOMESTIC SHIPMENT VIA A FOREIGN COUNTRY OF ARTICLES ON THE U.S. MUNITIONS LIST

Under penalty according to Federal law, the undersigned certifies and warrants that all the information in this document is true and correct, and that the equipment listed below is being shipped from (U.S. port of exit) via (foreign country) to (U.S. port of entry), which is the final destination in the United States.

Description of Equipment

Quantity_____________________________________________________
Equipment____________________________________________________
Value_________________________________________________________
Signed_________________________________________________________

Endorsement: U.S. Customs and Border Protection Inspector.

Port of Exit___________________________________________________
Date_________________________________________________________
Signed_________________________________________________________

Endorsement: U.S. Customs and Border Protection Inspector.

Port of Entry____________________________________________________
Date_________________________________________________________

[70 FR 50961, Aug. 29, 2005]

§ 123.14 Import certificate/delivery verification procedure.

(a) The Import Certificate/Delivery Verification Procedure is designed to assure that a commodity imported into the territory of those countries participating in IC/DV procedures will not be diverted, transshipped, or reexported to another destination except in accordance with export control regulations of the importing country.

(b) Exports. The Directorate of Defense Trade Controls may require the IC/DV procedure on proposed exports of defense articles to non-government entities in those countries participating in IC/DV procedures. In such cases, U.S. exporters must submit both an export license application (the completed Form DSP-5) and the original Import Certificate, which must be provided and authenticated by the government of the importing country. This document verifies that the foreign importer complied with the import regulations of the government of the importing country and that the importer declared the intention not to divert, transship or reexport the material described therein without the prior approval of that government. After delivery of the commodities to the foreign consignee, the Directorate of Defense Trade Controls may also require U.S. exporters to furnish Delivery Verification documentation from the government of the importing country. This documentation verifies that the delivery was in accordance with the terms of the approved export license. Both the Import Certificate and the Delivery Verification must be furnished to the U.S. exporter by the foreign importer.

(c) Triangular transactions. When a transaction involves three or more countries that have adopted the IC/DV procedure, the governments of these countries may stamp a triangular symbol on the Import Certificate. This symbol is usually placed on the Import Certificate when the applicant for the Import Certificate (the importer) states either (1) that there is uncertainty whether the items covered by the Import Certificate will be imported into the country issuing the Import Certificate; (2) that he or she knows that the items will not be imported into the country issuing the Import Certificate; or (3) that, if the items are to be imported into the country issuing the Import Certificate, they will subsequently be reexported to another destination. All parties, including the ultimate consignee in the country of ultimate destination, must be shown on the completed Import Certificate.

[58 FR 39299, July 22, 1993, as amended at 71 FR 20541, Apr. 21, 2006]
§ 123.15 Congressional certification pursuant to 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 §120.8 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 a firearm controlled under Category I of the United States Munitions List, 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.


§ 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; significant military equipment (SME); and may not be used by persons who are generally ineligible as described in §120.1(c) of this subchapter. All shipments of defense articles, including but not limited to those to Australia, Canada, and the United Kingdom, require an Electronic Export Information (EEI) filing or notification letter. If the export of a defense article is exempt from licensing, the EEI filing must cite the exemption. Refer to §123.22 of this subchapter for EEI filing and letter notification requirements.

(b) 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 components or spare parts (for exemptions for firearms and ammunition see §123.17) without a license when the total value does not exceed $500 in a single transaction and:
   (i) The components or spare parts are being exported to support a defense article previously authorized for export; and
   (ii) The spare parts or components are not going to a distributor, but to a previously approved end-user of the defense articles; and
   (iii) The spare parts or components are not to be used to enhance the capability of the defense article;
   (iv) Exporters shall not split orders so as not to exceed the dollar value of this exemption;
   (v) The exporter may not make more than 24 shipments per calendar year to the previously authorized end user;
   (vi) The exporter must certify on the invoice, the bill of lading, air waybill, or shipping 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 subchapter and do not contain components (see §120.45(b) 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 provide a written certification to the Port Director of U.S. Customs and Border Protection that these conditions are met. This exemption does not imply that the Directorate of Defense Trade Controls will approve the export of any defense articles for which models or mocks-ups have been exported pursuant to this exemption.

(5) Port Directors of U.S. Customs and Border Protection shall permit the temporary export without a license of unclassified defense articles to any public exhibition, trade show, air show or related event if that article has previously been licensed for a public exhibition, trade show, air show or related event and the license is still valid. U.S. persons who avail themselves of this exemption must provide a written certification to the Port Director of U.S. Customs and Border Protection that these conditions are met.

(6) For exemptions for firearms and ammunition refer to §123.17 of this subchapter.

(7) For exemptions for firearms for personal use of members of the U.S. Armed Forces and civilian employees see §123.18.

(8) For exports to Canada refer to §126.5 of this subchapter.

(9) Port Directors of U.S. Customs and Border Protection shall permit the temporary export without a license by a U.S. person of any unclassified component, part, tool or test equipment to a subsidiary, affiliate or facility owned or controlled by the U.S. person (see §120.37 of this subchapter for definition of foreign ownership and foreign control) if the component, part, tool or test equipment is to be used for manufacture, assembly, testing, production, or modification provided:
   (i) The U.S. person is registered with the Directorate of Defense Trade Controls and complies with all requirements set forth in part 122 of this subchapter;
   (ii) No defense article exported under this exemption may be sold or transferred without the appropriate license or other approval from the Directorate of Defense Trade Controls.

(10)[Reserved]
§ 123.17 Exports of firearms, ammunition, and personal protective gear.

(a) Port Directors of U.S. Customs and Border Protection shall permit the export without a license of:

1. Parts and components for USML Category I(a) firearms, except barrels, cylinders, receivers (frames), or complete breech mechanisms, when the total value does not exceed $100 wholesale in any transaction, except to any of the countries or entities as provided in §126.1 of this subchapter;

2. Parts, components, accessories, or attachments for USML Category I firearms, except barrels, cylinders, receivers (frames), complete breech mechanisms, or fully automatic firearms and parts and components for such firearms, when:
   i. The total value does not exceed $500 wholesale in any transaction;
   ii. The export is to Canada for end-use in Canada or return to the United States, or temporary import into the United States of Canadian-origin items and return to Canada for a Canadian citizen; and
   iii. The exporter makes a declaration via the Automated Export System, pursuant to §123.22(a) of this subchapter, and the exporter is eligible to export under this exemption, pursuant to §120.1(c) of this subchapter; or

3. Parts, components, accessories, or attachments for USML Category I firearms, including fully automatic firearms and parts and components for such firearms, when:
   i. The total value does not exceed $500 wholesale in any transaction;
   ii. The export is to Canada for end-use by the Canadian Federal Government, a Canadian Provincial Government, or a Canadian Municipal Government; and
   iii. The exporter makes a declaration via the Automated Export System, pursuant to §123.22(a) of this subchapter, and the exporter is eligible to export under this exemption, pursuant to §120.1(c) of this subchapter.

(b) Port Directors of U.S. Customs and Border Protection shall permit the export without a license of nonautomatic firearms covered by Category I(a) of §121.1 of this subchapter if they were manufactured in or before 1898, or are replicas of such firearms.

(c) Port Directors of U.S. Customs and Border Protection (CBP) shall permit U.S. persons to export temporarily from the United States without a license not more than three nonautomatic firearms in Category I(a) of §121.1 of this subchapter and not more than 1,000 cartridges thereof, provided that:

1. The person declares to a CBP officer upon each departure from the United States, presents the Internal Transaction Number from submission of the Electronic Export Information in the Automated Export System per §123.22 of this subchapter, and the articles are presented to the CBP officer for inspection;

2. The firearms and accompanying ammunition to be exported is with the individual's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

3. The firearms and accompanying ammunition must be for that person's exclusive use and not for reexport or other transfer of ownership. The person must declare that it is his [or her] intention to return the article(s) on each return to the United States. The foregoing exemption is not applicable to the personnel referred to in §123.18 of this subchapter.

(d) Port Directors of U.S. Customs and Border Protection shall permit a foreign person to export without a license such firearms in Category I(a) of §121.1 of this subchapter and ammunition therefor as the foreign person brought into the United States under the provisions of 27 CFR 478.115(d). (The latter provision specifically excludes from the definition of importation the bringing into the United States of firearms and ammunition by certain foreign persons for specified purposes.)

(e) Port Directors of U.S. Customs and Border Protection shall permit U.S. persons to export without a license ammunition for nonautomatic firearms referred to in paragraph (a) of this section if the quantity does not exceed 1,000 cartridges (or rounds) in any shipment. The ammunition must also be for personal use and not for resale or other transfer of ownership. The foregoing exemption is also not applicable to the personnel referred to in §123.18.
(f) Port Directors of U.S. Customs and Border Protection (CBP) shall permit U.S. persons to export temporarily from the United States without a license one set of body armor covered by U.S. Munitions List Category X(a)(1), which may include one helmet covered by U.S. Munitions List Category X(a)(6), or one set of chemical agent protective gear covered by U.S. Munitions List Category XIV(f)(4), which may include one additional filter canister, provided:

1. The person declares the articles to a CBP officer upon each departure from the United States, presents the Internal Transaction Number from submission of the Electronic Export Information in the Automated Export System (AES) per §123.22 of this subchapter, and the articles are presented to the CBP officer for inspection;

2. The body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, to be exported is with the individual's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

3. The body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, to be exported is for that person's exclusive use and not for reexport or other transfer of ownership. The person must declare it is his intention to return the article(s) to the United States at the end of tour, contract, or assignment for which the articles were temporarily exported.

(g) The license exemption set forth in paragraph (f) of this section is available for the temporary export of body armor or chemical agent protective gear for personal use to countries listed in §126.1 of this subchapter provided:

1. The conditions in paragraph (f) of this section are met; and

2. The person is affiliated with the U.S. Government traveling on official business or is traveling in support of a U.S. Government contract. The person shall present documentation to this effect, along with the Internal Transaction Number for the AES submission, to the CBP officer.

(h) The license exemption set forth in paragraph (f) of this section is available for the temporary export of body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, for personal use to Iraq, provided the conditions in paragraph (f) are met, and the person is either affiliated with the U.S. Government traveling on official business or is traveling in support of a U.S. Government contract, or is traveling to Iraq under a direct authorization by the Government of Iraq and engaging in activities for, on behalf of, or at the request of, the Government of Iraq. The person shall present documentation to this effect, along with the Internal Transaction Number for the AES submission, to the CBP officer. Documentation regarding direct authorization from the Government of Iraq shall include an English translation.

(i) The license exemption set forth in paragraph (f) of this section is available for the temporary export of body armor, which may include a helmet, or chemical agent protective gear, which may include one additional filter canister, for personal use to Afghanistan, provided the conditions in paragraph (f) are met.

(j) If the articles temporarily exported pursuant to paragraphs (c) and (f) through (i) of this section are not returned to the United States, a detailed report must be submitted to the Office of Defense Trade Controls Compliance in accordance with the requirements of §127.12(c)(2) of this subchapter.

(k) To use the exemptions in this section, individuals are not required to be registered with the Department of State (the registration requirement is described in part 122 of this subchapter). All other entities must be registered and eligible, as provided in §§120.1(c) and (d) and part 122 of this subchapter.

[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]

§ 123.18 Firearms for personal use of members of the U.S. Armed Forces and civilian employees of the U.S. Government.

The following exemptions apply to members of the U.S. Armed Forces and civilian employees of the U.S. Government who are U.S. persons (both referred to herein as personnel). The exemptions apply only to such personnel if they are assigned abroad for extended duty. These exemptions do not apply to dependents.
(a) **Firearms.** Port Directors of U.S. Customs and Border Protection shall permit nonautomatic firearms in Category I(a) of §121.1 of this subchapter and parts therefor to be exported, except by mail, from the United States without a license if:

1. They are consigned to servicemen's clubs abroad for uniformed members of the U.S. Armed Forces; or,
2. In the case of a uniformed member of the U.S. Armed Forces or a civilian employee of the Department of Defense, they are for personal use and not for resale or other transfer of ownership, and if the firearms are accompanied by a written authorization from the commanding officer concerned; or
3. In the case of other U.S. Government employees, they are for personal use and not for resale or other transfer of ownership, and the Chief of the U.S. Diplomatic Mission or his designee in the country of destination has approved in writing to Department of State the import of the specific types and quantities of firearms into that country. The exporter shall provide a copy of this written statement to the Port Director of U.S. Customs and Border Protection.

(b) **Ammunition.** Port Directors of U.S. Customs and Border Protection shall permit not more than 1,000 cartridges (or rounds) of ammunition for the firearms referred to in paragraph (a) of this section to be exported (but not mailed) from the United States without a license when the firearms are on the person of the owner or with his baggage or effects, whether accompanied or unaccompanied (but not mailed).

[58 FR 39299, July 22, 1993, as amended at 70 FR 50962, Aug. 29, 2005]

§ 123.19 Canadian and Mexican border shipments.

A shipment originating in Canada or Mexico which incidentally transits the United States en route to a delivery point in the same country that originated the shipment is exempt from the requirement for an in transit license.

§ 123.20 Nuclear related controls.

(a) The provisions of this subchapter do not apply to articles, technical data, or services in Category VI, Category XV, Category XVI, or 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, as amended, and the Nuclear Non-Proliferation Act of 1978, as amended, or is a government transfer 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.

(b) The transfer of materials, including special nuclear materials, nuclear parts of nuclear weapons, or other non-nuclear parts of nuclear weapons systems involving Restricted Data or of assistance involving any person directly or indirectly engaging in the production or use thereof is prohibited except as authorized by the Atomic Energy Act of 1954, as amended. The transfer of Restricted Data or such assistance is prohibited except as authorized by the Atomic Energy Act of 1954, as amended. The technical data or defense services relating to nuclear weapons, nuclear weapons systems or related defense purposes (and such data or services relating to applications of atomic energy for peaceful purposes, or related research and development) may constitute Restricted Data or such assistance, subject to the foregoing prohibition.

(c) A license for the export of 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 Atomic Energy Act of 1954, as amended, 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:

1. If the proposed export involves an article which is identical to that in use in an unclassified civilian nuclear power plant,
2. If the proposed export has no relationship to naval nuclear propulsion, and
3. If it is not for use in a naval propulsion plant.
§ 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.

§ 123.22 Filing, retention, and return of export licenses and filing of export information.

(a) Any export, as defined in this subchapter, of a defense article controlled by this subchapter, to include defense articles transiting the United States, requires the electronic reporting of export information. The reporting of the export information shall be to the U.S. Customs and Border Protection using the Automated Export System (AES) or directly to the Directorate of Defense Trade Controls (DDTC). Any license or other approval authorizing the permanent export of hardware must be filed at a U.S. Port before any export. Licenses or other approvals for the permanent export of technical data and defense services shall be retained by the applicant who will send the export information directly to DDTC. Temporary export or temporary import licenses for such items need not be filed with the U.S. Customs and Border Protection, but must be presented to the U.S. Customs and Border Protection for decrementation of the shipment prior to departure and at the time of entry. The U.S. Customs and Border Protection will only decrement a shipment after the export information has been filed correctly using the AES. Before the export of any hardware using an exemption in this subchapter, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically provide export information using the AES (see paragraph (b) of this section). In addition to electronically providing the export information to the U.S. Customs and Border Protection before export, all the mandatory documentation must be presented to the port authorities (e.g., attachments, certifications, proof of AES filing; such as the Internal Transaction Number (ITN)). Export authorizations shall be filed, retained, decremented or returned to DDTC as follows:

(1) Filing of licenses and documentation for the permanent export of hardware. For any permanent export of hardware using a license (e.g., DSP-5, DSP-94) or an exemption in this subchapter, the exporter must, prior to an AES filing, deposit the license and provide any required documentation for the license or the exemption with the U.S. Customs and Border Protection, unless otherwise directed in this subchapter (e.g., §125.9). If necessary, an export may be made through a port other than the one designated on the license if the exporter complies with the procedures established by the U.S. Customs and Border Protection.

(b) Filing and reporting of export information – (1) Filing of export information with the U.S. Customs and Border Protection. Before exporting any hardware controlled by this subchapter, using a license or exemption, the DDTC registered applicant/exporter, or an agent acting on the filer’s behalf, must electronically file the export information with the U.S. Customs and Border Protection using the Automated Export System (AES) in accordance with the following timelines:

(i) Air or truck shipments. The export information must be electronically filed at least 8 hours prior to departure.
Sea or rail Shipments. The export information must be electronically filed at least 24 hours prior to departure.

(2) Emergency shipments of hardware that cannot meet the pre-departure filing requirements. U.S. Customs and Border Protection may permit an emergency export of hardware by truck (e.g., departures to Mexico or Canada) or air, by a U.S. registered person, when the exporter is unable to comply with the Electronic Export Information (EEI) filing timeline in paragraph (b)(1)(i) of this section. The applicant, or an agent acting on the applicant's behalf, in addition to providing the EEI using the AES, must provide documentation required by U.S. Customs and Border Protection and this subchapter. The documentation provided to U.S. Customs and Border Protection at the port of exit must include the Internal Transaction Number (ITN) for the shipment and a copy of a notification to the Directorate of Defense Trade Controls stating that the shipment is urgent and must be accompanied by an explanation for the urgency. The original of the notification must be immediately provided to the Directorate of Defense Trade Controls. The AES filing of the export information must be made at least two hours prior to any departure by air from the United States. When shipping via ground, the AES filing must be made at the time when the exporter provides the articles to the carrier or at least one hour prior to departure from the United States, when the permanent export of the hardware has been authorized for export:

(i) In accordance with §126.4 of this subchapter, or

(ii) On a valid license (i.e., DSP-5, DSP-94) and the ultimate recipient and ultimate end user identified on the license is a foreign government.

(3) Reporting of export information on technical data and defense service. When an export is being made using a DDTC authorization (e.g., technical data license, agreement or a technical data exemption provided in this subchapter), the DDTC registered exporter will retain the license or other approval and provide the export information electronically to DDTC as follows:

(i) Technical data license. Prior to the permanent export of technical data licensed using a Form DSP-5, the applicant shall electronically provide export information using the system for direct electronic reporting to DDTC of export information and self validate the original of the license. When the initial export of all the technical data authorized on the license has been made, the license must be returned to DDTC. Exports of copies of the licensed technical data should be made in accordance with existing exemptions in this subchapter. Should an exemption not apply, the applicant may request a new license.

(ii) Manufacturing license and technical assistance agreements. Prior to the initial export of any technical data and defense services authorized in an agreement the U.S. agreement holder must electronically inform DDTC that exports have begun. In accordance with this subchapter, all subsequent exports of technical data and services are not required to be filed electronically with DDTC except when the export is done using a U.S. Port. Records of all subsequent exports of technical data shall be maintained by the exporter in accordance with this subchapter and shall be made immediately available to DDTC upon request. Exports of technical data in furtherance of an agreement using a U.S. Port shall be made in accordance with §125.4 of this subchapter and made in accordance with the procedures in paragraph (b)(3)(iii) of this section.

(iii) Technical data and defense service exemptions. In any instance when technical data is exported using an exemption in this subchapter (e.g., §§125.4(b)(2), 125.4(b)(4), 126.5) from a U.S. port, the exporter is not required to report using AES, but must, effective January 18, 2004, provide the export data electronically to DDTC. A copy of the electronic notification to DDTC must accompany the technical data shipment and be made available to the U.S. Customs and Border Protection upon request.

NOTE TO PARAGRAPH (b)(3)(iii): Future changes to the electronic reporting procedure will be amended by publication of a rule in the FEDERAL REGISTER. Exporters are reminded to continue maintaining records of all export transactions, including exemption shipments, in accordance with this subchapter.

(c) Return of licenses. Per §123.21 of this subchapter, all DSP licenses issued by the Directorate of Defense Trade Controls (DDTC) must be disposed of in accordance with the following:
(1) A DSP–5 license issued electronically by DDTC and decremented electronically by the U.S. Customs and Border Protection through the Automated Export System (AES) is not required to be returned to DDTC. If a DSP–5 license issued electronically is decremented physically in one or more instance the license must be returned DDTC. A copy of the DSP–5 license must be maintained by the applicant in accordance with §122.5 of this subchapter.

(2) DSP–5, DSP–61, DSP–73, and DSP–85 licenses issued by DDTC but not decremented electronically by the U.S. Customs and Border Protection through AES (e.g., oral or visual technical data releases or temporary import and export licenses retained in accordance with paragraph (a)(2) of this section), must be returned by the applicant, or the government agency with which the license was filed, to DDTC upon expiration, to include when the total authorized value or quantity has been shipped. A copy of the license must be maintained by the applicant in accordance with §122.5 of this subchapter. AES does not decrement the DSP–61, DSP–73, and DSP–85 licenses. Submitting the Electronic Export Information is not considered to be decremented electronically for these licenses.

(3) A DSP–94 authorization filed with the U.S. Customs and Border Protection must be returned by the applicant, or the government agency with which the authorization was filed, to DDTC upon expiration, to include when the total authorized value or quantity has been shipped, or when all shipments against the Letter of Offer and Acceptance have been completed. AES does not decrement the DSP–94 authorization. Submitting the Electronic Export Information is not considered to be decremented electronically for the DSP–94. A copy of the DSP–94 must be maintained by the applicant in accordance with §122.5 of this subchapter.

(4) A license issued by DDTC but not used by the applicant does not need to be returned to DDTC, even when expired.

(5) A license revoked by DDTC is considered expired and must be handled in accordance with paragraphs (c)(1) and (c)(2) of this section.


§ 123.23 Monetary value of shipments.

Port Directors of U.S. Customs and Border Protection shall permit the shipment of defense articles identified on any license when the total value of the export does not exceed the aggregate monetary value (not quantity) stated on the license by more than ten percent, provided that the additional monetary value does not make the total value of the license or other approval for the export of any major defense equipment sold under a contract reach $14,000,000 or more, and provided that the additional monetary value does not make defense articles or defense services sold under a contract reach the amount of $50,000,000 or more.

[70 FR 50963, Aug. 29, 2005]

§ 123.24 Shipments by U.S. Postal Service.

(a) The export of any defense hardware using a license or exemption in this subchapter by the U.S. Postal Service must be filed with the U.S. Customs and Border Protection using the Automated Export System (AES) and the license must be filed with the U.S. Customs and Border Protection before any hardware is actually sent abroad by mail. The exporter must certify the defense hardware being exported in accordance with this subchapter by clearly marking on the package “This export is subject to the controls of the ITAR, 22 CFR (identify section for an exemption) or (state license number) and the export has been electronically filed with the U.S. Customs and Border Protection using the Automated Export System (AES).”

(b) The export of any technical data using a license in this subchapter by the U.S. Postal Service must be notified electronically directly to the Directorate of Defense Trade Controls (DDTC). The exporter, using either a license or exemption, must certify, by clearly marking on the package, “This export is subject to the controls of the ITAR, 22 CFR (identify section for an exemption) or (state license number).” For those exports using a license, the exporter must also state “The export has been electronically notified directly to DDTC.” The license must be returned to DDTC upon completion of the use of the license (see §123.22(c)).

[68 FR 61102, Oct. 27, 2003, as amended at 70 FR 50963, Aug. 29, 2005]
§ 123.25 Amendments to licenses.

(a) The Directorate of Defense Trade Controls may approve an amendment to a license for permanent export, temporary export and temporary import of unclassified defense articles. A suggested format is available from the Directorate of Defense Trade Controls.

(b) The following types of amendments to a license will be considered: Addition of U.S. freight forwarder or U.S. consignor; change due to an obvious typographical error; change in source of commodity; and change of foreign intermediate consignee if that party is only transporting the equipment and will not process (e.g., integrate, modify) the equipment. For changes in U.S. dollar value 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.


§ 123.26 Recordkeeping for exemptions.

Any person engaging in any export, reexport, transfer, or retransfer of a defense article or defense service pursuant to an exemption must maintain records of each such export, reexport, transfer, or retransfer. The records shall, to the extent applicable to the transaction and consistent with the requirements of §123.22 of this subchapter, include the following information: A description of the defense article, including technical data, or defense service; the name and address of the end-user and other available contact information (e.g., telephone number and electronic mail address); the name of the natural person responsible for the transaction; the stated end-use of the defense article or defense service; the date of the transaction; the Electronic Export Information (EEI) Internal Transaction Number (ITN); and the method of transmission. The person using or acting in reliance upon the exemption shall also comply with any additional recordkeeping requirements enumerated in the text of the regulations concerning such exemption (e.g., requirements specific to the Defense Trade Cooperation Treaties in §126.16 and §126.17 of this subchapter).

[77 FR 16599, Mar. 21, 2012]

§ 123.27 Special licensing regime for export to U.S. allies of commercial communications satellite components, systems, parts, accessories, attachments and associated technical data.

(a) U.S. persons engaged in the business of exporting specifically designed or modified components, systems, parts, accessories, attachments, associated equipment and certain associated technical data for commercial communications satellites, and who are so registered with the Directorate of Defense Trade Controls pursuant to part 122 of this subchapter, may submit license applications for multiple permanent and temporary exports and temporary imports of such articles for expeditious consideration without meeting the documentary requirements of §123.1(c)(4) and (5) concerning purchase orders, letters of intent, contracts and non-transfer and end use certificates, or the documentary requirements of §123.9, concerning approval of re-exports or re-transfers, when all of the following requirements are met:

(1) The proposed exports or re-exports concern exclusively one or more countries of the North Atlantic Treaty Organization (see §120.31 of this subchapter) and/or one or more countries which have been designated in accordance with section 517 of the Foreign Assistance Act of 1961 and with section 1206 of the Foreign Relations Authorization Act, Fiscal Year 2003 as a major non-NATO ally (see §120.32 of this subchapter).

(2) The proposed exports concern exclusively one or more foreign persons (e.g., companies or governments) 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.


PART 124 AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

Source: 58 FR 39305, July 22, 1993, unless otherwise noted.

§ 124.1 Manufacturing license agreements and technical assistance agreements.

(a) Approval. The approval of the Directorate of Defense Trade Controls must be obtained before the defense services described in §120.9(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement to the Directorate of Defense Trade Controls. Such agreements are generally characterized as manufacturing license agreements, technical assistance agreements, distribution agreements, or off-shore procurement agreements, and may not enter into force 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 §120.9(a) of this subchapter (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt
from licensing requirements of this subchapter pursuant to §125.4 of this subchapter). This requirement also applies to the training of any foreign military forces, regular and irregular, in the use of defense articles. Technical assistance agreements must be submitted in such cases. In exceptional cases, the Directorate of Defense Trade Controls, upon written request, will consider approving the provision of defense services described in §120.9(a) of this subchapter by granting a license under part 125 of this subchapter.

(b) **Classified articles.** Copies of approved agreements involving the release of classified defense articles will be forwarded by the Directorate of Defense Trade Controls to the Defense Security Service of the Department of Defense.

(c) **Amendments.** Changes to the scope of approved agreements, including modifications, upgrades, or extensions must be submitted for approval. The amendments may not enter into force until approved by the Directorate of Defense Trade Controls.

(d) **Minor amendments.** Amendments which only alter delivery or performance schedules, or other minor administrative amendments which do not affect in any manner the duration of the agreement or the clauses or information which must be included in such agreements because of the requirements of this part, do not have to be submitted for approval. One copy of all such minor amendments must be submitted to the Directorate of Defense Trade Controls within thirty days after they are concluded.

[71 FR 20542, Apr. 21, 2006, as amended at 75 FR 52624, Aug. 27, 2010]

### § 124.2 Exemptions for training and military service.

(a) Technical assistance agreements are not required for the provision of training in the basic operation and maintenance of defense articles lawfully exported or authorized for export to the same recipient. This does not include training in intermediate and depot level maintenance.

(b) Services performed as a member of the regular military forces of a foreign nation by U.S. persons who have been drafted into such forces are not deemed to be defense services for purposes of §120.9 of this subchapter.

(c) NATO countries, 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 such as that described in paragraphs (c)(4)(i) through (c)(4)(iii) as follows:

   (i) **Design methodology,** such as: The underlying engineering methods and design philosophy utilized (i.e., the “why” or information that explains the rationale for particular design decision, engineering feature, or performance requirement); engineering experience (e.g., lessons learned); and the rationale and associated databases (e.g., design allowables, factors of safety, component life predictions, failure analysis criteria) that establish the operational requirements (e.g., performance, mechanical, electrical, electronic, reliability and maintainability) of a defense article.
(ii) *Engineering analysis*, such as: Analytical methods and tools used to design or evaluate a defense article’s performance against the operational requirements. Analytical methods and tools include the development and/or use of mockups, computer models and simulations, and test facilities.

(iii) *Manufacturing know-how*, such as: Information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a qualified, finished defense article.

(5) This defense service exemption does not apply to maintenance training or the performance of maintenance and service or the transfer of supporting technical data for the following defense articles:

(i) All Missile Technology Control Regime Annex Items;
(ii) Firearms listed in Category I; and ammunition listed in Category III for the firearms in Category I;
(iii) [Reserved];
(iv) Naval nuclear propulsion equipment listed in USML Category VI and USML Category XX;
(v) Gas turbine engine hot sections covered by Categories VI(f) and VIII(b);
(vi) Category VIII(f);
(vii) Category XII(c);
(viii) Chemical agents listed in Category XIV (a), biological agents in Category XIV (b), and equipment listed in Category XIV (c) for dissemination of the chemical agents and biological agents listed in Categories XIV (a) and (b);
(ix) [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.

§ 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.

§ 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.


§ 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.

The following information must be included in all proposed manufacturing license agreements and technical assistance agreements. The information should be provided in terms which are as precise as possible. If the applicant believes that a clause or that required information is not relevant or necessary, the applicant may request the omission of the clause or information. The transmittal letter accompanying the agreement must state the reasons for any proposed variation in the clauses or required information.

1. The agreement must describe the defense article to be manufactured and all defense articles to be exported, including any test and support equipment or advanced materials. They should be described by military nomenclature, contract number, National Stock Number, nameplate data, or other specific information. Supporting technical data or brochures should be submitted in seven copies. Only defense articles listed in the agreement will be eligible for export under the exemption in §123.16(b)(1) of this subchapter.

2. The agreement must specifically describe the assistance and technical data, including the design and manufacturing know-how involved, to be furnished and any manufacturing rights to be granted;

3. The agreement must specify its duration; and
The agreement must specifically identify the countries or areas in which manufacturing, production, processing, sale or other form of transfer is to be licensed.

§ 124.8 Clauses required both in manufacturing license agreements and technical assistance agreements.

The following statements must be included both in manufacturing license agreements and in technical assistance agreements:

1. “This agreement shall not enter into force, and shall not be amended or extended, without the prior written approval of the Department of State of the U.S. Government.”
2. “This agreement is subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations.”
3. “The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government.”
4. “No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government’s approval of this agreement.”
5. “The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a foreign person except pursuant to §§124.16 and 126.18, as specifically authorized in this agreement, or where prior written approval of the Department of State has been obtained.”
6. “All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement.”

[58 FR 39305, July 22, 1993, as amended at 76 FR 28177, May 16, 2011]

§ 124.9 Additional clauses required only in manufacturing license agreements.

(a) Clauses for all manufacturing license agreements. The following clauses must be included only in manufacturing license agreements:

1. “No export, sale, transfer, or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government unless otherwise exempted by the U.S. Government. Sales or other transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained.”
2. “It is agreed that sales by licensee or its sub-licensees under contracts made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others.”
3. “If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sub-licensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly.”
4. “If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sub-licensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and subject to the provisions of paragraphs (a) (2) and (3) of this section, no other royalties, or fees or other charges may be assessed against U.S. Government funded purchases of such articles. However,
Charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data."

(5) "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State. This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. See §126.10(b) of this subchapter.

(6) "(Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the licensed articles are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State."

§ 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 as defined in Sections 120.21 and 120.22 respectively for the
manufacturing abroad of any item of significant military equipment (see §120.7 of this subchapter) that is entered into with any country regardless of dollar value. Additionally, any manufacturing license agreement or technical assistance agreement providing for the export of major defense equipment, as defined in §120.8 of this subchapter shall also require a certification when meeting the requirements of §123.15 of this subchapter.

(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.


§ 124.12 Required information in letters of transmittal.

(a) An application for the approval of a manufacturing license or technical assistance agreement with a foreign person must be accompanied by an explanatory letter. The original letter and seven copies of the letter and eight copies of the proposed agreement shall be submitted to the Directorate of Defense Trade Controls. The explanatory letter shall contain:

(1) A statement giving the applicant's Directorate of Defense Trade Controls registration number.

(2) A statement identifying the licensee and the scope of the agreement.

(3) A statement identifying the U.S. Government contract under which the equipment or technical data was generated, improved, or developed and supplied to the U.S. Government, and whether the equipment or technical data was derived from any bid or other proposal to the U.S. Government.

(4) A statement giving the military security classification of the equipment or technical data.

(5) A statement identifying any patent application which discloses any of the subject matter of the equipment or technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office.

(6) A statement of the actual or estimated value of the agreement, including the estimated value of all defense articles to be exported in furtherance of the agreement or amendments thereto. If the value is $500,000 or more, an additional statement must be made regarding the payment of political contributions, fees or commissions, pursuant to part 130 of this subchapter.

(7) A statement indicating whether any foreign military sales credits or loan guarantees are or will be involved in financing the agreement.

(8) The agreement must describe any classified information involved and identify, from Department of Defense form 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 Investigative 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.

(10) A statement specifying whether the applicant is requesting retransfer of defense articles and defense services pursuant to §124.16 of this subchapter.

(b) The following statements must be made in the letter of transmittal:

(1) "If the agreement is approved by the Department of State, such approval will not be construed by (the applicant) as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will (the applicant) construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."
(2) “The (applicant) will not permit the proposed agreement to enter into force until it has been approved by the Department of State.”

(3) “The (applicant) will furnish the Department of State with one copy of the signed agreement (or amendment) within 30 days from the date that the agreement is concluded and will inform the Department of its termination not less than 30 days prior to expiration and provide information on the continuation of any foreign rights or the flow of technical data to the foreign party. If a decision is made not to conclude the proposed agreement, the applicant will so inform the Department within 60 days.”

(4) “If this agreement grants any rights to sub-license, it will be amended to require that all sub-licensing arrangements incorporate all the provisions of the basic agreement that refer to the U.S. Government and the Department of State (i.e., 22 CFR 124.9 and 124.10).”


§ 124.13 Procurement by United States persons in foreign countries (offshore procurement).

Notwithstanding the other provisions in part 124 of this subchapter, the Directorate of Defense Trade Controls may authorize by means of a license (DSP-5) the export of unclassified technical data to foreign persons for offshore procurement of defense articles, provided that:

(a) The contract or purchase order for offshore procurement limits delivery of the defense articles to be produced only to the person in the United States or to an agency of the U.S. Government; and

(b) The technical data of U.S.-origin to be used in the foreign manufacture of defense articles does not exceed that required for bid purposes on a build-to-print basis (build-to-print means producing an end-item (i.e., system, subsystem or component) from technical drawings and specifications which contain no process or know-how information) without the need for additional technical assistance. Release of supporting documentation (e.g., acceptance criteria, object code software for numerically controlled machines) is permissible. Build-to-print does not include the release of any information which discloses design methodology, engineering analysis, detailed process information or manufacturing know-how); and

(c) The contract or purchase order between the person in the United States and the foreign person:

(1) Limits the use of the technical data to the manufacture of the defense articles required by the contract or purchase order only; and

(2) Prohibits the disclosure of the data to any other person except subcontractors within the same country; and

(3) Prohibits the acquisition of any rights in the data by any foreign person; and

(4) Provides that any subcontracts between foreign persons in the approved country for manufacture of equipment for delivery pursuant to the contract or purchase order contain all the limitations of this paragraph (c); and

(5) Requires the foreign person, including subcontractors, to destroy or return to the person in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of their terms; and

(6) Requires delivery of the defense articles manufactured abroad only to the person in the United States or to an agency of the U.S. Government; and

(d) The person in the United States provides the Directorate of Defense Trade Controls with a copy of each 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.

§ 124.14 Exports to warehouses or distribution points outside the United States.

(a) Agreements. Agreements (e.g., contracts) between U.S. persons and foreign persons for the warehousing and distribution of defense articles must be approved by the Directorate of Defense Trade Controls before they enter into force. Such agreements will be limited to unclassified defense articles and must contain conditions for special distribution, end-use and reporting. Licenses for exports pursuant to such agreements must be obtained prior to exports of the defense articles unless an exemption under §123.16(b)(1) of this subchapter is applicable.

(b) Required information. Proposed warehousing and distribution agreements (and amendments thereto) shall be submitted to the Directorate of Defense Trade Controls for approval. The following information must be included in all such agreements:

(1) A description of the defense articles involved including test and support equipment covered by the U.S. Munitions List. This shall include when applicable the military nomenclature, the Federal stock number, nameplate data, and any control numbers under which the defense articles were developed or procured by the U.S. Government. Only those defense articles specifically listed in the agreement will be eligible for export under the exemption in §123.16(b)(1) of this subchapter.

(2) A detailed statement of the terms and conditions under which the defense articles will be exported and distributed;

(3) The duration of the proposed agreement;

(4) Specific identification of the country or countries that comprise the distribution territory. Distribution must be specifically limited to the governments of such countries or to private entities seeking to procure defense articles pursuant to a contract with a government within the distribution territory or to other eligible entities as specified by the Directorate of Defense Trade Controls. Consequently, any deviation from this condition must be fully explained and justified. A nontransfer and use certificate (DSP-83) will be required to the same extent required in licensing agreements under §124.9(b).

(c) Required statements. The following statements must be included in all warehousing and distribution agreements:

(1) “This agreement shall not enter into force, and may not be amended or extended, without the prior written approval of the Department of State of U.S. Government.”

(2) “This agreement is subject to all United States laws and regulations related to exports and to all administrative acts of the United States Government pursuant to such laws and regulations.

(3) “The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government.”

(4) “No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign by reason of the U.S. Government’s approval of this agreement.”

(5) “No export, sale, transfer, or other disposition of the defense articles covered by this agreement is authorized to any country outside the distribution territory without the prior written approval of the Directorate of Defense Trade Controls of the U.S. Department of State.”

(6) “The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient shall be provided by (applicant or licensee) to the Department of State.” This clause must specify which party is obligated to provide the
annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. (See §126.10(b) of this subchapter.)

(7) (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the articles covered by this agreement are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

(8) “All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement.”

(9) Additional clause. Unless the articles covered by the agreement are in fact intended to be distributed to private persons or entities (e.g., sporting firearms for commercial resale, cryptographic devices and software for financial and business applications), the following clause must be included in all warehousing and distribution agreements:

“Sales or other transfers of the licensed article shall be limited to governments of the countries in the distribution territory and to private entities seeking to procure the licensed article pursuant to a contract with a government within the distribution territory, unless the prior written approval of the U.S. Department of State is obtained.”

(d) Special clauses for agreements relating to significant military equipment. With respect to agreements for the warehousing and distribution of significant military equipment, the following additional provisions must be included in the agreement:

1. A completed nontransfer and use certificate (DSP-83) must be executed by the foreign end-user and submitted to the U.S. Department of State before any transfer may take place.

2. The prior written approval of the U.S. Department of State must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside the approved distribution territory.

(e) Transmittal letters. Requests for approval of warehousing and distribution agreements with foreign persons must be made by letter. The original letter and seven copies of the letter and seven copies of the proposed agreement shall be submitted to the Directorate of Defense Trade Controls. The letter shall contain:

1. A statement giving the applicant’s Directorate of Defense Trade Controls registration number.

2. A statement identifying the foreign party to the agreement.

3. A statement identifying the defense articles to be distributed under the agreement.

4. A statement identifying any U.S. Government contract under which the equipment may have been generated, improved, developed or supplied to the U.S. Government, and whether the equipment was derived from any bid or other proposal to the U.S. Government.

5. A statement that no classified defense articles or classified technical data are involved.

6. A statement identifying any patent application which discloses any of the subject matter of the equipment or related technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office.

(f) Required clauses. The following statements must be made in the letter of transmittal:

1. “If the agreement is approved by the Department of State, such approval will not be construed by (applicant) as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will (the applicant) construe the Department’s approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement.”

2. “The (applicant) will not permit the proposed agreement to enter into force until it has been approved by the Department of State.”
(3) “(Applicant) will furnish the Department of State with one copy of the signed agreement (or amendment thereto) within 30 days from the date that the agreement is concluded, and will inform the Department of its termination not less than 30 days prior to expiration. If a decision is made not to conclude the proposed agreement, (applicant) will so inform the Department within 60 days.”

[58 FR 39305, July 22, 1993, as amended at 71 FR 20544, Apr. 21, 2006]

§ 124.15 Special Export Controls for Defense Articles and Defense Services Controlled under Category XV: Space Systems and Space Launches.

(a) The export of 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.

§ 124.16 Special retransfer authorizations for unclassified technical data and defense services to member states of NATO and the European Union, Australia, Japan, New Zealand, and Switzerland.

The provisions of §124.8(5) of this subchapter notwithstanding, the Department may approve access to unclassified defense articles exported in furtherance of or produced as a result of a TAA/MLA, and retransfer of technical data and defense services to individuals who are dual national or third-country national employees of the foreign signatory or its approved sub-licensees, including the transfer to dual nationals or third-country nationals who are bona fide regular employees, directly employed by the foreign signatory or approved sub-licensees, provided they are nationals exclusively of countries that are members of NATO the European Union, Australia, Japan, New Zealand, and Switzerland and their employer is a signatory to the agreement or has executed a Non-Disclosure Agreement. The retransfer must take place completely within the physical territories of these countries or the United States. Permanent retransfer of hardware is not authorized.

[76 FR 28177, May 16, 2011]

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

Source: 58 FR 39310, July 22, 1993, unless otherwise noted.

§ 125.1 Exports subject to this part.

(a) The controls of this part apply to the export of technical data and the export of classified defense articles. Information which is in the public domain (see §120.11 of this subchapter and §125.4(b)(13)) is not subject to the controls of this subchapter.

(b) A license for the export of technical data and the exemptions in §125.4 may not be used for foreign production purposes or for technical assistance unless the approval of the Directorate of Defense Trade Controls has been obtained. Such approval is generally provided only pursuant to the procedures specified in part 124 of this subchapter.

(c) Technical data authorized for export may not be reexported, transferred or diverted from the country of ultimate end-use or from the authorized foreign end-user (as designated in the license or approval for export) or disclosed to a national of another country without the prior written approval of the Directorate of Defense Trade Controls.

(d) The controls of this part apply to the exports referred to in paragraph (a) of this section regardless of whether the person who intends to export the technical data produces or manufactures defense articles if the technical data is determined by the Directorate of Defense Trade Controls to be subject to the controls of this subchapter.

(e) 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, please see §123.20 of this subchapter.


§ 125.2 Exports of unclassified technical data.

(a) License. A license (DSP-5) is required for the export of unclassified technical data unless the export is exempt from the licensing requirements of this subchapter. In the case of a plant
visit, details of the proposed discussions must be transmitted to the Directorate of Defense Trade Controls for an appraisal of the technical data. Seven copies of the technical data or the details of the discussion must be provided.

(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]

§ 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 §120.1(c) of this subchapter. The exemptions are also not applicable for purposes of establishing offshore procurement arrangements or producing defense articles offshore (see §124.13), except 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, and regardless of media or format, sent or taken by a U.S. person who is an employee of a U.S. corporation or a U.S. Government agency to a U.S. person employed by that U.S. corporation or to a U.S. Government agency outside the United States. This exemption is subject to the limitations of §125.1(b) of this subchapter and may be used only if:
   (i) The technical data is to be used outside the United States solely by a U.S. person;
   (ii) The U.S. person outside the United States is an employee of the U.S. Government or is directly employed by the U.S. corporation and not by a foreign subsidiary; and
   (iii) The classified information is sent or taken outside the United States in accordance with the requirements of the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed).

(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 (c)(1), (c)(2), and (c)(3) of this section and must not include paragraphs (c)(4), (c)(5), and (c)(6) of this section which follow:

(1) Build-to-Print. “Build-to-Print” means that a foreign consignee can produce a defense article from engineering drawings without any technical assistance from a U.S. exporter. This transaction is based strictly on a “hands-off” approach since the foreign consignee is understood to have the inherent capability to produce the defense article and only lacks the necessary drawings. Supporting documentation such as acceptance criteria, and specifications, may be released on an as-required basis (i.e., “must have”) such that the foreign consignee would not be able to produce an acceptable defense article without this additional supporting documentation. Documentation which is not absolutely necessary to permit manufacture of an acceptable defense article (i.e., “nice to have”) is not considered within the boundaries of a “Build-to-Print” data package;

(2) Build/Design-to-Specification. “Build/Design-to-Specification” means that a foreign consignee can design and produce a defense article from requirement specifications without any technical assistance from the U.S. exporter. This transaction is based strictly on a “hands-off” approach since the foreign consignee is understood to have the inherent capability to both design and produce the defense article and only lacks the necessary requirement information;

(3) Basic Research. “Basic Research” means a systemic study directed toward greater knowledge or understanding of the fundamental aspects of phenomena and observable facts without specific applications towards processes or products in mind. It does not include “Applied Research” (i.e., a systemic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met. It is a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.);

(4) Design Methodology, such as: The underlying engineering methods and design philosophy utilized (i.e., the “why” or information that explains the rationale for particular design decision, engineering feature, or performance requirement); engineering experience (e.g., lessons learned); and the rationale and associated databases (e.g., design allowables, factors of safety, component life predictions, failure analysis criteria) that establish the operational requirements (e.g., performance, mechanical, electrical, electronic, reliability and maintainability) of a defense article. (Final analytical results and the initial conditions and parameters may be provided.)

(5) Engineering Analysis, such as: Analytical methods and tools used to design or evaluate a defense article’s performance against the operational requirements. Analytical methods and tools include the development and/or use of mockups, computer models and simulations, and test facilities. (Final analytical results and the initial conditions and parameters may be provided.)

(6) Manufacturing Know-how, such as: information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a qualified, finished defense article. (Information may be provided in a build-to-print package that is necessary in order to produce an acceptable defense article.)

(d) [Reserved]
§ 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 Certification requirements for exemptions.

(a) To claim an exemption for the export of technical data under the provisions of this subchapter (e.g., §§125.4 and 125.5), the exporter must certify that the proposed export is covered by a relevant section of this subchapter, to include the paragraph and applicable subparagraph. Certifications consist of clearly marking the package or letter containing the technical data “22 CFR [insert ITAR exemption] applicable.” This certification must be made in written form and retained in the exporter’s files for a period of 5 years (see §123.22 of this subchapter).

(b) For exports that are oral, visual, or electronic the exporter must also complete a written certification as indicated in paragraph (a) of this section and retain it for a period of 5 years.

[68 FR 61102, Oct. 27, 2003]

§ 125.7 Procedures for the export of classified technical data and other classified defense articles.

(a) All applications for the export or temporary import of classified technical data or other classified defense articles must be submitted to the Directorate of Defense Trade Controls on Form DSP-85.

(b) An application for the export of classified technical data or other classified defense articles must be accompanied by seven copies of the data and a completed Form DSP-83 (see §123.10 of this subchapter). Only one copy of the data or descriptive literature must be provided if a renewal of the license is requested. All classified materials accompanying an application must be transmitted to the Directorate of Defense Trade Controls in accordance with the procedures contained in the Department of Defense National Industrial 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).

[71 FR 20546, Apr. 21, 2006]

§ 125.8 [Reserved]

§ 125.9 Filing of licenses and other authorizations for exports of classified technical data and classified defense articles.

Licenses and other authorizations for the export of classified technical data or classified defense articles will be forwarded by the Directorate of Defense Trade Controls to the Defense Security Service of the Department of Defense in accordance with the provisions of the Department of Defense National Industrial 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

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. This policy applies to Belarus, Cuba, Eritrea, Iran, North Korea, Syria, and Venezuela. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g., Burma, China, and the Republic of the Sudan) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a Department of State notice published in the FEDERAL REGISTER. The exemptions provided in this subchapter, except §§123.17, 126.4, and 126.6 of this subchapter or when the recipient is a U.S. Government department or agency, 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 this section or to brokering activities involving such countries, areas, or persons. (See §129.7 of this subchapter, which imposes restrictions on brokering activities similar to those in this section.)

(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) Exports and sales prohibited by United Nations Security Council embargoes. Whenever the United Nations Security Council mandates an arms embargo, all transactions that are prohibited by the embargo and that involve U.S. persons (see §120.15 of this subchapter) anywhere, or any person in the United States, and defense articles or services of a type described on the United States Munitions List (22 CFR part 121), irrespective of origin, are prohibited under the ITAR for the duration of the embargo, unless the Department of State publishes a notice in the FEDERAL REGISTER specifying different measures. This would include, but is not limited to, transactions involving trade by U.S. persons who are located inside or outside of the United States in defense articles or services of U.S. or foreign origin that are located inside or outside of the United States. United Nations Security Council arms embargoes include, but are not necessarily limited to, the following countries:

(1) Cote d'Ivoire (see also paragraph (q) of this section).

(2) Democratic Republic of Congo (see also paragraph (i) of this section).

(3) Eritrea.
(4) Iraq (see also paragraph (f) of this section).
(5) Iran.
(6) Lebanon (see also paragraph (t) of this section).
(7) Liberia (see also paragraph (o) of this section).
(8) Libya (see also paragraph (k) of this section).
(9) North Korea.
(10) Somalia (see also paragraph (m) of this section).
(11) The Republic of the Sudan (see also paragraph (v) of this section).

d) Terrorism. Exports to countries which the Secretary of State has determined to have repeatedly provided support for acts of international terrorism are contrary to the foreign policy of the United States and are thus subject to the policy specified in paragraph (a) of this section and the requirements of section 40 of the Arms Export Control Act (22 U.S.C. 2780) and the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986 (22 U.S.C. 4801, NOTE). The countries in this category are: Cuba, Iran, the Republic of the Sudan and Syria.

(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; and
(2) Lethal military equipment required by the Government of Iraq or coalition forces.

(g) Afghanistan. It is the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services, destined for or originating in Afghanistan, except that a license or other approval may be issued, on a case-by-case basis, for the Government of Afghanistan or coalition forces. In addition, the names of individuals, groups, undertakings, and entities subject to arms embargoes, due to their affiliation with the Taliban, Al-Qaeda, 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) [Reserved]

(i) Democratic Republic of the Congo. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Democratic Republic of the Congo, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services for the Government of the Democratic Republic of the Congo as notified in advance to the Committee of the Security Council concerning the Democratic Republic of the Congo;
(2) Defense articles and defense services intended solely for the support of or use by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC);
(3) Personal protective gear temporarily exported to the Democratic Republic of the Congo by United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only; and

(4) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as notified in advance to the Committee of the Security Council concerning the Democratic Republic of the Congo.

(j) Haiti.

(1) It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Haiti, except that a license or other approval may be issued, on a case-by-case basis, for:

(i) Defense articles and defense services intended solely for the support of or use by security units that operate under the command of the Government of Haiti, to include the Coast Guard;

(ii) Defense articles and defense services intended solely for the support of or use by the United Nations or a United Nations-authorized mission; and

(iii) Personal protective gear for use by personnel from the United Nations and other international organizations, representatives of the media, and development workers and associated personnel.

(2) All shipments of arms and related materials consistent with the above exceptions shall only be made to Haitian security units as designated by the Government of Haiti, in coordination with the U.S. Government.

(k) Libya. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Libya, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Arms and related materiel intended solely for security or disarmament assistance to the Libyan government, 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;

(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; or

(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.

(l) Vietnam. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Vietnam, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Lethal defense articles and defense services to enhance maritime security capabilities and domain awareness;

(2) Non-lethal defense articles and defense services; or

(3) Non-lethal, safety-of-use defense articles (e.g., cartridge actuated devices, propellant actuated devices and technical manuals for military aircraft for purposes of enhancing the safety of the aircraft crew) for lethal end-items.

NOTE TO PARAGRAPH (l). For non-lethal defense end-items, no distinction will be made between Vietnam’s existing and new inventory.

(m) Somalia. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Somalia, except that a license or other approval may be issued, on a case-by-case basis, for:
(1) Defense articles and defense services intended solely for support for the African Union Mission to Somalia (AMISOM); and

(2) Defense services for the purpose of helping develop security sector institutions in Somalia that further the objectives of peace, stability and reconciliation in Somalia, after advance notification of the proposed export by the United States Government to the UNSC Somalia Sanctions Committee and the absence of a negative decision by that committee.

Exemptions from the licensing requirement may not be used with respect to any export to Somalia unless specifically authorized in writing by the Directorate of Defense Trade Controls.

(n) Sri Lanka. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Sri Lanka, except that a license or other approval may be issued, on a case-by-case basis, for humanitarian demining and aerial or maritime surveillance.

(o) Liberia. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Liberia, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services for the Government of Liberia as notified in advance to the Committee of the Security Council concerning Liberia;

(2) Defense articles and defense services intended solely for support of or use by the United Nations Mission in Liberia (UNMIL);

(3) Personal protective gear temporarily exported to Liberia by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only; and

(4) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as notified in advance to the Committee of the Security Council concerning Liberia.

(p) [Reserved]

(q) Côte d'Ivoire. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Côte d'Ivoire, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services intended solely for support of or use by the United Nations Operations in Côte d'Ivoire (UNOCI) and the French forces that support them;

(2) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as approved in advance to the Committee of the Security Council concerning Côte d'Ivoire;

(3) Personal protective gear temporarily exported to Côte d'Ivoire by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only;

(4) Supplies temporarily exported to Côte d'Ivoire to the forces of a State which is taking action, in accordance with international law, solely and directly to facilitate the evacuation of its nationals and those for whom it has consular responsibility in Côte d'Ivoire, as notified in advance to the Committee of the Security Council concerning Côte d'Ivoire; and

(5) Non-lethal equipment intended solely to enable the Ivorian security forces to use only appropriate and proportionate force while maintaining public order, as approved in advance by the Sanctions Committee.

(r) Cyprus. It is the policy of the United States to deny licenses or other approvals, for exports or imports of defense articles and defense services destined for or originating in Cyprus, except that a license or other approval may be issued, on a case-by-case basis, for the United Nations Forces in Cyprus (UNFICYP) or for civilian end-users.

(s) Zimbabwe. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Zimbabwe, except that a license or other approval may be issued, on a case-by-case basis, for the temporary export of firearms and ammunition for personal use by individuals (not for resale or retransfer, including to the Government of Zimbabwe). Such exports may meet the licensing exemptions of §123.17 of this subchapter.
(t) **Lebanon.** It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Lebanon, except that a license or other approval may be issued, on a case-by-case basis, for the United Nations Interim Force in Lebanon (UNIFIL) 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 in the Central African Republic, except that a license or other approval may be issued, on a case-by-case basis, for:

1. Defense articles intended solely for the support of or use by the International Support Mission to the Central African Republic (MISCA); the UN Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA); the African Union Regional Task Force (AU-RTF); and the French forces and European Union operation deployed in the Central African Republic;
2. Non-lethal military equipment, and related technical assistance and training, when intended solely for humanitarian and protective use, as approved in advance by the Committee of the Security Council concerning the Central African Republic;
3. Personal protective gear temporarily exported to the Central African Republic by United Nations personnel, representatives of the media, and humanitarian and developmental workers and associated personnel, for their personal use only;
4. Small arms and related equipment intended solely for use in international patrols providing security in the Sangha River Tri-national Protected Area to defend against poaching, smuggling of ivory and arms, and other activities contrary to the laws of the Central African Republic or its international legal obligations;
5. Arms and related lethal military equipment for Central African Republic security forces, intended solely for support of or use in security sector reform, as approved in advance by the Committee of the Security Council concerning the Central African Republic; or
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 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;
3. Personal protective gear for the personal use of United Nations personnel, human rights monitors, representatives of the media, and humanitarian and development workers and associated personnel; or
4. Assistance and supplies provided in support of implementation of the Comprehensive Peace Agreement.

**NOTE TO §126.1.** On July 9, 2011, the Republic of South Sudan declared independence from Sudan and was recognized as a sovereign state by the United States. This policy does not apply to the Republic of South Sudan. Licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Republic of the South Sudan will be considered on a case-by-case basis.


[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.fdsys.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.
[71 FR 20546, Apr. 21, 2006; 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.
[77 FR 16600, Mar. 21, 2012; 79 FR 8085, Feb. 11, 2014]

§ 126.4 Shipments by or for United States Government agencies.

(a) A license is not required for the temporary import, or temporary export, of any defense article, including technical data or the performance of a defense service, by or for any agency of the U.S. Government for official use by such an agency, or for carrying out any foreign assistance, cooperative project or sales program authorized by law and subject to control by the President by other means. This exemption applies only when all aspects of a transaction (export, carriage, and delivery abroad) are affected by a United States Government agency or when the export is covered by a United States Government Bill of Lading. This exemption, however, does not apply when a U.S. Government agency acts as a transmittal agent on behalf of a private individual or firm, either as a convenience or in satisfaction of security requirements. The approval of the Directorate of Defense Trade Controls must be obtained before defense articles previously exported pursuant to this exemption are permanently transferred (e.g., property disposal of surplus defense articles overseas) unless the transfer is pursuant to a grant, sale, lease, loan or cooperative project under the Arms Export Control Act or a sale, lease or loan under the Foreign Assistance Act of 1961, as amended, or the defense articles have been rendered useless for military purposes beyond the possibility of restoration.

   NOTE: Special definition. For purposes of this section, defense articles exported abroad for incorporation into a foreign launch vehicle or for use on a foreign launch vehicle or satellite that is to be launched from a foreign country shall be considered a permanent export.

(b) This section does not authorize any department or agency of the U.S. Government to make any export which is otherwise prohibited by virtue of other administrative provisions or by any statute.

(c) A license is not required for the temporary import, or temporary or permanent export, of any classified or unclassified defense articles, including technical data or the performance of a defense service, for end-use by a U.S. Government agency in a foreign country under the following circumstances:

   (1) The export or temporary import is pursuant to a contract with, or written direction by, an agency of the U.S. Government; and

   (2) The end-user in the foreign country is a U.S. Government agency or facility, and the defense articles or technical data will not be transferred to any foreign person; and

   (3) The urgency of the U.S. Government requirement is such that the appropriate export license or U.S. Government Bill of Lading could not have been obtained in a timely manner.

(d) An Electronic Export Information (EEI) filing, required under §123.22 of this subchapter, and a written statement by the exporter certifying that these requirements have been met must be presented at the time of export to the appropriate Port Directors of U.S. Customs and Border Protection or Department of Defense transmittal authority. A copy of the EEI filing and the written certification statement shall be provided to the Directorate of Defense Trade Controls immediately following the export.

§ 126.5 Canadian exemptions.

(a) Temporary import of defense articles. Port Directors of U.S. Customs and Border Protection and postmasters shall permit the temporary import and return to Canada without a license of any unclassified defense articles (see §120.6 of this subchapter) that originate in
Canada for temporary use in the United States and return to Canada. All other temporary imports shall be in accordance with §§123.3 and 123.4 of this subchapter.

(b) Permanent and temporary export of defense articles. Except as provided in Supplement No. 1 to part 126 of this subchapter and for exports that transit third countries, Port Directors of U.S. Customs and Border Protection and postmasters shall permit, when for end-use in Canada by Canadian Federal or Provincial governmental authorities acting in an official capacity or by a Canadian-registered person, or for return to the United States, the permanent and temporary export to Canada without a license of unclassified defense articles and defense services identified on the U.S. Munitions List (22 CFR 121.1). The exceptions are subject to meeting the requirements of this subchapter, to include 22 CFR 120.1(c) and (d), parts 122 and 123 (except insofar as exemption from licensing requirements is herein authorized) and §126.1, and the requirement to obtain non-transfer and use assurances for all significant military equipment. For purposes of this section, “Canadian-registered person” is any Canadian national (including Canadian business entities organized under the laws of Canada), dual citizen of Canada and a third country other than a country listed in §126.1 of this subchapter, and permanent resident registered in Canada in accordance with the Canadian Defense Production Act, and such other Canadian Crown Corporations identified by the Department of State in a list of such persons publicly available through the Internet 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.


§ 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
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(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, the Port Director of U.S. Customs and Border Protection is provided an original and properly executed DSP-94 accompanied by a copy of the LOA and any other documents required by U.S. Customs and Border Protection in carrying out its responsibilities. The Electronic Export Information (EEI) or, if authorized, the outbound manifest, must be annotated “This shipment is being exported under the authority of Department of State Form DSP-94. It covers FMS Case [insert case identification], expiration [insert date]. 22 CFR 126.6 applicable. The U.S. Government point of contact is ______, telephone number ______,” and

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

(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.


§ 126.7 Denial, revocation, suspension, or amendment of licenses and other approvals.

(a) Policy. Licenses or approvals shall be denied or revoked whenever required by any statute of the United States (see §§127.7 and 127.11 of this subchapter). Any application for an export license or other approval under this subchapter may be disapproved, and any license or other approval or exemption granted under this subchapter may be revoked, suspended, or amended without prior notice whenever:

1. The Department of State deems such action to be in furtherance of world peace, the national security or the foreign policy of the United States, or is otherwise advisable; or

2. The Department of State believes that 22 U.S.C. 2778, any regulation contained in this subchapter, or the terms of any U.S. Government export authorization (including the terms of a manufacturing license or technical assistance agreement, or export authorization granted pursuant to the Export Administration Act, as amended) has been violated by any party to the export or other person having significant interest in the transaction; or

3. An applicant is the subject of a criminal complaint, other criminal charge (e.g., an information), or indictment for a violation of any of the U.S. criminal statutes enumerated in §120.27 of this subchapter; or

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 §120.27 of this subchapter; or

5. An applicant is ineligible to contract with, or to receive a license or other authorization to import defense articles or defense services from, any agency of the U.S. Government; or

6. An applicant, any party to the export or agreement, any source or manufacturer of the defense article or defense service or any person who has a significant interest in the transaction has been debarred, suspended, or otherwise is ineligible to receive an export license or other authorization from any agency of the U.S. government (e.g., pursuant to debarment by the Department of Commerce under 15 CFR part 760 or by the Department of State under part 127 or 128 of this subchapter); or

7. An applicant has failed to include any of the information or documentation expressly required to support a license application, exemption, or other request for approval under this subchapter, or as required in the instructions in the applicable Department of State form or has failed to provide notice or information as required under this subchapter; or

8. An applicant is subject to sanctions under other relevant U.S. laws (e.g., the Missile Technology Controls title of the National Defense Authorization Act for FY 1991 (Pub. L. 101-510); the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Pub. L. 102-182); or the Iran-Iraq Arms Non-Proliferation Act of 1992 (Pub. L. 102-484)).

(b) Notification. The Directorate of Defense Trade Controls will notify applicants or licensees or other appropriate United States persons of actions taken pursuant to paragraph (a) of this section. The reasons for the action will be stated as specifically as security and foreign policy considerations permit.
(c) Reconsideration. If a written request for reconsideration of an adverse decision is made within 30 days after a person has been informed of the decision, the U.S. person will be accorded an opportunity to present additional information. The case will then be reviewed by the Directorate of Defense Trade Controls.

(d) Reconsideration of certain applications. Applications for licenses or other requests for approval denied for repeated failure to provide information or documentation expressly required will normally not be reconsidered during the thirty day period following denial. They will be reconsidered after this period only after a final decision is made on whether the applicant will be subject to an administrative penalty imposed pursuant to this subchapter. Any request for reconsideration shall be accompanied by a letter explaining the steps that have been taken to correct the failure and to ensure compliance with the requirements of this subchapter.

(e) Special definition. For purposes of this subchapter, the term “party to the export” means:

1. The chief executive officer, president, vice-presidents, other senior officers and officials (e.g., comptroller, treasurer, general counsel) and any member of the board of directors of the applicant;
2. The freight forwarders or designated exporting agent of the applicant; and
3. Any consignee or end-user of any item to be exported.

§ 126.9 Advisory opinions and related authorizations.

(a) Advisory opinion. Any person desiring information as to whether the Directorate of Defense Trade Controls would be likely to grant a license or other approval for the export or approval of a particular defense article or defense service to a particular country may request an advisory opinion from the Directorate of Defense Trade Controls. Advisory opinions are issued on a case-by-case basis and apply only to the particular matters presented to the Directorate of Defense Trade Controls. These opinions are not binding on the Department of State, and may not be used in future matters before the Department. A request for an advisory opinion must be made in writing and must outline in detail the equipment, its usage, the security classification (if any) of the articles or related technical data, and the country or countries involved. An original and seven copies of the letter must be provided along with seven copies of suitable descriptive information concerning the defense article or defense service.

(b) Related authorizations. The Directorate of Defense Trade Controls may, as appropriate, in accordance with the procedures set forth in paragraph (a) of this section, provide export authorization, subject to all other relevant requirements of this subchapter, both for transactions that have been the subject of advisory opinions requested by prospective U.S. exporters, or for the Directorate’s own initiatives. Such initiatives may cover pilot programs, or specifically anticipated circumstances for which the Directorate considers special authorizations appropriate.

§ 126.10 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 (22 U.S.C. 2778) provides by reference to certain procedures of the Export Administration Act that certain information required by the Department of State in connection with the licensing process may generally not be disclosed to the public unless certain determinations relating to the national interest are made in accordance with the procedures specified in that provision, except that the names of the countries and types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless the President determines that release of such information would be contrary to the national interest. Registration with the Directorate of Defense Trade Controls is required of certain persons, in accordance with Section 38 of the Arms Export Control Act. The requirements and guidance are provided in the ITAR pursuant to parts 122 and 129.
Registration is generally a precondition to the issuance of any license or other approvals under this subchapter, to include the use of any exemption. Therefore, information provided to the Department of State to effect registration, as well as that regarding actions taken by the Department of State related to registration, may not generally be disclosed to the public. Determinations required by Section 38(e) shall be made by the Assistant Secretary for Political-Military Affairs.

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

(d) National Interest Determinations. In accordance with section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)), the Secretary of State has determined that the following disclosures are in the national interest of the United States:

1. Furnishing information to foreign governments for law enforcement or regulatory purposes; and
2. Furnishing information to foreign governments and other agencies of the U.S. Government in the context of multilateral or bilateral export regimes (e.g., the Missile Technology Control Regime, the Australia Group, and Wassenaar Arrangement).

§ 126.11 Relations to other provisions of law.

The provisions in this subchapter are in addition to, and are not in lieu of, any other provisions of law or regulations. The sale of firearms in the United States, for example, remains subject to the provisions of the Gun Control Act of 1968 and regulations administered by the Department of Justice. The performance of defense services on behalf of foreign governments by retired military personnel continues to require consent pursuant to part 3a of this title. Persons who intend to export defense articles or furnish defense services should not assume that satisfying the requirements of this subchapter relieves one of other requirements of law.

§ 126.12 Continuation in force.

All determinations, authorizations, licenses, approvals of contracts and agreements and other action issued, authorized, undertaken, or entered into by the Department of State pursuant to section 414 of the Mutual Security Act of 1954, as amended, or under the previous provisions of this subchapter, continue in full force and effect until or unless modified, revoked or superseded by the Department of State.

§ 126.13 Required information.

(a) All applications for licenses (DSP-5, DSP-61, DSP-73, and DSP-85), all requests for approval of agreements and amendments thereto under part 124 of this subchapter, and all requests for other written authorizations (including requests for retransfer or reexport pursuant to §123.9 of this subchapter) must include a letter signed by a responsible official empowered by the applicant and addressed to the Directorate of Defense Trade Controls, stating whether:

1. The applicant or the chief executive officer, president, vice-presidents, 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 §120.27 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 §126.7(e) has been convicted of violating any of the U.S. criminal statutes enumerated in §120.27 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.

§ 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.


§ 126.15 Expedited processing of license applications for the export of defense articles and defense services to Australia or the United Kingdom.

(a) Any application submitted for authorization of the export of defense articles or services to Australia or the United Kingdom will be expeditiously processed by the Department of State, in consultation with the Department of Defense. Such license applications will not be referred to any other Federal department or agency, except when the defense articles or defense services are classified or exceptional circumstances apply. (See section 1225, Pub. L. 108-375).

(b) To be eligible for the expedited processing in paragraph (a) of this section, the destination of the prospective export must be limited to Australia or the United Kingdom. No other country may be included as intermediary or ultimate end-user.

[70 FR 39919, July 12, 2005]

§ 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) Retransfer and reexport have the meaning provided in § 120.19 of this subchapter.

(iv) Intermediate consignee means, for purposes of this section, an entity or person who receives, 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;
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 §120.17 of this subchapter) the identical type of defense article to any foreign person and end-use of the article is for an end-use identified in paragraph (e) of this section.

(2) The export of any defense article specific to the existence of (e.g., reveals the existence of or details of) anti-tamper measures made at U.S. Government direction always requires prior written approval from 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 subchapter by 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 in the Automated Export System;
   (xvi) All shipping documentation (including, but not limited to the airway bill, bill of lading, packing list, delivery verification, and invoice); and
   (xvii) Statement of Registration (Form DS-2032).

2. Filing of export information. All exporters of defense articles under the Defense Trade Cooperation Treaty between the United States and Australia and this section must electronically file Electronic Export Information (EEI) using the Automated Export System citing one of the four below referenced codes in the appropriate field in the EEI for each shipment:
   (i) For exports in support of United States and 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 § 120.7 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.


§126.17 Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom.

(a) Scope of exemption and required conditions.

(1) Definitions.

(i) An export means, for purposes of this section only, the initial movement of defense articles or defense services from the United States Community to the United Kingdom Community.

(ii) A transfer means, for purposes of this section only, the movement of a previously exported defense article or defense service by a member of the United Kingdom Community within the United Kingdom Community, or between a member of the United States Community and a member of the United Kingdom Community.

(iii) Retransfer and reexport have the meaning provided in §120.19 of this subchapter.

(iv) Intermediate consignee means, for purposes of this section, an 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


(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 § 120.17 of this subchapter) the identical type of defense article to any foreign person and end-use of the article is for an end-use identified in paragraph (e) of this section.
(2) The export of any defense article specific to the existence of (e.g., reveals the existence of or details of) anti-tamper measures made at U.S. Government direction always requires prior written approval from 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 subchapter (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.

(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 in the Automated Export System;
(xvi) All shipping documentation (including, but not limited to the airway bill, bill of lading, packing list, delivery verification, and invoice); and
(xvii) Statement of Registration (Form DS–2032).

(2) Filing of export information. All exporters of defense articles under the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section must electronically file Electronic Export Information (EEI) using the Automated Export System citing one of the four below referenced codes in the appropriate field in the EEI for each shipment:

(i) For exports in support of United States and United Kingdom combined military or counter-terrorism operations identify § 126.17(e)(1) (the name or an appropriate description of the operation shall be placed in the appropriate field in the EEI, as well);
(ii) For exports in support of United States and United Kingdom cooperative security and defense research, development, production, and support programs identify § 126.17(e)(2) (the name or an appropriate description of the program shall be placed in the appropriate field in the EEI, as well);
(iii) For exports in support of mutually determined specific security and defense projects where the Government of the United Kingdom is the end-user identify § 126.17(e)(3) (the name or an appropriate description of the project shall be placed in the appropriate field in the EEI, as well); or
(iv) For exports that will have a U.S. Government end-use identify § 126.17(e)(4) (the U.S. Government contract number or solicitation number (e.g., “U.S. Government contract number XXXXX”) shall be placed in the appropriate field in the EEI, as well). Such exports must meet the required export documentation and filing guidelines, including for defense services, of §§ 123.22(a), (b)(1), and (b)(2) of this subchapter.

(m) Fees and commissions. All exporters authorized pursuant to paragraph (b)(2) of this section shall, with respect to each export, transfer, reexport, or retransfer, pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section, submit a statement to 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 § 120.7 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 connection with the export and a description of any such offset agreement;

(iii) A copy of the signed contract; and

(iv) If the notification is for paragraph (o)(1)(ii) of this section, a statement of what will happen to the weapons in their inventory (for example, whether the current inventory will be sold, reassigned to another service branch, destroyed, etc.).

(3) The Department of State will notify the Congress of exports that meet the requirements of paragraph (o)(1) of this section.


§ 126.18 Exemptions regarding intra-company, intra-organization, and intra-governmental transfers to employees who are dual nationals or third-country nationals.

(a) Subject to the requirements of paragraphs (b) and (c) of this section and notwithstanding any other provisions of this part, and where the exemption provided in § 124.16 cannot be implemented because of applicable domestic laws, no approval is needed from the Directorate of Defense Trade Controls (DDTC) for the transfer of unclassified defense articles, which
includes technical data (see § 120.6), to or within a foreign business entity, foreign governmental entity, or international organization that is an authorized end-user or consignee (including approved sub-licensees) for those defense articles, including the transfer to dual nationals or third-country nationals who are bona fide regular employees, directly employed by the foreign consignee or end-user. The transfer of defense articles pursuant to this section must take place completely within the physical territory of the country where the end-user is located, where the governmental entity or international organization conducts official business, or where the consignee operates, and be within the scope of an approved export license, other export authorization, or license exemption.

(b) The provisions of § 127.1(b) are applicable to any transfer under this section. As a condition of transferring to foreign person employees described in paragraph (a) of this section any defense article under this provision, any foreign business entity, foreign governmental entity, or international organization, as a “foreign person” within the meaning of § 120.16, that receives a defense article, must have effective procedures to prevent diversion to destinations, entities, or for purposes other than those authorized by the applicable export license or other authorization (e.g., written approval or exemption) in order to comply with the applicable provisions of the Arms Export Control Act and the ITAR.

(c) The end-user or consignee may satisfy the condition in paragraph (b) of this section, prior to transferring defense articles, by requiring:

(1) A security clearance approved by the host nation government for its employees, or

(2) The end-user or consignee to have in place a process to screen its employees and to have executed a Non-Disclosure Agreement that provides assurances that the employee will not transfer any defense articles to persons or entities unless specifically authorized by the consignee or end-user. The end-user or consignee must screen its employees for substantive contacts with restricted or prohibited countries listed in § 126.1. Substantive contacts include regular travel to such countries, recent or continuing contact with agents, brokers, and nationals of such countries, continued demonstrated allegiance to such countries, maintenance of business relationships with persons from such countries, maintenance of a residence in such countries, receiving salary or other continuing monetary compensation from such countries, or acts otherwise indicating a risk of diversion. Although nationality does not, in and of itself, prohibit access to defense articles, an employee who has substantive contacts with persons from countries listed in § 126.1(a) shall be presumed to raise a risk of diversion, unless DDTC determines otherwise. End-users and consignees must maintain a technology security/clearance plan that includes procedures for screening employees for such substantive contacts and maintain records of such screening for five years. The technology security/clearance plan and screening records shall be made available to DDTC or its agents for civil and criminal law enforcement purposes upon request.

[76 FR 28177, May 16, 2011]
SUPPLEMENT NO. 1 TO PART 126

*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.

<table>
<thead>
<tr>
<th>USML Category</th>
<th>Exclusion</th>
<th>(CA) §126.5</th>
<th>(AS) §126.16</th>
<th>(UK) §126.17</th>
</tr>
</thead>
<tbody>
<tr>
<td>I-XXI</td>
<td>Classified defense articles and services. See Note 1.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>I-XXI</td>
<td>Defense articles listed in the Missile Technology Control Regime (MTCR) Annex.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>I-XXI</td>
<td>U.S. origin defense articles and services used for marketing purposes and not previously licensed for export in accordance with this subchapter.</td>
<td>X</td>
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<td></td>
</tr>
<tr>
<td>I-XXI</td>
<td>Defense services for or technical data related to defense articles identified in this supplement as excluded from the Canadian exemption.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I-XXI</td>
<td>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.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I-XXI</td>
<td>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.</td>
<td>X</td>
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<tr>
<td>I-XXI</td>
<td>Nuclear weapons strategic delivery systems and all components, parts, accessories, and attachments specifically designed for such systems and associated equipment.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I-XXI</td>
<td>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.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>I-XXI</td>
<td>Defense articles and services specific to reduced observables or counter low observables in any part of the spectrum. See NOTE 2.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>I-XXI</td>
<td>Defense articles and services specific to sensor fusion beyond that required for display or identification correlation. See NOTE 3.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>I-XXI</td>
<td>Defense articles and services specific to the automatic target acquisition or recognition and cueing of multiple autonomous unmanned systems.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>I-XXI</td>
<td>Nuclear power generating equipment or propulsion equipment (e.g., nuclear reactors), specifically designed for military use and components therefor, specifically designed for military use. <em>See also §123.20 of this subchapter.</em></td>
<td>X</td>
<td></td>
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</tr>
<tr>
<td>I-XXI</td>
<td>Libraries (parametric technical databases) specially designed for military use with equipment controlled on the USML. <em>See NOTE 13.</em></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I-XXI</td>
<td>Defense services or technical data specific to applied research as defined in §125.4(c)(3) of this subchapter, design methodology as defined in §125.4(c)(4) of this subchapter, engineering analysis as defined in §125.4(c)(5) of this subchapter, or manufacturing know-how as defined in §125.4(c)(6) of this subchapter. <em>See NOTE 12.</em></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I-XXI</td>
<td>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. <em>See NOTE 14.</em></td>
<td>X</td>
<td></td>
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</tr>
<tr>
<td>I</td>
<td>Firearms, close assault weapons, and combat shotguns.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>II(k)</td>
<td>Software source code related to USML Category II(c), II(d), or II(i). <em>See NOTE 4.</em></td>
<td>X X</td>
<td></td>
<td></td>
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<tr>
<td>II(k)</td>
<td>Manufacturing know-how related to USML Category II(d). <em>See NOTE 5.</em></td>
<td>X X X</td>
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<td></td>
</tr>
<tr>
<td>III</td>
<td>Ammunition for firearms, close assault weapons, and combat shotguns listed in USML Category I.</td>
<td>X</td>
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<td></td>
</tr>
<tr>
<td>III</td>
<td>Defense articles and services specific to ammunition and fuse setting devices for guns and armament controlled in USML Category II.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>III(e)</td>
<td>Manufacturing know-how related to USML Category III(d)(1) or III(d)(2) and their specially designed components. <em>See NOTE 5.</em></td>
<td>X X X</td>
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<td></td>
</tr>
<tr>
<td>III(e)</td>
<td>Software source code related to USML Category III(d)(1) or III(d)(2). <em>See NOTE 4.</em></td>
<td>X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IV</td>
<td>Defense articles and services specific to man-portable air defense systems (MANPADS). <em>See NOTE 6.</em></td>
<td>X X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IV</td>
<td>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).</td>
<td>X</td>
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<tr>
<td>IV</td>
<td>Defense articles and services specific to torpedoes.</td>
<td>X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>USML Category</td>
<td>Description</td>
<td>Notes</td>
<td></td>
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<tr>
<td>IV</td>
<td>Defense articles and services specific to anti-personnel landmines. See NOTE 15.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IV</td>
<td>Defense articles and services specific to cluster munitions.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IV(i)</td>
<td>Software source code related to USML Category IV(a), IV(b), IV(c), or IV(g). See NOTE 4.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IV(i)</td>
<td>Manufacturing know-how related to USML Category IV(a), IV(b), IV(d), or IV(g) and their specially designed components. See NOTE 5.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>V</td>
<td>The following energetic materials and related substances:</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>a. TATB (triaminotrinobenzene) (CAS 3058-38-6);</td>
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<tr>
<td></td>
<td>b. Explosives controlled in USML Category V(a)(38);</td>
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<td></td>
<td>c. Iron powder (CAS 7439-89-6) with particle size of 3 micrometers or less produced by reduction of iron oxide with hydrogen;</td>
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<td></td>
<td>d. BOBBA-8 (bis(2- methylaziridinyl)2-(2-hydroxypropanoxy) propylamino phosphine oxide), and other MAPO derivatives;</td>
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<tr>
<td></td>
<td>e. N-methyl-p-nitroaniline (CAS 100-15-2); or</td>
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<tr>
<td></td>
<td>f. Trinitrophenylmethylnitramine (tetryl) (CAS 479-45-8)</td>
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</tr>
<tr>
<td>V(a)(13)</td>
<td>ANF or ANAzF as described in USML Category V(a)(13)(iii) and (iv).</td>
<td>X</td>
<td></td>
<td></td>
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<tr>
<td>V(a)(23)</td>
<td>Difluoraminated derivative of RDX as described in USML Category V(a)(23)(iii).</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>V(c)(7)</td>
<td>Pyrotechnics and pyrophorics specifically formulated for military purposes to enhance or control radiated energy in any part of the IR spectrum.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>V(d)(3)</td>
<td>Bis-2, 2-dinitropropynitrate (BDNPN).</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>V(i)</td>
<td>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.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>VI</td>
<td>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).</td>
<td>X</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>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 that 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.</td>
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<tr>
<td>VI</td>
<td>Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. See NOTE 10.</td>
<td>X</td>
<td></td>
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</tr>
<tr>
<td>VI(a)</td>
<td>Nuclear powered vessels.</td>
<td>X X X</td>
<td></td>
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</tr>
<tr>
<td>VI(e)</td>
<td>Defense articles and services specific to naval nuclear propulsion equipment. See NOTE 7.</td>
<td>X X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>VI(g)</td>
<td>Software source code related to USML Category VI(a) or VI(c). See NOTE 4.</td>
<td>X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>VII</td>
<td>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).</td>
<td>X</td>
<td></td>
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<tr>
<td>VII</td>
<td>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 that 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.</td>
<td>X</td>
<td></td>
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<tr>
<td>VIII</td>
<td>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).</td>
<td>X</td>
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<tr>
<td>Category</td>
<td>Description</td>
<td>Example</td>
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<tr>
<td>VIII</td>
<td>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 that 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.</td>
<td>X</td>
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<tr>
<td>VIII(a)</td>
<td>All USML Category VIII(a) items.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>VIII(f)</td>
<td>Developmental aircraft, parts, components, accessories and attachments identified in USML Category VIII(f).</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>VIII(i)</td>
<td>Manufacturing know-how related to USML Category VIII(a) or VIII(e) and specially designed parts or components therefor. See NOTE 5.</td>
<td>X X X</td>
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<td></td>
</tr>
<tr>
<td>VIII(i)</td>
<td>Software source code related to USML Category VIII(a) or VIII(e). See NOTE 4.</td>
<td>X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IX</td>
<td>Training or simulation equipment for Man Portable Air Defense Systems (MANPADS). See NOTE 6.</td>
<td>X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IX(e)</td>
<td>Software source code related to USML Category IX(a) or IX(b). See NOTE 4.</td>
<td>X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IX(e)</td>
<td>Software that is both specifically designed or modified for military use and specifically designed or modified for modeling or simulating military operational scenarios.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>X(e)</td>
<td>Manufacturing know-how related to USML Category X(a)(1) or X(a)(2), and specially designed components therefor. See NOTE 5.</td>
<td>X X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XI(a), XI(c), XI(d)</td>
<td>Defense articles and services specific to countermeasures and counter-countermeasures. See NOTE 9.</td>
<td>X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XI(a)</td>
<td>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.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XI(a), XI(c), XI(d)</td>
<td>Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. See NOTE 10.</td>
<td>X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XI(a)</td>
<td>Defense articles and services specific to USML Category XI (b) (e.g., communications security (COMSEC) and TEMPEST).</td>
<td>X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XI(d)</td>
<td>Software source code related to USML Category XI(a). See NOTE 4.</td>
<td>X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XI(d)</td>
<td>Manufacturing know-how related to USML Category XI(a)(3) or XI(a)(4), and specially designed components therefor. See NOTE 5.</td>
<td>X X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XII</td>
<td>Defense articles and services specific to countermeasures and counter-countermeasures. See NOTE 9.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>XII</td>
<td>Defense articles and services specific to USML Category XII(c) articles, except any 1st- and 2nd-generation image intensification tubes and 1st- and 2nd-generation image intensification night sighting equipment. End items in USML Category XII(c) and related technical data limited to basic operations, maintenance, and training information as authorized under the exemption in §125.4(b)(5) of this subchapter may be exported directly to a Canadian Government entity (i.e., federal, provincial, territorial, or municipal) consistent with §126.5, other exclusions, and the provisions of this subchapter.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XII</td>
<td>Technical data or defense services for night vision equipment beyond basic operations, maintenance, and training data. However, the AS and UK Treaty exemptions apply when such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in 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.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>XII(f)</td>
<td>Manufacturing know-how related to USML Category XII(d) and specially designed components therefor. See NOTE 5.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>XII(f)</td>
<td>Software source code related to USML Category XII(a), XII(b), XII(c), or XII(d). See NOTE 4.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>XIII(b)</td>
<td>Defense articles and services specific to USML Category XIII(b) (Military Information Security Assurance Systems, cryptographic devices, software, and components).</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>XIII(d)</td>
<td>Carbon/carbon billets and preforms which are reinforced in three or more dimensional planes, specifically designed, developed, modified, configured or adapted for defense articles.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XIII(e)</td>
<td>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.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XIII(g)</td>
<td>Defense articles and services related to concealment and deception equipment and materials.</td>
<td>X</td>
<td></td>
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</tr>
<tr>
<td>XIII(h)</td>
<td>Energy conversion devices other than fuel cells.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XIII(j)</td>
<td>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.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>XIII(l)</td>
<td>Software source code related to USML Category XIII(a). See NOTE 4.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>XIV</td>
<td>Defense articles and services related to toxicological agents, including chemical agents, biological agents, and associated equipment.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>XIV(a), XIV(b), XIV(d), XIV(e), XIV(f)</td>
<td>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 dissemination of the chemical agents and biological agents listed in USML Category XIV(a), (b), (d), and (e).</td>
<td>X</td>
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</tr>
<tr>
<td>XV(a)</td>
<td>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.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>XV(b)</td>
<td>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.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>XV(c)</td>
<td>Defense articles and services specific to GPS/PPS security modules.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>XV(c)</td>
<td>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.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XV(e)</td>
<td>Anti-jam systems with the ability to respond to incoming interference by adaptively reducing antenna gain (nulling) in the direction of the interference.</td>
<td>X</td>
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</tbody>
</table>
| XV(e)(1) | Antennas having any of the following:  
(a) Aperture (overall dimension of the radiating portions of the antenna) greater than 30 feet;  
(b) All sidelobes less than or equal to -35 dB relative to the peak of the main beam; or  
(c) Designed, modified, or configured to provide coverage area on the surface of the 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 the antenna (which is the angular distance between half power points of the beam). | X |
<p>| 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 |</p>
<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>X</th>
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</tr>
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<tbody>
<tr>
<td>XV(e)</td>
<td>All parts, components, accessories, attachments, equipment, or systems for USML Category XV(a) items, except when specially designed for use in commercial communications satellites.</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XV(e)</td>
<td>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.</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>XV(f)</td>
<td>Technical data and defense services directly related to the other defense articles excluded from the exemptions for USML Category XV.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>XVI</td>
<td>Defense articles and services specific to design and testing of nuclear weapons.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>XVII</td>
<td>Classified articles and technical data and defense services relating thereto, not elsewhere enumerated. See NOTE 1.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>XVIII</td>
<td>Defense articles and services specific to directed energy weapon systems.</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>XIX(e),</td>
<td>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.</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>XIX(f)(1),</td>
<td>Technical data and defense services for gas turbine engine hot sections. (This does not include hardware). See NOTE 8.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>XIX(f)(2),</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>XIX(g)</td>
<td>Technical data and defense services for gas turbine engine hot sections. (This does not include hardware). See NOTE 8.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>XX</td>
<td>Defense articles and services related to submersible vessels, oceanographic, and associated equipment.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>XX</td>
<td>Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. See NOTE 10.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>XX</td>
<td>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).</td>
<td>X</td>
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<tr>
<td>XX</td>
<td>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.</td>
<td>X</td>
<td></td>
<td></td>
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<tr>
<td>XX(a)</td>
<td>Nuclear powered vessels</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>XX(b)</td>
<td>Defense articles and services specific to naval nuclear propulsion equipment. See NOTE 7.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>XX(c)</td>
<td>Defense articles and services specific to submarine combat control systems.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>XX(d)</td>
<td>Software source code related to USML Category XX(a). See NOTE 4.</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>XXI</td>
<td>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.</td>
<td>X</td>
<td>X</td>
<td>X</td>
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</table>

**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 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 §125.4(c)(6) 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), (e)(2), or (e)(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.

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 location that directly or indirectly supports fire control and is used for situation awareness, target identification, target acquisition, and weapons targeting and Radio Direction Finding (RDF) capabilities. Precision RF location is defined as angle of arrival accuracy of less than five degrees (RMS) and RF emitter location of less than ten percent range error;
   d. Providing the capability to reprogram; and
   e. Acoustics (including underwater), active and passive countermeasures, and counter-countermeasures.

NOTE 10: Examples of defense articles covered by this exclusion include underwater acoustic vector sensors; acoustic reduction; off-board, underwater, active and passive sensing, propeller/propulsor technologies; fixed mobile/floating/powered detection systems which include in-buoy signal processing for target detection and classification; autonomous underwater vehicles capable of long endurance in ocean environments (manned submarines excluded); 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, broadband "acoustic color," active acoustic "fingerprint" sensing for the purpose of long range, single pass identification of ocean bottom objects, buried or otherwise. (Controlled under USML Category 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 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 (§125.4(c)(3) of this subchapter), design methodology (§125.4(c)(4) of this subchapter), engineering analysis (§125.4(c)(5) of this subchapter), or manufacturing know-how (§125.4(c)(6) 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 §125.4(c)(1) of this subchapter, build/design-to-specification as defined in §125.4(c)(2) of this subchapter, or basic research as defined in §125.4(c)(3) 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;
   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 Australian and UK exemptions for congressional notification, see § 126.16(o) and § 126.17(o).

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.
PART 127  VIOLATIONS AND PENALTIES

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 §120.1(c)(2) of this subchapter, or a person with knowledge that another person is ineligible pursuant to §120.1(c)(2) 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.


§ 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.


§ 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).

[58 FR 39316, July 22, 1993, as amended at 71 FR 20549, Apr. 21, 2006; 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. Section 38(g)(4) of the Arms Export Control Act prohibits the issuance of licenses to persons who have been convicted of violating the U.S. criminal statutes enumerated in section 38(g)(1) of the Arms Export Control Act. Discretionary authority to issue licenses is provided, but only if certain statutory requirements are met. It is the policy of the Department of State not to consider applications for licenses or requests for approvals involving any person who has been convicted of violating the Arms Export Control Act or convicted of conspiracy to violate that Act for a three year period following conviction. Such individuals shall be notified in writing that they are 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, that established guilt beyond a reasonable doubt in accordance with due process. The procedures of part 128 of this subchapter are not applicable in such cases.

(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 eligibility determination. The procedures specified in §128.13 of this subchapter will be used in submitting a reconsideration appeal.

§ 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.

§ 127.10 Civil penalty.

(a) The Assistant Secretary of State for Political-Military Affairs is authorized to impose a civil penalty in an amount not to exceed that authorized by 22 U.S.C. 2778, 2779a, and 2780 for each violation of 22 U.S.C. 2778, 2779a, and 2780, or any regulation, order, license, or written approval issued thereunder. This civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.

(b) The Directorate of Defense Trade Controls may make:

(1) The payment of a civil penalty under this section or

(2) The completion of any administrative action pursuant to this part 127 or 128 of this subchapter a prior condition for the issuance, restoration, or continuing validity of any export license or other approval.

§ 127.8 [Reserved]

[78 FR 52689, Aug. 26, 2013]

§ 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) The Assistant Secretary of State for Political-Military Affairs is authorized to impose a civil penalty in an amount not to exceed that authorized by 22 U.S.C. 2778, 2779a, and 2780 for each violation of 22 U.S.C. 2778, 2779a, and 2780, or any regulation, order, license, or written approval issued thereunder. This civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.

(b) The Directorate of Defense Trade Controls may make:

(1) The payment of a civil penalty under this section or

(2) The completion of any administrative action pursuant to this part 127 or 128 of this subchapter a prior condition for the issuance, restoration, or continuing validity of any export license or other approval.

§ 127.8 [Reserved]

[78 FR 52689, Aug. 26, 2013]
§ 127.11 Past violations.

(a) Presumption of denial. Pursuant to section 38 of the Arms Export Control Act, licenses or other approvals may not be granted to persons who have been convicted of violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter or who are ineligible to receive any export licenses from any agency of the U.S. Government, subject to a narrowly defined statutory exception. This provision establishes a presumption of denial for licenses or other approvals involving such persons. This presumption is applied by the Directorate of Defense Trade Controls to all persons convicted or deemed ineligible in this manner since the effective date of the Arms Export Control Act (Public Law 94-329; 90 Stat. 729) (June 30, 1976).

(b) Policy. An exception to the policy of the Department of State to deny applications for licenses or other approvals that involve persons described in paragraph (a) of this section shall not be considered unless there are extraordinary circumstances surrounding the conviction or ineligibility to export, and only if the applicant demonstrates, to the satisfaction of the Assistant Secretary of State for Political-Military Affairs, that the applicant has taken appropriate steps to mitigate any law enforcement and other legitimate concerns, and to deal with the causes that resulted in the conviction, ineligibility, or debarment. Any person described in paragraph (a) of this section who wishes to request consideration of any application must explain, in a letter to the 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(c) (statutory debarment) may not utilize the procedures provided by this section while the debarment is in force. Such persons may utilize only the procedures provided by §127.7(d) of this part.

[71 FR 20550, Apr. 21, 2006; 79 FR 8088, Feb. 11, 2014]

§ 127.12 Voluntary disclosures.

(a) General policy. The Department strongly encourages the disclosure of information to the Directorate of Defense Trade Controls by persons (see §120.14 of this subchapter) 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 subchapter concerning a violation of the export control provisions of the Arms Export Control Act and these regulations.

(2) The provisions of this section apply only when information is received by the Directorate of Defense Trade Controls for review prior to such time that either the Department of State or any other agency, bureau, or department of the United States Government obtains knowledge of either the same or substantially similar information from another source and commences an investigation or inquiry that involves that information, and that is intended to determine whether the Arms Export Control Act or these regulations, or any other license, order, or other authorization issued under the Arms Export Control Act has been violated.

(3) The violation(s) in question, despite the voluntary nature of the disclosure, may merit penalties, administrative actions, sanctions, or referrals to the Department of Justice to consider criminal prosecution. In the latter case, the Directorate of Defense Trade Controls will notify the Department of Justice of the voluntary nature of the disclosure, although the Department of Justice is not required to give that fact any weight. The Directorate of Defense Trade Controls has the sole discretion to consider whether
“voluntary disclosure,” in context with other relevant information in a particular case, should be a mitigating factor in determining what, if any, administrative action will be imposed. Some of the mitigating factors the Directorate of Defense Trade Controls may consider are:

(i) Whether the transaction would have been authorized, and under what conditions, had a proper license request been made;

(ii) Why the violation occurred;

(iii) The degree of cooperation with the ensuing investigation;

(iv) Whether the person has instituted or improved an internal compliance program to reduce the likelihood of future violation;

(v) Whether the person making the disclosure did so with the full knowledge and authorization of the person’s senior management. (If not, then the Directorate will not deem the disclosure voluntary as covered in this section.)

(4) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person in any civil, criminal, administrative, or other matter.

(5) Nothing in this section shall be interpreted to negate or lessen the affirmative duty pursuant to §§126.1(e), 126.16(h)(5), and 126.17(h)(5) of this subchapter upon persons to inform the Directorate of Defense Trade Controls of the actual or final sale, export, transfer, reexport, or retransfer of a defense article, technical data, or defense service to any country referred to in §126.1 of this subchapter, any citizen of such country, or any person acting on its behalf.

(c) Notification.

(1) Any person wanting to disclose information that constitutes a voluntary disclosure should, in the manner outlined below, initially notify the Directorate of Defense Trade Controls immediately after a violation is discovered and then conduct a thorough review of all defense trade transactions where a violation is suspected.

(i) If the notification does not contain all the information required by 127.12(c)(2) of this section, a full disclosure must be submitted within 60 calendar days of the notification, or the Directorate of Defense Trade Controls will not deem the notification to qualify as a voluntary disclosure.

(ii) If the person is unable to provide a full disclosure within the 60 calendar day deadline, an empowered official (see §120.25 of this subchapter) or a senior officer may request an extension of time in writing. A request for an extension must specify what information required by §127.12(c)(2) of this section could not be immediately provided and the reasons why.

(iii) Before approving an extension of time to provide the full disclosure, the Directorate of Defense Trade Controls may require the requester to certify in writing that they will provide the full disclosure within a specific time period.

(iv) Failure to provide a full disclosure within a reasonable time may result in a decision by the Directorate of Defense Trade Controls not to consider the notification as a mitigating factor in determining the appropriate disposition of the violation. In addition, the Directorate of Defense Trade Controls may direct the requester to furnish all relevant information surrounding the violation.

(2) Notification of a violation must be in writing and should include the following information:

(i) A precise description of the nature and extent of the violation (e.g., an unauthorized shipment, doing business with a party denied U.S. export privileges, etc.);

(ii) The exact circumstances surrounding the violation (a thorough explanation of why, when, where, and how the violation occurred);

(iii) The complete identities and addresses of all persons known or suspected to be involved in the activities giving rise to the violation (including mailing, shipping, and e-mail addresses; telephone and fax/facsimile numbers; and any other known identifying information);

(iv) Department of State license numbers, exemption citation, or description of any other authorization, if applicable;
(v) U.S. Munitions List category and subcategory, product description, quantity, and characteristics or technological capability of the hardware, technical data or defense service involved;

(vi) A description of corrective actions already undertaken that clearly identifies the new compliance initiatives implemented to address the causes of the violations set forth in the voluntary disclosure and any internal disciplinary action taken; and how these corrective actions are designed to deter those particular violations from occurring again;

(vii) The name and address of the person making the disclosure and a point of contact, if different, should further information be needed.

(3) Factors to be addressed in the voluntary disclosure include, for example, whether the violation was intentional or inadvertent; the degree to which the person responsible for the violation was familiar with the laws and regulations, and whether the person was the subject of prior administrative or criminal action under the AECA; whether the violations are systemic; and the details of compliance measures, processes and programs, including training, that were in place to prevent such violations, if any. In addition to immediately providing written notification, persons are strongly urged to conduct a thorough review of all export-related transactions where a possible violation is suspected.

(d) Documentation. The written disclosure should be accompanied by copies of substantiating documents. Where appropriate, the documentation should include, but not be limited to:

(1) Licensing documents (e.g., license applications, export licenses, and end-user statements), exemption citation, or other authorization description, if any;

(2) Shipping documents (e.g., Electronic Export Information filing, including the Internal Transaction Number, air waybills, and bills of laden, invoices, and any other associated documents); and

(3) Any other relevant documents must be retained by the person making the disclosure until the Directorate of Defense Trade Controls requests them or until a final decision on the disclosed information has been made.

(e) Certification. A certification must be submitted stating that all of the representations made in connection with the voluntary disclosure are true and correct to the best of that person’s knowledge and belief. Certifications should be executed by an empowered official (See §120.25 of this subchapter), or by a senior officer (e.g. chief executive officer, president, vice-president, comptroller, treasurer, general counsel, or member of the board of directors). If the violation is a major violation, reveals a systemic pattern of violations, or reflects the absence of an effective compliance program, the Directorate of Defense Trade Controls may require that such certification be made by a senior officer of the company.

(f) Oral presentations. Oral presentation is generally not necessary to augment the written presentation. However, if the person making the disclosure believes a meeting is desirable, a request should be included with the written presentation.


administration of the Arms Export Control Act is a foreign affairs function encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act and is thereby expressly exempt from various provisions of that Act. Because the exercising of the foreign affairs function, including the decisions required to implement the Arms Export Control Act, is highly discretionary, it is excluded from review under the Administrative Procedure Act.

[61 FR 48831, Sept. 17, 1996]

§ 128.2 Administrative Law Judge.

The Administrative Law Judge referred to in this part is an Administrative Law Judge appointed by the Department of State. The Administrative Law Judge is authorized to exercise the powers and perform the duties provided for in §§127.7 and 128.3 through 128.16 of this subchapter.

[71 FR 20551, Apr. 21, 2006; 78 FR 52689, Aug. 26, 2013]

§ 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. 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[s] involved. It will give notice to the respondent to answer the charges within 30 days, as provided in §128.5(a), and indicate that a failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he or she is entitled to an oral hearing if a written demand for one is filed with the answer or within seven (7) days after service of the answer. The respondent will also be informed that he or she may, if so desired, be represented by counsel of his or her choosing. Charging letters may be amended from time to time, upon reasonable notice.

(b) Service. A charging letter is served upon a respondent:

1. If the respondent is a resident of the United States, when it is mailed postage prepaid in a wrapper addressed to the respondent at that person’s last known address; or when left with the respondent or the agent or employee of the respondent; or when left at the respondent’s dwelling with some person of suitable age and discretion then residing therein; 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.


§ 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...
§ 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.

§ 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 the 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.

[71 FR 20552, Apr. 21, 2006; 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 §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.


§ 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.


§ 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

**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) The brokering activities identified in this subchapter apply to those defense articles and defense services controlled for purposes of export on the U.S. Munitions List (see part 121 of this subchapter) or for purposes of permanent import on the U.S. Munitions Import List (see 27 CFR part 447).

[78 FR 52690, Aug. 26, 2013]

§ 129.2 Definitions.

As used in this part:

(a) Broker means any person (see §120.14 of this subchapter) described below who engages in the business of brokering activities:

(1) Any U.S. person (see §120.15 of this subchapter) wherever located;
(2) Any foreign person (see §120.16 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 §120.39 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 §120.40 of this subchapter, on behalf of another affiliate; or
   (vi) Activities by persons, including their regular employees (see §120.39 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 parts 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.

(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]

§ 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 §120.40 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]

§ 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 (see §120.44 of this subchapter, and §129.5 for exemptions); 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;

(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
§ 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 §120.44 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 §120.1(c)(2) 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.

§ 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 §120.27 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 §120.27 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 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]

§ 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 §120.40 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 a fee following the fee guidelines available on the Directorate of Defense Trade Controls Web site at www.pmddtc.state.gov. 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 §120.27 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 §120.37 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 §120.27 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]

§ 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

Source: 58 FR 39323, July 22, 1993, unless otherwise noted.

§ 130.1 Purpose.
Section 39(a) of the Arms Export Control Act (22 U.S.C. 2779) provides that the Secretary of State shall prescribe regulations with respect to reporting on certain payments relating to sales of defense articles and defense services. The provisions of this part implement that requirement. Definitions which apply to this part are contained in §§130.2 through 130.8.

§ 130.2 Applicant.
Applicant means any person who applies to the Directorate of Defense Trade Controls for any license or approval required under this subchapter for the export of defense articles or defense services valued in an amount of $500,000 or more which are being sold commercially to or for the use of the armed forces of a foreign country or international organization. This term also includes a person to whom the required license or approval has been given.

[71 FR 20554, Apr. 21, 2006]

§ 130.3 Armed forces.
Armed forces means the army, navy, marine, air force, or coast guard, as well as the national guard and national police, of a foreign country. This term also includes any military unit or military personnel organized under or assigned to an international organization.

§ 130.4 Defense articles and defense services.
Defense articles and defense services have the meaning given those terms in paragraphs (3), (4) and (7) of section 47 of the Arms Export Control Act (22 U.S.C. 2794 (3), (4), and (7)). When used with reference to commercial sales, the definitions in §§120.6 and 120.9 of this subchapter apply.

§ 130.5 Fee or commission.
(a) Fee or commission means, except as provided in paragraph (b) of this section, any loan, gift, donation or other payment of $1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:

(1) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with an applicant, a supplier or a vendor; and

(2) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization.

(b) The term fee or commission does not include:

(1) A political contribution or a payment excluded by §130.6 from the definition of political contribution;

(2) A normal salary (excluding contingent compensation) established at an annual rate and paid to a regular employee of an applicant, supplier or vendor;

(3) General advertising or promotional expenses not directed to any particular sale or purchaser; or

(4) Payments made, or offered or agreed to be made, solely for the purchase by an applicant, supplier or vendor of specific goods or technical, operational or advisory services, which payments are not disproportionate in amount with the value of the specific goods or services actually furnished.

[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]


§ 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.


§ 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 §130.10 with respect to a sale; and

(2) Prior to furnishing such information, must obtain from each person, if any, to whom it has paid, or offered or agreed to pay, a fee or commission in respect of such sale, a timely statement containing a full disclosure by such a person of all political contributions paid, or offered or agreed to be paid, by it or on its behalf, or at its direction, in respect of such sale. Such disclosure must include responses to all the information required to enable the applicant, supplier or vendor, as the case may be, to comply fully with §§130.9, 130.10, and 130.12.

(b) In obtaining information under paragraph (a) of this section, the applicant, supplier or vendor, as the case may be, must also require each person to whom a fee or commission is paid, or offered or agreed to be paid, to furnish from time to time such reports of its political contributions as may be necessary to enable the applicant, supplier or vendor, as the case may be, to comply fully with §§130.9, 130.10, 130.11, and 130.12.

(c) The applicant supplier or vendor, as the case may be, must include any political contributions paid, or offered or agreed to be paid, by or on behalf of, or at the direction of, any person to whom it has paid, or offered or agreed to pay a fee or commission in determining whether applicant, supplier or vendor is required by §§130.9, 130.11, and 130.12 to furnish information specified in §130.10.

§ 130.14 Recordkeeping.

Each applicant, supplier and vendor must maintain a record of any information it was required to furnish or obtain under this part and all records upon which its reports are based for a period of not less than five years 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]
## ANNEX A

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<td>Request for Reconsideration of Unclassified Provisos</td>
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<tr>
<td>DS-6004</td>
<td>Reqt To Change End User, End Use and/or Destination of Hardware</td>
</tr>
<tr>
<td>DSCA</td>
<td>Defense Security Cooperation Agency</td>
</tr>
<tr>
<td>DSP-119</td>
<td>Amendment to License for Export or Import of Defense Articles</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>---------</td>
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</tr>
<tr>
<td>MILSPEC</td>
<td>Military Specification</td>
</tr>
<tr>
<td>MLA (or MA-)</td>
<td>Manufacturing License Agreement</td>
</tr>
<tr>
<td>MOA</td>
<td>Memorandum of Agreement</td>
</tr>
<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
</tr>
<tr>
<td>MTCR</td>
<td>Missile Technology Control Regime</td>
</tr>
<tr>
<td>MTEC</td>
<td>Missile Technology Export Control Group</td>
</tr>
<tr>
<td>NASA</td>
<td>National Aeronautical and Space Administration</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<tr>
<td>NDA</td>
<td>Non-Disclosure Agreement</td>
</tr>
<tr>
<td>NDP</td>
<td>National Disclosure Policy</td>
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<tr>
<td>NISPOM</td>
<td>National Industrial Security Program Operating Manual</td>
</tr>
<tr>
<td>NLR</td>
<td>No License Required</td>
</tr>
<tr>
<td>NPT</td>
<td>Nuclear Non Proliferation Treaty</td>
</tr>
<tr>
<td>NSA</td>
<td>National Security Agency</td>
</tr>
<tr>
<td>NSG</td>
<td>Nuclear Suppliers Group</td>
</tr>
<tr>
<td>OEE</td>
<td>Office of Export Enforcement (BIS)</td>
</tr>
<tr>
<td>OEF</td>
<td>Operation Enduring Freedom</td>
</tr>
<tr>
<td>OFAC</td>
<td>Office of Foreign Assets Control – U.S. Department of the Treasury</td>
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<tr>
<td>OGEL</td>
<td>Open General Export Licence (UK)</td>
</tr>
<tr>
<td>OGTCL</td>
<td>Open General Trade Control Licence (UK)</td>
</tr>
<tr>
<td>OIEL</td>
<td>Open Individual Export Licence (UK)</td>
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<td>OITCL</td>
<td>Open Individual Trade Control Licence (UK)</td>
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<td>OSD</td>
<td>Office of the Secretary of Defense</td>
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<td>OSR</td>
<td>Office of Security Review</td>
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<td>R&amp;R</td>
<td>Repair and Replace</td>
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<td>RFP</td>
<td>Request for Proposal</td>
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<td>RFQ</td>
<td>Request for Quote</td>
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<td>RWA</td>
<td>Return Without Action</td>
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<td>SED</td>
<td>Shipper's Export Declaration</td>
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<td>SIEL</td>
<td>Standard Individual Export Licence (UK)</td>
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<tr>
<td>SITCL</td>
<td>Standard Individual Trade Control Licence</td>
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<td>SME</td>
<td>Significant Military Equipment</td>
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<td>SNAP-R</td>
<td>Simplified Network Application Process-Redesign (EAR)</td>
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<tr>
<td>SOW</td>
<td>Statement of Work</td>
</tr>
<tr>
<td>SPIRE</td>
<td>UK Licensing Portal</td>
</tr>
<tr>
<td>STA</td>
<td>License Exception Strategic Trade Authorization (EAR)</td>
</tr>
<tr>
<td>TAA (or TA-)</td>
<td>Technical Assistance Agreement</td>
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<tr>
<td>TCN</td>
<td>Third Country National</td>
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<tr>
<td>TCP</td>
<td>Technology Control Plan</td>
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<tr>
<td>TTCP</td>
<td>Technology Transfer Control Plan</td>
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<td>USC</td>
<td>United States Code</td>
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<tr>
<td>USG</td>
<td>United States Government</td>
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<tr>
<td>USML</td>
<td>United States Munitions List</td>
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<tr>
<td>USPPI</td>
<td>United States Principal Party in Interest</td>
</tr>
<tr>
<td>USTR</td>
<td>United States Trade Representative</td>
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<tr>
<td>VEU</td>
<td>Validated End-Users</td>
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<tr>
<td>WA</td>
<td>Wassenaar Arrangement</td>
</tr>
<tr>
<td>WDA</td>
<td>Warehouse Distribution Agreement</td>
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<td>WMD</td>
<td>Weapons of Mass Destruction</td>
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<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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<tr>
<td>XTN</td>
<td>AES External Transaction Number</td>
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</table>
ANNEX B
The Basics of Compliance with the International Traffic in Arms Regulations

I. GETTING STARTED

A. Defense Article Export Controls Statutory and Regulatory Authorities

The U.S. Government views the export of defense articles and services as an integral part of safeguarding U.S. national security and furthering U.S. foreign policy objectives. The U.S. Government’s authority to control the export of defense articles and services is found under 22 U.S.C. §§ 2778-2780 of the Arms Export Control Act (AECA). The AECA provides the authority to control the export of defense articles and services and charges the President to exercise this authority, which has been delegated to the Secretary of State. The agency in charge of administering the regulations is the U.S. Department of State, Directorate of Defense Trade Controls (DDTC). The implementing regulations are the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130), which govern export and temporary import of defense articles and defense services that are covered under the United States Munitions List (USML).

B. Registration: The First Step

All manufacturers, exporters and brokers of defense articles, defense services, or related technical data are required to register with DDTC. Manufacturers of defense articles must register even if they do not export, and have no intention of exporting, their defense products. Registration does not confer any export rights or privileges, but is a precondition for the issuance of any license or other approval for export. To register, a party must provide to DDTC information about, among other things, its business, the defense articles or defense services in which it deals, its governing officers, and affiliated (parent and subsidiary) business entities. Registrations must be renewed annually and must be submitted along with a registration fee. The registration fee varies depending upon the number of export authorization requests submitted by the registrant and processed by DDTC. The Registration Statement (DS-2032) and the accompanying supporting documentation, to include a recommended explanatory transmittal letter, must be submitted electronically by an “empowered official” of the registrant.

C. Empowered Officials

All DDTC registrants must designate at least one empowered official. ITAR § 120.25 provides that an empowered official must be “a U.S. person who is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization [who] is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant.” The empowered official must have received training in, and possess an understanding of, the requirements of the AECA and ITAR. In addition, the empowered official must have the independent authority to: (i) enquire into any aspect of a proposed export or

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1 This Primer is intended to provide an introduction to, and a high level summary of the ITAR. It does not address or include many of the provisions of the ITAR, and it should not be relied upon for any legal or regulatory analysis. The full text of the ITAR, as published FEDERAL REGISTER’s annual 22 C.F.R. 120 - 130 printing, should be referenced for any such analysis.
temporary import by the applicant; (ii) verify the legality of the export 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.

D. D-Trade: The Process for Obtaining an Export License or Other Required DDTC Authorization

Available through DDTC’s website, D-Trade is a fully-electronic defense export licensing system that registrants must use to submit license applications for authorizations for exports of defense articles. D-Trade receives defense export authorization requests that are properly submitted by any U.S. person who is a defense trade registrant and wishes to permanently export unclassified defense articles via the Form DSP-5, temporarily import unclassified defense articles via the Form DSP-61, or temporarily export unclassified defense articles via the Form DSP-73.

D-Trade also must be used by registrants to submit technical assistance agreements and other agreements for DDTC review and approval. Such agreements are discussed further in Section V, below.


E. Technology Control Plan for Avoiding Inadvertent Release of Technical Data

In addition to controlling exports of hardware defense articles, the ITAR controls exports of technical data and provision of defense services to foreign persons either in the U.S. or abroad. Like exports of hardware, technical data and defense service exports usually require prior DDTC approval.

“Technical data” is broadly defined under the ITAR as information that is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles, or classified information about defense articles or defense services. Technical data includes information in the form of blueprints, drawings, photographs, plans, instructions, or documentation, and can also be in the form of models or mock-ups of defense articles.

Because transfers of technical data and provision of defense services may occur in the course of day-to-day communications with customers, vendors, visitors, non-U.S. affiliates and others, including through email, faxes, access to shared servers, meetings, presentations, plant tours and conversations, such exports often may be more difficult to control than hardware exports which can be captured in the order process. In addition, exports of technical data may occur through the employment of foreign nationals and through facility visits by foreign persons. Therefore, companies possessing controlled technical data should adopt and enforce a Technology Control Plan (TCP) containing written policies and procedures to prevent unauthorized exports or transfers of controlled technical data.

II. CLASSIFICATION OF PRODUCTS AND DATA

A. Jurisdiction: ITAR-controlled vs. EAR-controlled Items

The U.S. export control regime is administered primarily by the Bureau of Industry and Security (BIS) under the Department of Commerce and by DDTC at the Department of State. The two agencies administer separate regulations for different items: BIS administers the Export Administration Regulations (EAR),
which governs “dual-use” articles and technologies and certain military articles
and technologies called the “600 series” (essentially, everything not covered
under the ITAR); DDTC administers the ITAR, which governs “defense articles”
and “defense services.” To determine the licensing or other government approval
required to export a defense-related item, an exporter must first determine which
agency, BIS or DDTC, has jurisdiction over the item.

The term “defense articles” is defined in the ITAR to include any item (commodity
or software) or technical data that is identified on the U.S. Munitions List (USML)
codified at 22 C.F.R. § 121.1. An item may be designated by DDTC as a defense
article, and thus within its jurisdiction, if it either (1) meets the criteria of a
defense article or defense service on the USML; or (2) provides the equivalent
performance capabilities of a defense article on the USML. In addition, an item
will be designated in the future as a defense article or defense service (and
added to the USML) if it provides a critical military or intelligence advantage such
that it warrants control under the ITAR.

Several USML categories have undergone Export Control Reform (“ECR”).
These are: Categories IV, V, VI, VII, VIII, IX, X, XI, XIII, XV, XVI, XIX and XX. For
these categories, DDTC has enumerated the items that are controlled and those
military items that are not listed are the ones that are moved to the EAR and
comprise the 600 series. The “specifically designed, developed, configured,
adapted, or modified” test described in the preceding paragraph does not apply
to these categories, because it is an enumerated list. The categories do refer to
“components, parts, accessories, attachments, and associated equipment
specifically designed, modified, configured, or adapted for use” with the articles
listed in the category. For the definition of “specially designed,” see section
120.41.

Where it may be unclear whether an item is covered by the USML, and thus
within the jurisdiction of DDTC, one may submit a “Commodity Jurisdiction
Request” to DDTC. The purpose of the Commodity Jurisdiction Request is to
eliminate doubt as to DDTC’s jurisdiction over a particular item, or to request that
the agency consider removing an article from the USML. A determination that an
article is not covered by the ITAR does not necessarily mean that it can be
exported without a license because it might require a license under the EAR of
BIS.

B. Internal Export Controls Matrix: Export Classification
The USML is organized into twenty-one broad categories (Category I through
Category XXI). Once the DDTC jurisdictional determination has been established,
organizations should maintain an internal matrix of hardware and related
technical data that reflects the classification of the defense article under the
applicable USML Category (e.g., parts and components of tanks and military
vehicles would be under USML Category VII(h)). (The company’s EAR-controlled
products should also be reflected in the matrix and identified according to the
Export Control Classification Number (ECCN) applicable to the item under the
EAR’s Commerce Control List.) The matrix should be constructed so that it will
provide the user with ready reference to these classifications and a thumbnail
summary of applicable export licensing requirements. The Internal Export
Controls Matrix should be updated regularly to address changes in regulations or
the application of the regulations and new or modified products.

III. EXPORT LICENSING
The most fundamental ITAR-controlled transaction is the export. The term
“export” is defined broadly to include sending or taking a defense article out of
the United States or disclosing (including oral or visual disclosure) or transferring
a defense article or technical data to a foreign person or to an embassy, agency
or subdivision of a foreign government in the United States. (For defense
services, “export” means performing a defense service for a foreign person,
whether in the United States or abroad.)

The reach of the ITAR extends beyond the initial export of defense articles and
includes reexports and retransfers of such items. In these circumstances, the
ITAR controls any transfer of a defense article to an end use, end user or
destination that is not previously authorized by DDTC. The ITAR also controls
temporary imports, i.e., the import and subsequent export, of defense articles.
(Permanent imports of defense articles are regulated, if at all, by the U.S.
Department of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, not
by DDTC.)

As noted in Section I, above, U.S. person wishing to export (including to reexport
or retransfer) or temporarily import a defense article must first register with DDTC
and must be certified on the DTrade system.

Unless an ITAR licensing exemption applies, all exports and temporary imports
of defense articles (including technical data) require a license from DDTC. DDTC
has created a variety of license applications, each specific to the type of intended
export transaction and item. The following license applications are used for
defense articles and technical data:

- Form DSP-5: Application for permanent export of unclassified
defense articles, related technical data, and defense services.
- Form DSP-6: Application for amendment to a DSP-5 license.
- Form DSP-61: Application/license for temporary import of unclassified
defense articles.
- Form DSP-62: Application for amendment to a DSP-61 license.
- Form DSP-73: Application/license for temporary export of unclassified
defense articles.
- Form DSP-74: Application for amendment to a DSP-73 license.
- Form DSP-85: Application for permanent/temporary export or
temporary import of classified defense articles and related classified
technical data.

In addition to the license application form, applicants must submit to DDTC
certain supporting documentation, such as technical data, product brochures,
and a freight forwarder list. Applications for licenses for the permanent export of
a defense article must include a copy of the relevant purchase order, letter of
intent or similar document. In addition, all license applications must include a
certification by an empowered official of the applicant. License applications
submitted without a required supporting documentation are routinely returned by
DDTC without action.

Licenses granted by DDTC are valid for four years from their date of issuance.
They expire upon the earlier of date of expiration or when the total value or
quantity authorized has been shipped.

IV. EMPLOYMENT OF FOREIGN NATIONALS

Disclosing (including oral or visual disclosure) technical data or providing defense
services to a “foreign person,” whether located in the United States or abroad, is
considered by DDTC to be an export to that individual’s “home country.” To avoid
violating the ITAR under this “deemed export” concept, companies that
manufacture or export defense articles, or that possess ITAR-controlled technical
data, must ensure that their employment of foreign persons is in compliance with
the ITAR.

A “foreign person” under the ITAR (as well as under the EAR) is any person who
is not a lawful resident of the United States or a “protected” individual. For
example, employees with H-1B (Specialty Occupation Workers), L-1 (Intra-
company Transferees) and F-1 (Student Workers) visas are considered foreign
persons while permanent resident aliens, green card holders, and individuals
granted political asylum are not considered foreign persons. When determining a
person's “home country” for purposes of deemed exports, DDTC may consider
not only the individual's country (or countries) of citizenship, but also his or her
country of birth.

Generally, compliance will require either that the foreign employee be strictly
insulated from any access to defense articles or technical data (e.g., through a
TCP as discussed in Section I.E.), or that an application for the foreign person be
submitted to and approved by DDTC before the foreign person employee is given
such access. Companies that wish to provide their foreign employees access to
ITAR-controlled information must obtain authorization from the DDTC before
providing foreign national employees with access to any ITAR-controlled defense
articles, technical data, and/or defense services. Typically, such authorization is
provided through a DSP-5 license. However, when the situation involves the
release of classified technical data, the U.S. company should obtain a DSP-85
and must consult the Department of Defense National Industrial Security
Program Operating Manual (NISPOM). A license authorizing transfer to a foreign
national employee does not also permit the export of the defense article,
technical data, and/or defense service to other individuals or companies in the
home country of the employee.

V. TECHNICAL COLLABORATION WITH FOREIGN PERSONS

Prior to performing a “defense service,” including technical assistance, for a
foreign person or persons,2 the U.S. applicant and the foreign person or persons
must prepare and submit to DDTC for its approval an agreement detailing the
scope of the defense service to be performed and the technical data to be
exported and, following DDTC approval of the agreement, must execute the
agreement and deposit a copy of the executed agreement with DDTC.

A “defense service” is defined in the ITAR as “the furnishing of assistance
(including training) to foreign persons, whether in the U.S. or abroad, in the
design, development, engineering, manufacture, production, assembly, testing,
repair, maintenance, modification, operation, demilitarization, destruction,
processing or use” of ITAR-controlled items or technical data. It also includes the
furnishing of military training to foreign persons in the United States or abroad.

Such DDTC-approved agreements, which act as authorizations for the provision
of defense services to foreign persons, generally take one of two forms. A
technical assistance agreement (TAA) permits the U.S. party to perform defense
services and/or disclose technical data to a foreign party as described within the
scope of the TAA. A manufacturing license agreement (MLA), in addition to the
items permitted by a TAA, grants a right or license to manufacture defense
articles and allows for release of manufacturing know-how. An MLA also may
involve only the assembly or repair of hardware abroad and no actual

2 In this context, the term “foreign person” encompasses in addition to natural persons “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).”
manufacturing in situations where the foreign party requires manufacturing data in order to complete assembly.

The TAA or MLA does not allow the reexport or retransfer technical data received under the TAA or MLA to other entities or employees of other nationalities unless specifically permitted by the ITAR or the TAA or MLA. Subcontractors and other entities can be approved under the TAA or MLA as “Sublicensees.” Employees of other nationalities, called dual nationals or third country nationals, can be authorized in the TAA or MLA or through appropriate compliance mechanisms. For example, see sections 124.16 and 126.18.

VI. COMPLIANCE PROGRAMS

A. Compliance Program

A comprehensive export controls compliance program is essential to ensuring compliance with the AECA and the ITAR. An effective compliance program should include a compliance manual that is required to be read by all relevant personnel, an organization structure that identifies key personnel for defense trade controls, a written corporate commitment policy, and a system to track ITAR controlled items, including re-exports and retransfers, from marketing to shipment. A compliance program also must provide for a systematic method of recordkeeping. Further, to be effective, the compliance program must ensure that personnel undergo periodic training and that internal audits are conducted on a regular basis.

B. Training

An effective compliance program must provide for regular training of company personnel on U.S. export control laws and regulations. The training program should include a written procedure to identify the personnel who should receive training and then to ensure that the appropriate training is received. Initial training should be included in the orientation agenda for new hires and refresher training should be offered on a regular basis.

C. Auditing

Internal audits are essential to ensure the integrity and measure the effectiveness of a compliance program. The emphasis of the audit should be on validation of full export compliance, including adherence to license and other approval conditions. Audits should measure the effectiveness of day-to-day operations and should be conducted regularly.
ANNEX C
U.S. Department of State, Directorate of Defense Trade Controls
Telephone Directory

DEPUTY ASSISTANT SECRETARY OF STATE, DEFENSE TRADE CONTROLS

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YoLanda Mitchell (202) 663-3704

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Division 4 – Electronic and Training Systems
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Karen Conyers (202) 663-2738
MAJ Nathan Hurt (202) 663-2843
Deloris Kinard (202) 736-9227

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Division 6 – Light Weapons and Personal Protective Equipment Systems
(USML Commodity Categories I, III, X, and XIV)
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DDTC Help Desk  (202) 663-2838
In-Person License Submission and Pick-Up  (202) 663-2980

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ANNEX D
Index of ITAR Exemptions

The following index provides the reader with references to the license exemptions contained in the ITAR. Subject to conditions, the license exemptions allow exports or temporary imports of defense articles, including technical data, or the performance of defense services, without prior authorization (or pursuant to reduced requirements for authorization). The exemptions may not be used with respect to articles originating in or for export to any proscribed countries, areas, or persons listed in § 126.1 of the ITAR. This restriction does not apply to the exemptions in §§ 123.17, 126.4, and 126.6 which may be used.

ECR has changed the usefulness of certain ITAR exemptions. The intent of ECR was not to remove the exporter’s capability to export items. Therefore, if an exporter was using an ITAR exemption before ECR, there is most likely an EAR exception the exporter can now use to export these items. The following index also includes NOTES about possible EAR exceptions that might match the legacy ITAR exemptions. Every situation is unique, and these exemptions/exceptions may not match up exactly, but this list is a good place to start.

Although we have included a brief summary of each exemption, this index is intended only as a reference and should not be relied upon in conducting exports under any of the exemptions described herein. In almost all cases, exclusions, conditions and specific requirements or processes for use of ITAR exemptions apply which are not described in this index in the interests of brevity. Persons wishing to conduct a transaction under any ITAR exemption should consult the relevant ITAR provisions referenced in this index and official State Department guidance to determine eligibility and procedures for use of the exemption.

I. LICENSE EXEMPTIONS FOR TEMPORARY IMPORT TRANSACTIONS

A. Imports for Overhaul, Service and Repair – ITAR § 123.4(a)(1)

A license is not required for the temporary import (and subsequent export), for a period of up to 4 years, of unclassified U.S. origin defense items (including items manufactured abroad with U.S. Government approval) if the items are inspected, tested, serviced, refurbished or repaired (including one-to-one replacement of any defective parts, but excluding modification or enhancement) and subsequently returned to the country from which they were imported.

B. Imports for Enhancement or Upgrade – ITAR § 123.4(a)(2)

A license is not required for the temporary import (and subsequent export), for a period of up to 4 years, of unclassified U.S. origin defense items (including items manufactured abroad with U.S. Government approval) if the items are to be enhanced, upgraded or incorporated into another item which has already been authorized for export.

C. Imports for Exhibition, Demonstration or Marketing – ITAR § 123.4(a)(3)

A license is not required for the temporary import (and subsequent export), for a period of up to 4 years, of unclassified U.S. origin defense items (including items manufactured abroad with U.S. Government approval) if the items are imported for purposes of exhibition, demonstration or marketing, and are subsequently returned to the country from which they were imported.

D. Articles Rejected for Permanent Import – ITAR § 123.4(a)(4)

A license is not required for the temporary import (and subsequent export), for a period of up to 4 years, of unclassified U.S. origin defense items (including items...
manufactured abroad with U.S. Government approval) if the items have been rejected for permanent import by the U.S. Department of the Treasury.

E. Imports Pursuant to Foreign Military Sales (FMS) Programs – ITAR § 123.4(a)(5)

A license is not required for the temporary import (and subsequent export), for a period of up to 4 years, of unclassified U.S. origin defense items (including items manufactured abroad with U.S. Government approval) if the items are approved for import under the FMS program pursuant to an executed DoD Letter of Offer and Acceptance.

F. Imports of Articles for Incorporation into Other Articles – ITAR § 123.4(b)

A license is not required for the temporary import (but not the subsequent export), for a period of up to 4 years, of unclassified U.S. origin defense articles (including articles manufactured abroad with U.S. Government approval) if the articles are incorporated into other articles, or modified, enhanced, upgraded, altered, improved or serviced in any other manner that changes the basic performance or productivity of the items prior to being returned to the country from which they were imported.

NOTE: ITAR § 123.4, Temporary import license exemption, may translate to EAR § 740.10 License Exception Servicing and replacement of parts and equipment ("RPL") or § 740.9 Temporary imports, exports, reexports, and transfers (in-country) ("TMP"), specifically paragraphs § 740.9(b)(2) and (b)(4).

II. LICENSE EXEMPTIONS FOR EXPORTS OF FIREARMS, AMMUNITION and personal protective gear

A. Exports of Firearm Components – ITAR § 123.17(a)

A license is not required for the export of components and parts for USML Category I(a) firearms, except barrels, cylinders, receivers (frames) or complete breech mechanisms, when the total value of such export does not exceed $100 wholesale in any transaction.

B. Exports of Obsolete Firearms – ITAR § 123.17(b)

A license is not required for the export of nonautomatic firearms covered by USML Category I(a) that were manufactured before 1898 or are replicas of such firearms.

C. Exports of Firearms for Personal Use – ITAR § 123.17(c)

A license is not required for the temporary export by a U.S. person of not more than 3 nonautomatic firearms covered by USML Category I(a) and not more than 1000 cartridges therefore if carried with the person’s baggage or effects (but not mailed), and are for that person’s exclusive use (not for reexport or transfer).

D. Exports of Previously Imported Firearms – ITAR § 123.17(d)

A license is not required for the export by a foreign person of firearms covered by USML Category I(a) and ammunition therefore brought into the U.S. pursuant to the Federal Firearms Code provisions at 27 C.F.R. § 478.115(d).

E. Exports of Firearms Ammunition – ITAR § 123.17(e)

A license is not required for the export by a U.S. person of up to 1,000 cartridges for nonautomatic USML Category I(a) firearms, provided that such cartridges are for personal use and not for resale or other transfer of ownership.
F. Exports of Firearms for Personal Use of U.S. Government Personnel – ITAR § 123.18(a)
A license is not required for the export (except by mail) by U.S. Government personnel assigned abroad for extended duty of nonautomatic firearms covered by USML Category I(a) that are for their personal use and not for resale or other transfer of ownership.

G. Exports of Ammunition for U.S. Government Personnel – ITAR § 123.18(b)
A license is not required for the export (except by mail) by U.S. Government personnel assigned abroad for extended duty of up to 1,000 cartridges of ammunition for nonautomatic firearms covered by USML Category I(a) that are for their personal use and not for resale or other transfer of ownership, when the firearm is carried on the person or with their baggage or effects.

H. Temporary Exports of Body Armor and Chemical Agent Protective Gear – ITAR § 123.17(f)-(i)
A license is not required 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 various locations annotated in § 123.17. NOTE: ITAR § 123.17(f)-(i), may translate to §740.9 TMP, paragraph § 740.9(a)(11) or §740.14 Baggage ("BAG") exception paragraph § 740.14(h)(2).

III. LICENSE EXEMPTIONS FOR DATA AND TECHNICAL DATA
A. Unclassified Technical Data in Furtherance of Agreements – ITAR § 124.3(a)
A license is not required for the export of unclassified technical data if the export is in furtherance of an approved MLA or TAA, and the technical data is within the scope of such license or agreement.

B. Classified Technical Data in Support of Agreements – ITAR § 124.3(b)
A license is not required for the export of classified technical data if the export is in furtherance of an approved MLA or TAA, the exporter certifies that the technical data is within the scope of such license or agreement, and the exporter complies with applicable rules for the transmission of classified information.

C. Technical Data Pursuant to Written Request of DoD – ITAR § 125.4(b)(1)
A license is not required for the export of technical data, including classified information, to be disclosed pursuant to an official written request or directive from DoD. NOTE: ITAR § 125.4(b)(1), may translate to § 740.11, Exception for governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station ("GOV"), paragraph (b)(2)(iii), exception for exports, reexports, and transfers (in-country) made for or on behalf of a department or agency of the U.S. Government or paragraph (b)(2)(iv), Items exported at the direction of the U.S. Department of Defense. NOTE: Classified data continues to be controlled under the ITAR.

D. Technical Data in Furtherance of an MLA or TAA – ITAR § 125.4(b)(2)
A license is not required for the export of technical data, including classified information, in furtherance of an approved MLA or TAA if such export meets the requirements of ITAR § 124.3(a) or (b) (described above).

A license is not required for the export of technical data, including classified information, in furtherance of a contract between the exporter and a U.S. Government agency if called for by such contract and if such data does not disclose the details of design, development, production, or manufacturing of any defense article. NOTE: ITAR § 125.4(b)(3) may translate to § 740.11, GOV exception, paragraph (b)(2)(iii), exception for exports, reexports, and transfers (in-country) made for or on behalf of a department or agency of the U.S. Government. NOTE: Classified data continues to be controlled under the ITAR.

F. Technical Data Previously Authorized for Export – ITAR § 125.4(b)(4)

A license is not required for the export of technical data, including classified information, previously authorized for export to the same recipient. NOTE: ITAR § 125.4(b)(4) may translate to §740.13 TSU exception, paragraph (g), copies of technology previously authorized for export to same recipient. NOTE: Classified data continues to be controlled under the ITAR.

G. Data on Basic Operations, Maintenance and Training – ITAR § 125.4(b)(5)

A license is not required for the export of 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. NOTE: ITAR § 125.4(b)(5) may translate to §740.13 TSU exception, paragraph (a), for operation technology and software. NOTE: Classified data continues to be controlled under the ITAR.

H. Data on Selected Firearms and Ammunition – ITAR § 125.4(b)(6)

A license is not required for the export of 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 manufacture information.

I. Data Returned to Original Source of Import – ITAR § 125.4(b)(7)

A license is not required for the export of technical data, including classified information, being returned to the original source of import. NOTE: ITAR § 125.4(b)(7) may translate to §740.9 TMP exception, paragraph § 740.9(b)(3), Return of foreign-origin items. NOTE: Classified data continues to be controlled under the ITAR.

J. Data Related to Classified Information Approved for Export – ITAR § 125.4(b)(8)

A license is not required for the export of technical data related to classified information which has been previously exported (or authorized for export) to the same recipient, and which does not disclose the detail of the design, development, production, or manufacture of any defense article.

K. Data for Use Only by U.S. Persons – ITAR § 125.4(b)(9)

A license is not required for the export (including by hand delivery) by a U.S. corporation of technical data, including classified information, to a U.S. person employed by that corporation overseas or to a U.S. Government agency, provided that the technical data is to be used overseas solely by U.S. persons. NOTE: ITAR § 125.4(b)(9) may translate to §740.9 TMP exception, paragraph § 740.9(a)(3), Tools of trade: temporary exports, reexports, and transfers (in-
country) of technology by U.S. persons. NOTE: Classified data continues to be
controlled under the ITAR.

L. Unclassified Technical Data for Employees of Institutions of Higher Learning –
ITAR § 125.4(b)(10)
A U.S. institution of higher learning can disclose without a license unclassified
technical data in the U.S. to foreign persons who are their bona fide and full time
regular employees. NOTE: ITAR § 125.4(b)(10) may translate to §740.13 TSU
exception, paragraph (f), for release of technology and source code in the U.S.
by U.S. universities to their bona fide and full time regular employees.

M. Technical Data Exempt Under Arrangements with DoD, DoE or NASA – ITAR
§ 125.4(b)(11)
A license is not required for the export of technical data, including classified
information, that is required pursuant to an agreement with DoD, DoE or NASA.
and for which the person has been granted a written exemption by DDTC.

N. Data Exempt Under Part 126 – ITAR § 125.4(b)(12)
A license is not required for the export of technical data where specifically
exempt under part 126 of the ITAR.

O. Technical Data Approved for Public Release – ITAR 125.4(b)(13)
A license is not required for the export of technical data that has been approved
for public release by the cognizant U.S. Government department or agency.
NOTE: ITAR 125.4(b)(13) may not be subject to the EAR in accordance with EAR
§734.3 paragraph (b)(3)(i) and § 734.7 for published information and software not
subject to the EAR.

IV. COUNTRY-SPECIFIC LICENSE EXEMPTIONS
A. Canadian and Mexican Border Shipments – ITAR § 123.19
A shipment originating in Canada or Mexico which incidentally transits the U.S.
en route to a delivery point in the same country that originated the shipment is
exempt from the requirement for an in transit license. NOTE: ITAR § 123.19, may
translate to § 740.9 paragraph (b)(1), exception for items moving in transit
through the United States.

B. Temporary Imports from Canada – ITAR § 126.5(a)
A license is not required for the temporarily import and return to Canada of
unclassified defense articles that originate in Canada for temporary use in the
U.S. and return to Canada.

C. Permanent and Temporary Exports to Canada – ITAR § 126.5(b)
A license is not required for the export to Canada of certain defense articles and
technical data for end-use in Canada by Canadian Government officials or by a
Canadian-registered person, or return to the U.S. Refer to ITAR § 126.5(b) and
Supplement No. 1 to part 126 for more information.

D. Provision of Defense Services to Canada – ITAR § 126.5(c)
The provision of a defense service to a Canadian-registered person or Canadian
Government official is exempt from licensing requirements of ITAR § 124,
provided certain other criteria are satisfied.
E. Reexport/Retransfer within Canada – ITAR § 126.5(d)(1)

U.S. exporters can in some instances grant U.S. Government authorization to a Canadian-registered person to re-export or retransfer defense articles within Canada to another eligible Canadian recipient.

Note: ITAR § 126.5 Canadian exemptions, may not be required. Most 600 series items and technology are controlled for reasons that do not require a license for export to Canada. Those items that require a license under the EAR most likely did not qualify for the Canadian exemption under the ITAR.

F. Data for NATO/Australia/Japan/Sweden Bid Proposals – ITAR § 125.4(c)

Provisions of defense services and related unclassified technical data are in some instances exempt from ITAR licensing requirements when provided to nationals of NATO countries, Australia, Japan and Sweden, for the purpose of responding to a written request from DoD for a quote or bid proposal.

G. Re-Exports to NATO, Australia or Japan – ITAR § 123.9(e)

A license is not required for reexports or retransfers of U.S. origin components incorporated into a foreign defense article to NATO, NATO agencies, the government of a NATO country, or the governments of Australia, Japan, or South Korea, provided the U.S. origin components were previously authorized for export from the U.S. under a license or license exemption, and certain other criteria are satisfied.

H. Maintenance Exemption for NATO/ Australia/ Japan/ Sweden – ITAR § 124.2(c)

A TAA is not required for the provision of training in the maintenance of defense articles or performance of maintenance, including export of supporting technical data, related to unclassified US-origin defense articles lawfully exported and owned or operated by NATO or the government of a NATO country, Australia, Japan or Sweden, provided certain other criteria are satisfied. NOTE: ITAR § 124.2(c), may translate to §740.13 TSU exception, paragraph (a), or § 740.20 License Exception Strategic Trade Authorization ("STA"), except for Albania, which is not listed in Country Group A:5.

I. Exports and transfers to Australia pursuant to the Defense Trade Cooperation Treaty between the United States and Australia – ITAR § 126.16

A license is not required for the export to Australia of certain defense articles, technical data and defense services. There are restrictions on the persons who may export, the persons who may receive and the programs that may be involved.

NOTE: ITAR § 126.16 may be covered by the §740.20 STA exception.

J. Exports, transfers, reexports, and retransfers to the United Kingdom pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom – ITAR § 126.17

A license is not required for the export to the United Kingdom of certain defense articles, technical data and defense services. There are restrictions on the persons who may export, the persons who may receive and the programs that may be involved.

NOTE: ITAR § 126.17 may be covered by the §740.20 STA exception.
V. LICENSE EXEMPTIONS FOR U.S. GOVERNMENT ACTIVITIES

A. Shipments Conducted by or for U.S. Government Agencies – ITAR § 126.4(a)

A license is not required for the temporary import or temporary export of any defense article, including technical data or the performance of a defense service, by or for any agency of the U.S. Government for official use by such agency, or for carrying out any foreign assistance, cooperative project or sales program authorized by law and subject to control by the President by other means. NOTE: ITAR § 126.4(a) may translate to § 740.11, GOV exception, paragraph (b)(2), exceptions for the U.S. Government.

B. Urgent Shipments for End-Use by U.S. Government Agencies – ITAR § 126.4(c)

A license is not required for the temporary import, or temporary or permanent export, of any classified or unclassified defense articles, including technical data or the performance of a defense service, for end-use by a U.S. Government Agency in a foreign country where the urgency of the U.S. Government requirement is that the such that the appropriate export license or U.S. Government Bill of Lading could not have been obtained in a timely manner. NOTE: ITAR § 126.4(c) may translate to § 740.11, GOV exception, paragraph (b)(2), exceptions for the U.S. Government.

C. Transfer of Defense Articles or Technical Data by DoD – ITAR § 126.6(a)

A license is not required for the export of defense articles or technical data sold, leased, or loaned by the Department of Defense to a foreign country or international organization, if the article or technical data is delivered to representatives of such a country or organization in the U.S. and the article or technical data is to be exported from the U.S. on a military aircraft or naval vessel of that government or organization or via the Defense Transportation Service (DTS). NOTE: ITAR § 126.6(a) may translate to § 740.11, GOV exception, paragraph (b)(2)(v), exceptions for items sold, leased, or loaned by the U.S. Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961.

D. Foreign Military Aircraft and Naval Vessels – ITAR § 126.6(b)

A license is not required for the entry into the U.S. 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.

E. Foreign Military Sales Program – ITAR § 126.6(c)

A license is not required for the transfer of a defense article or technical data or a defense service that was sold, leased or loaned by the DoD to a foreign country or international organization under the Foreign Military Sales (FMS) Program pursuant to a qualifying Letter of Offer and Acceptance authorizing such transfer. NOTE: ITAR § 126.6 (c), Foreign Military Sales Program (“FMS”) exemption, may still apply to items that have moved to the EAR, or may translate to § 740.11, GOV exception, paragraph (b)(2)(iii)(B), exceptions for exports, reexports, and transfers (in-country) of items to implement or support any U.S. Government cooperative program, project, agreement, or arrangement with a foreign government or international organization or agency that is authorized by law and subject to control by the President by other means. NOTE: In accordance with EAR § 734.3 paragraph (b)(1)(vi), items that are subject to the EAR that are sold, leased or loaned by the Department of Defense to a foreign country or international organization under the FMS Program of the Arms Export Control Act pursuant to a Letter of Offer and Acceptance (LOA) authorizing such transfers.
are not “subject to the EAR,” but rather, are subject to the authority of the Arms Export Control Act.

VI. LICENSE EXEMPTIONS FOR PLANT VISITS

A. Exemptions for Plant Visits (Unclassified) – ITAR § 125.5(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 where the classified visit has itself been authorized pursuant to a license issued by DDTC, or the classified visit was approved by a qualifying U.S. Government agency, and certain other criteria are satisfied.

B. Exemptions for Plant Visits (Classified) – ITAR § 125.5(b)
A license is not required for the oral and visual disclosure of classified information to a foreign person during the course of a plant visit approved by the appropriate U.S. Government agency if certain criteria are satisfied.

C. Exemptions for Approved Plant Visits – ITAR § 125.5(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 DDTC or a cognizant U.S. Government agency, provided the technical data does not contain information in excess of that approved for disclosure and certain other criteria are satisfied.

VII. MISCELLANEOUS LICENSE EXEMPTIONS

A. Exceptions – ITAR § 126.3
In a case of exceptional or undue hardship, or when it is otherwise in the interest of the U.S. Government, the Director, Office of Defense Trade Controls may make an exception to the provisions of the ITAR.

B. Shipments Between U.S. Possessions – ITAR § 123.12
A license is not required for shipment of defense articles between the U.S., Puerto Rico, and U.S. possessions.

C. Foreign Trade Zones and U.S. Customs Bonded Warehouse – ITAR § 123.6
A license is not required for shipment between the U.S. and a foreign trade zone or a U.S. Customs and Border Protection bonded warehouse.

D. Movement of USML Vessels or Aircraft Outside of the U.S. – ITAR § 123.11(b)
A license is not required when a USML vessel or aircraft departs from the U.S. and does not enter the territorial waters or airspace of a foreign country if no defense articles are carried as cargo.

E. Domestic Aircraft Shipments via a Foreign Country – ITAR § 123.13
A license is not required for the shipment by air of a defense article from one location in the U.S. to another location in the U.S. via a foreign country, provided that the parties comply with certain U.S. Customs and Border Protection procedures.

F. Unclassified Defense Articles in Support of Agreements – ITAR § 123.16(b)(1)
A license is not required for the export of defense hardware being exported in furtherance of an MLA, TAA, DA or an arrangement for distribution of items
identified in Category XIII(b)(1), provided that the defense hardware to be exported supports the activity and is identified by item, quantity and value in the agreement or arrangement and certain other criteria are satisfied.

G. Components and Parts Valued at Less Than $500 – ITAR § 123.16(b)(2)
A license is not required for the export of components or spare parts the total value of which does not exceed $500 in a single transaction, if the components or spare parts are being exported to support a defense article previously authorized for export, the spare parts or components are not going to a distributor, but to a previously approved end-user of the defense articles, and the spare parts or components are not to be used to enhance the capability of the defense article. **Note:** ITAR § 123.16(b)(2), may translate to § 740.3 Shipments of limited value (LVS) exception.

H. Specially Designed Packing Cases – ITAR § 123.16(b)(3)
A license is not required for the export of packing cases specially designed to carry defense articles.

I. Exports of Models and Mockups – ITAR § 123.16(b)(4)
A license is not required for the export of unclassified models or mock-ups of defense articles, provided that such models or mock-ups are nonoperable and do not reveal any technical data in excess of that which is exempted from the licensing requirements of ITAR §125.4(b) and do not contain components covered by the USML.

J. Temporary Exports for Public Exhibitions or Trade Shows – ITAR § 123.16(b)(5)
A license is not required for the temporary export 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. **Note:** ITAR § 123.16(b)(5), may translate to § 740.9 paragraph (a)(5) for exception for exports to exhibitions and demonstrations.

K. Temporary Exports to U.S. Subsidiaries Overseas – ITAR § 123.16(b)(9)
A license is not required for the temporary export 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 if the component, part, tool or test equipment is to be used for manufacture, assembly, testing, production, or modification provided certain conditions are met. **Note:** ITAR § 123.16(b)(9), may translate to § 740.9 paragraph (a)(10), exception for temporary exports to a U.S. person’s foreign subsidiary, affiliate, or facility abroad.


M. Shipments Exceeding the Licensed Monetary Value – ITAR §123.23
Shipments of defense articles identified on any license are permitted 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.
N. Agreement Exemption for Training – ITAR § 124.2(a)

A TAA is not required for the provision of training in the basic operation and maintenance (but not intermediate and depot level maintenance) of defense articles lawfully exported or authorized for export to the same recipient. **NOTE:** ITAR § 124.2(a) may translate to §740.13 Technology and software—unrestricted ("TSU") exception, paragraph (a), for release of operation technology which is the minimum technology necessary for the installation, operation, maintenance (checking), and repair of those commodities or software that are lawfully exported or reexported under a license, a License Exception, or NLR.

O. Agreement Exemption for Foreign Military Service – ITAR § 124.2(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 defense services.

P. Intra-Company, Intra-organization and intra-governmental transfers to dual national and third-country national employees – ITAR § 126.18

No approval is needed from DDTC for the transfer of unclassified defense articles, including 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. To use this exemption, the foreign consignee or end-user must have effective procedures for preventing diversion, including, for non-governmental end-users, employee screening procedures.

VIII. 600 SERIES EXCEPTIONS

The following is a list of the EAR exceptions that may apply to the 600 series items:

A.  The § 740.3 Shipments of limited value ("LVS") exception can be used to export low value shipments, normal less than $1500.

B.  The § 740.9 Temporary imports, exports, reexports, and transfers (in-country) ("TMP") exception can be used to temporarily export tools of trade, exhibition/demonstration, certain exports to U.S. person's facility abroad, and personal protective equipment. It can also be used for certain returns of items temporarily in the U.S.

C.  The § 740.10 License Exception Servicing and replacement of parts and equipment ("RPL") exception can be used for one-for-one replacement parts/components and to return repaired or replaced items.

D.  The § 740.11, Exception for governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station ("GOV") exception can be used by personnel and agencies of USG, including contractor support personnel and for certain shipments for or on behalf of USG and DoD-directed shipments and for exports to cooperating governments.

E.  The § 740.13 Technology and software—unrestricted ("TSU") exception can be used for operation technology/software, sales technology, technology/source code transferred in the U.S. to bona fide, full time regular employees of U.S. universities, and for exporting copies of technology previously authorized for export.

F.  The § 740.14 Baggage ("BAG") exception can be used to export Certain personal protective equipment with U.S. person's baggage or effects.

G.  The § 740.20 License Exception Strategic Trade Authorization ("STA") exception can be used to export most 600 series items to country group A:5. Country Group A:5 includes Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, The Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.
## ANNEX E
Directorate of Defense Trade Controls License Processing Times

<table>
<thead>
<tr>
<th>Month and Year</th>
<th>Dec '13</th>
<th>Jan '14</th>
<th>Feb '14</th>
<th>Mar '14</th>
<th>Apr '14</th>
<th>May '14</th>
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<th>Jul '14</th>
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<th>Oct '14</th>
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<tbody>
<tr>
<td>Cases Received</td>
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<td>4,978</td>
<td>3,965</td>
<td>4,366</td>
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<tr>
<td>Cases Open at End of Month</td>
<td>3,323</td>
<td>3,100</td>
<td>3,232</td>
<td>3,421</td>
<td>3,571</td>
<td>3,532</td>
<td>3,597</td>
<td>3,529</td>
<td>3,511</td>
<td>3,454</td>
<td>3,294</td>
<td>3,193</td>
<td>3,155</td>
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<tr>
<td>Average Processing Time (in Calendar Days)</td>
<td>22</td>
<td>23</td>
<td>26</td>
<td>22</td>
<td>20</td>
<td>20</td>
<td>21</td>
<td>20</td>
<td>23</td>
<td>21</td>
<td>24</td>
<td>22</td>
<td>22</td>
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</table>

In order to provide greater transparency and predictability for U.S. defense firms in planning munitions license submissions, the Directorate of Defense Trade Controls publishes a monthly update of the Directorate’s processing times. The timelines are expressed in averages across all case activity. For electronic cases, the average is based on the date the case was signed by the applicant until the date of final action. For hardcopy cases, the processing times are determined by the date the case entered the Directorate until the time the case is signed out of the Directorate. Processing numbers include all case types except Commodity Jurisdictions (CJs), Government Jurisdictions (GJs), and Electronic Rejections.
New ECCNs for USML Items Transferred to the CCL

This Appendix contains the new CCL entries for equipment, assemblies, components and technology for military explosive devices and charges (0A604 and 0E604), military ground vehicle (0A606 and 0E606), military training equipment (0A614 and 0E614), miscellaneous military equipment (0A617 and 0E617), armored and protective equipment (1A613 and 1E613), military electronics (3A611 and 3E611), surface vessels of war (8A609 and 8E609), submersible vessels, oceanographic and associated commodities (8A620 and 8E620), spacecraft and related commodities (9A515 and 9E515), commodities related to launch vehicles, missiles, and rockets (9A604 and 9E604), military aircraft (9A610 and 9E610), and military aircraft engines (9A619 and 9E619), and Cryogenic and superconductive equipment (9A620 and 9E620). Please refer to the CCL for more information on the test, inspection, material and software associated with these items.

Similar changes and additions will be made to the remaining USML categories and to the CCL as DDTC and BIS continue export control reform.

Process for Determining Export Jurisdiction and Classification Under ECR

The diagram below guides jurisdiction and classification under export controls reform changes to the USML and the CCL and indicates the licensing requirements and available exemptions or exceptions.

Conduct normal CCL review.
Applying the diagram to military aircraft, for example, the exporter should begin by reviewing Category VIII, paragraph (a), which enumerates specific aircraft and then paragraphs (d) through (f) which include certain enumerated aircraft systems. Paragraph (h) contains certain specifically enumerated parts and components and other parts and components that are “specially designed” for enumerated aircraft. All of the items in Category VIII are subject to the ITAR and normal ITAR licensing and exemptions.

Next, the exporter should review ECCN 9A610 paragraph (a), which include aircraft “specially designed” for military use, followed by paragraphs (f) through (w). Items described by paragraphs (a)-(f) are subject to NS, RS, UN and AT controls. Items described by paragraphs (u), (v) and (w) are subject to MT, RS, UN and AT controls. A review of the country chart will determine whether a license is required for the destination. For Paragraph (a), license exception STA is available only after a one-time review of the item and determination by BIS that the item is eligible for the license exception. For the other paragraphs, license exception STA is available. License exception LVS is available. Other license exception may be available, such as RPL, GOV or TMP.

For parts, components, accessories and attachments, the exporter will turn to ECCN 9A610, paragraph (y). If the item is found on the list in paragraph (y), only AT controls will apply, which allows exports to all destinations without a license except Iran, Syria, Sudan, Cuba, North Korea and China (because it is a military item).

Other specially designed parts, components, accessories and attachments will be under paragraph (x). While items under this paragraph are subject to NS, RS, UN and AT controls, they are eligible for license exception STA and may be eligible for other license exceptions, if needed.

If the item to be exported is not “specially designed” and so not described by any of these list entries, the item is subject to normal CCL classification and EAR licensing and exceptions.

**EAR Definition of Specially Designed**

The ITAR and EAR have slightly different definitions for “specially designed.” The ITAR definition is found in section 120.41 of the ITAR. The EAR definition is found in section 772 of the EAR, and is set forth below.

*Specially designed.* When applying this definition, follow this sequential analysis set forth below. (For additional guidance on the order of review of “specially designed,” including how the review of the term relates to the larger CCL, see Supplement No. 4 to Part 774 of the EAR – Commerce Control List Order of Review.)

(a) Except for items described in (b), an “item” is “specially designed” if it:

1. As a result of “development” has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph; or
2. Is a “part,” “component,” “accessory,” “attachment,” or “software” for use in or with a commodity or defense article ‘enumerated’ or otherwise described on the CCL or the USML.

(b) A “part,” “component,” “accessory,” “attachment,” or “software” that would be controlled by paragraph (a) is not “specially designed” if it:

1. Has been identified to be in an ECCN paragraph that does not contain “specially designed” as a control parameter or as an EAR99 item in a commodity jurisdiction (CJ) determination or interagency-cleared commodity classification (CCATS) pursuant to §748.3(e);
2. Is, regardless of ‘form’ or ‘fit,’ a fastener (e.g., screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, 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 an item that:
   i. Is or was in “production” (i.e., not in “development”); and
   ii. Is either not ‘enumerated’ on the CCL or USML, or is described in an ECCN controlled only for Anti-Terrorism (AT) reasons;
4. Was or is being developed with “knowledge” that it would be for use in or with commodities or software (i) described in an ECCN and (ii) also commodities or software either not
'enumerated' on the CCL or the USML (e.g., EAR99 commodities or software) or commodities or software described in an ECCN controlled only for Anti-Terrorism (AT) reasons;

(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., an F/A-18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool); or

(6) Was or is being developed with "knowledge" that it would be for use in or with commodities or software described (i) in an ECCN controlled for AT-only reasons and also EAR99 commodities or software; or (ii) exclusively for use in or with EAR99 commodities or software.

**NOTE 1:** 'Enumerated' refers to any item (i) on either the USML or CCL not controlled in a 'catch-all' paragraph and (ii) when on the CCL, controlled by an ECCN for more than Anti-Terrorism (AT) reasons only. An example of an 'enumerated' ECCN is 2A226, which controls valves with the following three characteristics: a "nominal size" of 5 mm or greater; having a bellows seal; and wholly made of or lined with aluminum, aluminum alloy, nickel, or nickel alloy containing more than 60% nickel by weight. The CCL also contains notes excluding from control "parts" and "components" "specially designed" for uncontrolled items. Such uncontrolled items are merely 'described' and are not 'enumerated.' **NOTE 2** to ECCN 1A002 is an example of items excluded from control based on being "specially designed" for a 'described' item. Commodities or software in an ECCN controlled only for AT reasons are other examples of items 'described' on the CCL. ECCN 2B996, which controls dimensional inspection or measuring systems or equipment not controlled by 2B006, is an example of a commodity 'described' in an ECCN controlled only for AT reasons. For purposes of "specially designed," ECCNs 0B986, 0B999, 0D999, 1B999, 1C992, 1C995, 1C997, 1C999, 6A998 (except for .b), 7A994 (except for the QRS11) and 9A991 are treated as ECCNs controlled exclusively for AT reasons.

**NOTE 2:** A 'catch-all' paragraph is one that does not refer to specific types of "parts," "components," "accessories," or "attachments" but rather controls non-specific "parts," "components," "accessories," or "attachments" because they were "specially designed" for an enumerated item. For example, ECCN paragraph 9A610.x is a 'catch-all,' because it controls "parts," "components," "accessories," and "attachments" "specially designed" for military aircraft, but does not identify specific types of "parts," "components," "accessories," or "attachments" within its control. Another example of a 'catch-all' is the heading of 7A102, which controls "specially designed" components for the gyros enumerated in 7A102, but does not identify the specific types of "components" within its control.

**NOTE TO PARAGRAPH (a)(1):** Items that as a result of "development" have properties peculiarly responsible for achieving or exceeding the performance levels, 'functions' or characteristics in a relevant ECCN paragraph may have properties shared by different products. For example, ECCN 1A007 controls equipment and devices, specially designed to initiate charges and devices containing energetic materials, by electrical means. An example of equipment not meeting the peculiarly responsible standard under paragraph (a)(1) is a garage door opener, that as a result of "development" has properties that enable the garage door opener to send an encoded signal to another piece of equipment to perform an action (i.e., the opening of a garage door). The garage door opener is not "specially designed" for purposes of 1A007 because although the garage door opener could be used to send a signal by electrical means to charges or devices containing energetic materials, the garage door opener does not have properties peculiarly responsible for achieving or exceeding the performance levels, 'functions' or characteristics in 1A007. For example, the garage door opener is designed to only perform at a limited range and the level of encoding is not as advanced as the encoding usually required in equipment and devices used to initiate charges and devices containing energetic materials, by electrical means. Conversely, another piece of equipment that, as a result of "development," has the properties (e.g., sending a signal at a longer range, having signals with advanced encoding to prevent interference, and having signals that are specific to detonating blasting caps) needed for equipment used to initiate charges and devices containing energetic materials, would be peculiarly responsible because the equipment has a direct and proximate causal relationship that is central or special for achieving or exceeding the performance levels, 'functions' or characteristics identified in 1A007.
NOTE 1 TO PARAGRAPH (b)(3): 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 (MTBF)), 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.”

NOTE 2 TO PARAGRAPH (b)(3): With respect to a commodity, ‘equivalent’ means that its form has been modified solely for ‘fit’ purposes.

NOTE 3 TO PARAGRAPH (b)(3): The ‘form’ of a commodity is defined by its configuration (including the geometrically measured configuration), material, and material properties that uniquely characterize it. The ‘fit’ of a commodity is defined by its ability to physically interface or interconnect with or become an integral part of another item. The ‘function’ of the item is the action or actions it is designed to perform. ‘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, ‘form’ means the design, logic flow, and algorithms. ‘Fit’ means the ability to interface or connect with an item subject to the EAR. The ‘function’ means the action or actions it performs directly to an item subject to the EAR or as a stand-alone application. ‘Performance capability’ means the measure of software’s effectiveness to perform a designated function.

NOTE TO PARAGRAPHS (b)(3) and (b)(4): ECCNs controlled for AT-only reasons that use “specially designed” are eligible for paragraphs (b)(3) and (b)(4). However, the criteria for release under (b)(3) or (b)(4) must be met by another ECCN controlled for AT-only reasons or an EAR99 item in addition to the AT-only ECCN being reviewed for release from “specially designed.” For example, if a single gasket is used in ECCN 9A990 tractors (9A990 includes a control on “specially designed” “parts”) and also pick-up trucks designated as EAR99 that are in “production,” the single gasket would be released from “specially designed” on the basis of paragraph (b)(3). Or if the single gasket is or was used in 9A990 tractors and also 9A991.b aircraft (another AT-only controlled ECCN), that are in “production,” the gasket would be released from “specially designed” on the basis of paragraph (b)(3). Alternatively, if the single gasket is or was only used in ECCN 9A990 tractors that are in “production,” then paragraph (b)(3) would not be available. This same concept applies for paragraph (b)(4).

NOTE TO PARAGRAPHS (b)(4), (b)(5) and (b)(6): For a commodity or software to be not “specially designed” on the basis of paragraphs (b)(4), (b)(5) or (b)(6), documents contemporaneous with its “development,” in their totality, must establish the elements of paragraphs (b)(4), (b)(5) or (b)(6). 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 paragraphs (b)(4), (b)(5) or (b)(6).”

Military Items on the CCL: Selected 600 Series ECCNs

As previously described, the following are ECCNs for equipment, assemblies, components (Group A) and technology (Group E) for military items that have moved over to the CCL. There are accompanying additions for ECCNs related to the test, inspection, material and software associated with these items. However, adding them here is beyond the scope of this handbook.

Please refer to the CCL for further information concerning the following entries, which are not represented in this Handbook:

Test, Inspection, and Production Equipment (Group B)

The controlled test, inspection, and production equipment are test, inspection, and production equipment, that are “specially designed” for the “development,” “production,” repair, overhaul, or refurbishing of commodities enumerated in the corresponding Group A ECCN.

Materials (Group C)

The controlled materials are materials, not enumerated on the USML, that are “specially designed” for commodities enumerated in the corresponding Group A ECCN.

Software (Group D)
The controlled software is software that is “specially designed” for the “development,” “production,” operation or maintenance of commodities enumerated in the corresponding Group A ECCN.

Technology (Group E)

The controlled technology is technology that is “required” for the “production,” “development,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities enumerated in the corresponding Group A ECCN. Technology usually differentiates between technology for ECCN.a-x and ECCN.y.

0A604 Commodities Related to Military Explosive Devices and Charges (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT, UN

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<tr>
<th>Control(s)</th>
<th>Country Chart (See Supp. No. 1 to part 738)</th>
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<tr>
<td>UN applies to entire entry</td>
<td>See § 746.1(b) for UN controls</td>
</tr>
</tbody>
</table>

LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

LVS: N/A
GBS: N/A
CIV: N/A

Special Conditions for STA
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this ECCN 0A604.

LIST OF ITEMS CONTROLLED

Related Controls: (1) Torpedoes, bombs, and mines are subject to the ITAR (see 22 CFR § 121.1, USML Category IV). (2) Smoke bombs, non-irritant smoke flares, canisters, grenades and charges, and other pyrotechnical articles having both military and commercial applications are controlled by ECCN 1A984. (3) Certain explosive detonator firing sets, electrically driven explosive detonators, and detonators and multipoint initiation systems are controlled by ECCN 1A007 or ECCN 3A232. (4) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a de minimis amount of U.S.-origin “600 series” controlled content.

Related Definitions: N/A

Items:

a. Demolition blocks, and detonators designed, modified, or adapted therefor.

b. Military explosive excavating devices.

Note to 0A604.a and .b: This entry does not control the detonators and other items escribed in ECCN 1A007 or ECCN 3A232.

c. Smoke hand grenades and stun hand grenades (e.g., “flashbangs”) not controlled by ECCN 1A984.

d. through w. [Reserved]

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity subject to control in paragraphs .a through .c of this ECCN, or for a defense article controlled under USML Category IV, and not specified elsewhere on the USML.

NOTE 1 TO 0A604.x: 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 commodities controlled by ECCN 0A604.x, are controlled by ECCN 0A604.x.

NOTE 2 TO 0A604.x: “Parts,” “components,” “accessories,” and “attachments” specified in USML Category IV(h) are subject to the controls of that paragraph.

[79 FR 282, Jan. 2, 2014]

0E604 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 0A604 or 0B604, or “software” controlled by ECCN 0D604.

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT, UN

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<thead>
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<th>Control(s)</th>
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<td>See § 746.1(b) for UN controls</td>
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</tbody>
</table>

LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

CIV: N/A

TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this ECCN 0E604.

LIST OF ITEMS CONTROLLED

Related Controls: Technical data directly related to articles enumerated in USML Category IV are controlled under USML Category IV(i).

Related Definitions: N/A

Items:

a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 0A604 or 0B604, or “software” controlled by ECCN 0D604.

b. [Reserved]

[79 FR 284, Jan. 2, 2014]
**0A606  Ground vehicles and related commodities, as follows (see List of Items Controlled).**

**LICENSE REQUIREMENTS**

*Reason for Control*: NS, RS, AT, UN

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<th>Control(s)</th>
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<td>See § 746.1(b) for UN controls</td>
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**LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)**

*LVS*: $1,500

*GBS*: N/A

*CIV*: N/A

*STA*: (1) Paragraph (c)(1) of License Exception STA (§740.20(c)(1) of the EAR) may not be used for any item in 0A606.a, unless determined by BIS to be eligible for License Exception STA in accordance with §740.20(g) (License Exception STA eligibility requests for “600 series” end items). (2) Paragraph (c)(2) of License Exception STA (§740.20(c)(2) of the EAR) may not be used for any item in 0A606.

**LIST OF ITEMS CONTROLLED**

*Unit*: Equipment in number; “parts”, “components”, “accessories” and “attachments” in $ value

*Related Controls*: (1) The ground vehicles, other articles, technical data (including software) and services described in 22 CFR part 121, Category VII are subject to the jurisdiction of the International Traffic in Arms Regulations. (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a de minimis amount of U.S.-origin “600 series” controlled content.

*Related Definitions*: N/A

*Items:*

  a. Ground vehicles, whether manned or unmanned, “specially designed” for a military use and not enumerated or otherwise described in USML Category VII.

  **NOTE 1 TO PARAGRAPH .a:** For purposes of paragraph .a, “ground vehicles” include (i) tanks and armored vehicles manufactured prior to 1956 that have not been modified since 1955 and that do not contain a functional weapon or a weapon capable of becoming functional through repair; (ii) military railway trains except those that are armed or are “specially designed” to launch missiles; (iii) unarmored military recovery and other support vehicles; (iv) unarmored, unarmed vehicles with mounts or hard points for firearms of .50 caliber or less; and (v) trailers “specially designed” for use with other ground vehicles enumerated in USML Category VII or ECCN 0A606.a, and not separately enumerated or otherwise described in USML Category VII. For purposes of this note, the term “modified” does not include incorporation of safety features required by law, cosmetic changes (e.g., different paint or repositioning of bolt holes) or addition of “parts” or “components” available prior to 1956.

  **NOTE 2 TO PARAGRAPH .a:** A ground vehicle's being “specially designed” for military use for purposes of determining controls under paragraph .a. entails a structural, electrical or mechanical feature involving one or more components that are “specially designed” for military use. Such components include:
a. Pneumatic tire casings of a kind specially designed to be bullet-proof;
b. Armored protection of vital parts, (e.g., fuel tanks or vehicle cabs);
c. Special reinforcements or mountings for weapons;
d. Black-out lighting.
b. Other ground vehicles, “parts” and “components,” as follows:
   b.1. Unarmed vehicles that are derived from civilian vehicles and that have all of the
       following:
       b.1.a. Manufactured or fitted with materials or components other than reactive or
             electromagnetic armor to provide ballistic protection to level III (National Institute of
             Justice standard 0108.01, September 1985) or better;
       b.1.b. A transmission to provide drive to both front and rear wheels simultaneously,
             including those vehicles having additional wheels for load bearing purposes whether
             driven or not;
       b.1.c. Gross vehicle weight rating (GVWR) greater than 4,500 kg; and
       b.1.d. Designed or modified for off-road use.
       b.2. “Parts” and “components” having all of the following:
           b.2.a. “Specially designed” for vehicles specified in paragraph .b.1 of this entry; and
           b.2.b. Providing ballistic protection to level III (National Institute of Justice standard
                   0108.01, September 1985) or better.

   NOTE 1 to paragraph b: Ground vehicles otherwise controlled by 0A606.b.1 that contain
reactive or electromagnetic armor are subject to the controls of USML Category VII.
   NOTE 2 to paragraph b: ECCN 0A606.b.1 does not control civilian vehicles “specially
designed” for transporting money or valuables.
   Note 3 to paragraph b: “Unarmed” means not having installed weapons, installed mountings
for weapons, or special reinforcements for mounts for weapons.
   c. Air-cooled diesel engines and engine blocks for armored vehicles that weigh more than 40
tons.
   d. Fully automatic continuously variable transmissions for tracked combat vehicles.
   e. Deep water fording kits “specially designed” for ground vehicles controlled by ECCN
0A606.a or USML Category VII.
   f. Self-launching bridge components not enumerated in USML Category VII(g) “specially
designed” for deployment by ground vehicles enumerated in USML Category VII or this ECCN.
   g. through w. [RESERVED]
   x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a
commodity enumerated or otherwise described in ECCN 0A606 (except for 0A606.b or 0A606.y)
or a defense article enumerated or otherwise described in USML Category VII and not elsewhere
specified on the USML, in 0A606.y or 3A611.y.
   NOTE 1: Forgings, castings, and other unfinished products, such as extrusions and machined
bodies, that have reached a stage in manufacture where they are clearly identifiable by
mechanical properties, material composition, geometry, or function as commodities controlled by
ECCN 0A606.x are controlled by ECCN 0A606.x.
   NOTE 2: “Parts,” “components,” “accessories” and “attachments” enumerated in USML
paragraph VII(g) are subject to the controls of that paragraph. “Parts,” “components,”
“accessories” and “attachments” described in ECCN 0A606.y are subject to the controls of that
paragraph.
   y. Specific “parts”, “components”, “accessories” and “attachments” “specially designed” for a
commodity enumerated or otherwise described in this ECCN (other than ECCN 0A606.b) or for a
defense article in USML Category VII and not elsewhere specified on the USML or the CCL, as
follows and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor:
   y.1. Brake discs, rotors, drums, calipers, cylinders, pads, shoes, lines, hoses, vacuum
boosters, and parts thereof;
   y.2. Alternators and generators;
   y.3. Axles;
y.4. Batteries;
y.5. Bearings (e.g., ball, roller, wheel);
y.6. Cables, cable assemblies, and connectors;
y.7. Cooling system hoses;
y.8. Hydraulic, fuel, oil, and air filters, other than those controlled by ECCN 1A004;
y.9. Gaskets and o-rings;
y.10. Hydraulic system hoses, fittings, couplings, adapters, and valves;
y.11. Latches and hinges;
y.12. Lighting systems, fuses, and components;
y.13. Pneumatic hoses, fittings, adapters, couplings, and valves;
y.14. Seats, seat assemblies, seat supports, and harnesses;
y.15. Tires, except run flat; and
y.16. Windows, except those for armored vehicles.


0E606 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of ground vehicles and related commodities in 0A606, 0B606, 0C606, or software in 0D606 (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT, UN

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LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

CIV: N/A
TSR: N/A
STA: Paragraph (c)(2) of License Exception STA (§740.20(c)(2) of the EAR) may not be used for any technology in 0D606.

LIST OF ITEMS CONTROLLED

Related Controls: Technical data directly related to articles enumerated in USML Category VII are subject to the controls of USML paragraph VII(h).

Related Definitions: N/A

Items:

a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities enumerated or otherwise described in ECCN 0A606 (except for ECCNs 0A606.b or 0A606.y).
b. through x. [RESERVED]
y. Specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul or refurbishing of commodities or software in ECCN 0A606.y or 0D606.y.

[78 FR 40915, Jul. 8, 2013]
Military Training “Equipment,” as Follows (see List of Items Controlled).

**LICENSING REQUIREMENTS**

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<tr>
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**LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)**

- **LVS:** $1,500
- **GBS:** N/A
- **CIV:** N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 0A614.

**LIST OF ITEMS CONTROLLED**

**Related Controls:**

1. Defense articles that are enumerated or otherwise described in USML Category IX and “technical data” (including “software”) directly related thereto are subject to the ITAR.
2. See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a de minimis of US-origin “600 series” items.
3. “Parts,” “components,” “accessories” and “attachments” that are common to a simulator controlled by ECCN 0A614.a and to a simulated system or an end item that is controlled on the USML or elsewhere on the CCL are controlled under the same USML Category or ECCN as the “parts,” “components,” “accessories” and “attachments” of the simulated system or end item.

**Related Definitions:** N/A

**Items:**

a. “Equipment” “specially designed” for military training that is not enumerated or otherwise described in USML Category IX.

**NOTE 1 TO 0A614:** This entry includes operational flight trainers, radar target trainers, flight simulators for aircraft classified under ECCN 9A610.a, human-rated centrifuges, radar trainers for radars classified under ECCN 3A611, instrument flight trainers for military aircraft, navigation trainers for military items, target equipment, armament trainers, military pilotless aircraft trainers, mobile training units and training “equipment” for ground military operations.

**NOTE 2 TO 0A614:** This entry does not apply to “equipment” “specially designed” for training in the use of hunting or sporting weapons.

b. through w. [Reserved]

x. “Parts,” “components,” “accessories” “attachments” that are “specially designed” for a commodity controlled by this entry or an article enumerated or otherwise described in USML Category IX, and not specified elsewhere on the USML.

**NOTE 3 TO 0A614:** 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 commodities controlled by ECCN 0A614.x are controlled by ECCN 0A614.x.

0E614 “Technology” as follows (see List of Items Controlled).

**LICENSE REQUIREMENTS**

*Reason for Control:* NS, RS, AT, UN

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**LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)**

*CIV:* N/A

**LIST OF ITEMS CONTROLLED**

*Related Controls:* “Technical data” directly related to articles enumerated in USML Category IX is subject to the control of USML paragraph IX(e).

*Related Definitions:* N/A

*Items:*

a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair overhaul, or refurbishing of commodities or “software” controlled by ECCNs 0A614, 0B614, or 0D614.

b. [Reserved]

[79 FR 284, Jan. 2, 2014]

0A617 Miscellaneous “equipment,” materials, and related commodities (see List of Items Controlled).

**LICENSE REQUIREMENTS**

*Reason for Control:* NS, RS, AT, UN

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**LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)**

*LVS:* $1,500

*GBS:* N/A

*CIV:* N/A

*STA:* Paragraph (c)(2) of License Exception STA (§740.20(c)(2) of the EAR) may not be used for any item in 0A617.

**LIST OF ITEMS CONTROLLED**
Unit: “End items” in number; “parts,” “components,” “accessories,” and “attachments” in $ value.

Related Controls: (1) Defense articles, such as materials made from classified information, that are controlled by USML Category XIII, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a de minimis amount of U.S.-origin “600 series” controlled content. (3) For controls on self-contained diving and underwater swimming apparatus and related commodities, see ECCN 8A620.f. (4) For controls on robots, robot controllers, and robot end-effectors, see USML Category VII and ECCNs 0A606 and 2B007. (5) “Libraries,” i.e., parametric technical databases, “specially designed” for military use with equipment controlled by the USML or a “600 series” ECCN are controlled by the technical data and technology controls pertaining to such items. (6) For controls on nuclear power generating equipment or propulsion equipment, including “nuclear reactors,” “specially designed” for military use, and parts and components “specially designed” therefor, see USML Categories VI, XIII, XV, and XX. (7) Simulators “specially designed” for military “nuclear reactors” are controlled by USML Category IX(b). (8) See USML Categories X, XI and XII for laser protection equipment (e.g., eye and sensor protection) “specially designed” for military use. (9) “Fuel cells” “specially designed” for a defense article on the USML or a commodity controlled by a “600 series” ECCN are controlled according to the corresponding “600 series” ECCN for such end items. (10) See USML Category XV for controls on fuel cells specially designed for satellite or spacecraft.

Items:
   a. [RESERVED]
   b. Concealment and deception equipment “specially designed” for military application, including special paints, decoys, smoke or obscuration equipment and simulators, and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor, not controlled by USML Category XIII.
   c. Ferries, bridges (other than those described in ECCN 0A606 or USML Category VII), and pontoons, “specially designed” for military use.
   d. Test models “specially designed” for the “development” of defense articles controlled by USML Categories IV, VI, VII and VIII.
   e. [RESERVED]
   f. “Metal embrittlement agents.”
   g. through x. [RESERVED]
   y. Other commodities as follows and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor:
      y.1. Construction equipment “specially designed” for military use, including such equipment “specially designed” for transport in aircraft controlled by USML VIII(a) or ECCN 9A610.a.
      y.2. “Parts,” “components,” “accessories,” and “attachments” “specially designed” for commodities in paragraph .y.1 of this entry, including crew protection kits used as protective cabs.
      y.3. Containers, n.e.s., “specially designed” for shipping or packing defense articles or items controlled by a “600 series” ECCN.
      y.4. Field generators “specially designed” for military use.
      y.5. Power controlled searchlights and control units therefor, “specially designed” for military use, and “equipment” mounting such units.

[78 FR 40913, Jul. 8, 2013]
“Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 0A617, “equipment controlled by 0B617, or materials controlled by 0C617, or “software” controlled by ECCN 0D617 (see List of Items Controlled).

**LICENSE REQUIREMENTS**

*Reason for Control: NS, RS, AT, UN*

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**LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)**

*CIV: N/A*

*TSR: N/A*

*STA: Paragraph (c)(2) of License Exception STA (§740.20(c)(2) of the EAR) may not be used for any technology in 0E617.*

**LIST OF ITEMS CONTROLLED**

*Related Controls: Technical data directly related to articles controlled by USML Category XIII are subject to the control of USML paragraph XIII(l).*

*Related Definitions: N/A*

*Items:*

a. “Technology” (other than “technology” controlled by paragraph .y of this entry) “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or “software” controlled by ECCN 0A617 (except 0A617.y), 0B617, 0C617, or 0D617 (except 0D617.y).

b. through x. [RESERVED].

y. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 0A617.y or “software” controlled by 0D617.y.

*[78 FR 40915, Jul. 8, 2013]*

**1A613 Armored and protective “equipment” and related commodities, as follows.**

**LICENSE REQUIREMENTS**

*Reason for Control: NS, RS, AT, UN*

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**LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)**

*LVS: $1,500*
LIST OF ITEMS CONTROLLED

Related Controls: (1) Defense articles, such as materials made from classified information, that are controlled by USML Category X or XIII of the ITAR, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a de minimis amount of US-origin “600 series” controlled content. Related Definitions: References to “NIJ Type” protection are to the National Institute of Justice Classification guide at NIJ Standard 0101.06, Ballistic Resistance of Body Armor, and NIJ Standard 0108.01, Ballistic Resistant Protective Materials.

Items:

a. Armored plate “specially designed” for military use and not controlled by the USML.
   NOTE TO PARAGRAPH a: For controls on body armor plates, see ECCN 1A613.d.2 and USML Category X(a)(1).

b. Shelters “specially designed” to:
   b.1. Provide ballistic protection for military systems, or
   b.2. Protect against nuclear, biological, or chemical contamination.

c. Military helmets (other than helmets controlled under 1A613.y.1) and helmet shells providing less than NIJ Type IV protection.
   NOTE 1 TO PARAGRAPH c: See ECCN 0A979 for controls on police helmets.
   NOTE 2 TO PARAGRAPH c: See USML Category X(a)(5) and (a)(6) for controls on other military helmets.

d. Body armor and protective garments, as follows:
   d.1. Soft body armor and protective garments manufactured to military standards or specifications, or to their equivalents, that provide ballistic protection equal to or less than NIJ level III (NIJ 0101.06, July 2008); or
   NOTE FOR 1A613.d.1, military standards or specifications include, at a minimum, specifications for fragmentation protection.
   d.2. Hard body armor plates that provide ballistic protection equal to NIJ level III (NIJ 0101.06, July 2008) or national equivalents.
   NOTE: See ECCN 1A005 for controls on soft body armor not manufactured to military standards or specifications and hard body armor plates providing less than NIJ level III protection. For body armor providing NIJ Type IV protection or greater, see USML Category X(a)(1).

e. Other personal protective “equipment” “specially designed” for military applications not controlled by the USML.

f. to w. [Reserved]

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity enumerated or otherwise described in ECCN 1A613 (except for 1A613.y) or a defense article enumerated or otherwise described in USML Category X, and not elsewhere specified on the USML or in 3A611.y.

NOTE: 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 commodities controlled by ECCN 1A613.x are controlled by ECCN 1A613.x.

y. Other commodities as follows:
   y.1 Conventional military steel helmets.
   y.2 [Reserved]
1E613  “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 1A613 or 1B613 or “software” controlled by 1D613, as follows (see list of items controlled).

LIST OF ITEMS CONTROLLED

Related Controls: Technical data directly related to articles controlled by USML Category X are subject to the control of USML paragraph X(e) of the ITAR.

Related Definitions: N/A

Items:

a. “Technology” (other than “technology” controlled by paragraph .y of this entry) “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or “software” controlled by ECCNs 1A613 (except 1A613.y), 1B613 or 1D613 (except 1D613.y).

b. through x. [Reserved]

c. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled by ECCN 1A613.y or 1D613.y.

[79 FR 290, Jan. 2, 2014]

3A611  Military electronics, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT, UN

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LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE Exceptions)

CIV: N/A

TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any “technology” in 1E613.

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LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

LVS: $1,500 for 3A611.a, .d through .h and .x; N/A for ECCN 3A611.c.

GBS: N/A

CIV: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1A613.

LIST OF ITEMS CONTROLLED

Related Controls: (1) Electronic items that are enumerated in USML Category XI or other USML categories, and technical data (including software) directly related thereto, are subject to the ITAR. (2) Application specific integrated circuits (ASICs) and programmable logic devices (PLD) that are programmed for defense articles that are subject to the ITAR are controlled in USML Category XI(c) (1). (3) See ECCN 3A001.a.7 for controls on unprogrammed programmable logic devices (PLD). (4) Printed circuit boards and populated circuit cards with a layout that is "specially designed" for defense articles are controlled in USML Category XI(c) (2). (5) Multichip modules for which the pattern or layout is "specially designed" for defense articles are controlled in USML Category XI(c) (3). (6) Electronic items "specially designed" for military application that are not controlled in any USML category but are within the scope of another "600 series" ECCN or a 9x515 ECCN are controlled by that "600 series" ECCN or 9x515 ECCN. For example, electronic components not enumerated on the USML or a "600 series" other than 3A611 that are "specially designed" for a military aircraft controlled by USML Category VIII or ECCN 9A610 are controlled by the catch-all control in ECCN 9A610.x. Electronic components not enumerated on the USML or another "600 series" entry that are "specially designed" for a military vehicle controlled by USML Category VII or ECCN 0A606 are controlled by ECCN 0A606.x. Electronic components not enumerated on the USML or other "600 series" entry that are "specially designed" for a missile controlled by USML Category IV are controlled by ECCN 9A604. (7) Certain radiation-hardened microelectronic circuits are controlled by ECCN 9A515.d or 9A515.e, when "specially designed" for defense articles, "600 series" items, or items controlled by 9A515.

Related Definitions: N/A.

Items:

a. Electronic "equipment," "end items," and "systems" "specially designed" for a military application that are not enumerated or otherwise described in either a USML category or another "600 series" ECCN.

NOTE TO 3A611.a: ECCN 3A611.a includes any radar, telecommunications, acoustic or computer equipment, end items, or systems "specially designed" for military application that are not enumerated or otherwise described in any USML category or controlled by another "600 series" ECCN.

b. through d. [Reserved]

e. High frequency (HF) surface wave radar that maintains the positional state of maritime surface or low altitude airborne objects of interest in a received radar signal through time.

NOTE TO 3A611.e: ECCN 3A611.e does not apply to systems, equipment, and assemblies "specially designed" for marine traffic control.

f. Application specific integrated circuits (ASICs) and programmable logic devices (PLD) that are not controlled by paragraph .y of this entry and that are programmed for "600 series" items.

NOTE TO PARAGRAPH .f: In this paragraph, the term 'application specific integrated circuit' means an integrated circuit developed and produced for a specific application or function regardless of number of customers for which the integrated circuit is developed or produced. Printed circuit boards and populated circuit card assemblies that are not controlled by paragraph .y of this entry and for which the layout is "specially designed" for "600 series" items.

g. Multichip modules that are not controlled by paragraph .y of this entry and for which the pattern or layout is "specially designed" for "600 series" items.

h. through w. [Reserved]
x. "Parts," "components," "accessories" and "attachments" that are "specially designed" for a commodity controlled by this entry or for an article controlled by USML Category XI, and not enumerated or described in any USML category or another 600 series ECCN or in paragraph .y of this entry.

Note 1 to ECCN 3A611.x: ECCN 3A611.x includes "parts," "components", "accessories", and "attachments" "specially designed" for a radar, telecommunications, acoustic system or equipment or computer "specially designed" for military application that are neither controlled in any USML category nor controlled in another "600 series" ECCN.

Note 2 to ECCN 3A611.x: ECCN 3A611.x controls "parts" and "components" "specially designed" for underwater sensors or projectors controlled by USML Category XI(c) (12) containing single-crystal lead magnesium niobate lead titanate (PMN-PT) based piezoelectrics.

Note 3 to ECCN 3A611.x: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacture where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 3A611.x are controlled by ECCN 3A611.x.

y. Specific "parts," "components," "accessories" and "attachments" "specially designed" for a commodity subject to control in a "600 series" ECCN or a defense article and not elsewhere specified in any "600 series" ECCN or the USML as follows, and "parts," "components," "accessories," and "attachments" "specially designed" therefor: y.l. Electrical connectors;

y.2 Electric fans;
y.3 Heat sinks;
y.4 Joy sticks;
y.5 Mica paper capacitors;
y.6 Microphones;
y.7 Potentiometers;
y.8 Rheostats;
y.9 Electric connector backshells;
y.10 Solenoids;
y.11 Speakers;
y.12 Trackballs;
y.13 Electric transformers;
y.14 Application specific integrated circuits (ASICs) and programmable logic devices (PLD) that are programmed for commodities controlled in the .y paragraph of any "600 series" ECCN;
y.15 Printed circuit boards and populated circuit card assemblies for which the layout is "specially designed" for an item controlled by the .y paragraph of any "600 series" ECCN;
y.16 Multichip modules for which the pattern or layout is "specially designed" for an item in the .y paragraph of a "600 series" ECCN;
y.17 Circuit breakers;
y.18 Ground fault circuit interrupters;
y.19 Electrical contacts;
y.20 Electrical guide pins;
y.21 Filtered and unfiltered mechanical switches;
y.22 Thumbwheels;
y.23 Fixed resistors;
y.24 Electrical jumpers;
y.25 Grounding straps;
y.26 Indicator dials;
y.27 Contactors;
y.28 Touchpads;
y.29 Mechanical caps;
y.30 Mechanical plugs;
y.31 Finger barriers;
y.32 Flip-guards;
y.33 Identification plates and nameplates;
y.34 Knobs;
y.35 Hydraulic, pneumatic, fuel and lubrication gauges.

NOTE TO ECCN 3A611: When applying the “specially designed” definition to determine whether a printed circuit board, populated circuit card assembly or multichip module is controlled by paragraph .g, .h, .y.15 or .y.16 of this entry, the layout of the board or assembly and the pattern and layout of the module are the only characteristics that need be evaluated under the “specially designed” definition.


3E611 "Technology" "required" for military electronics, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

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LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c) (2) of License Exception STA (§ 740.20(c) (2) of the EAR) may not be used for any “technology” in 3E611.2. Except for “build-to-print technology,” License Exception STA is not eligible for “technology” enumerated in ECCN 3E611.b.

LIST OF ITEMS CONTROLLED

Related Controls: Technical data directly related to articles enumerated in USML Category XI is controlled in USML Category XI(d).

Related Definitions: N/A

Items:

a. "Technology" (other than that controlled by 3E611.b or 3E611.y) "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled by ECCN 3A611, 3B611 or 3D611.

b. "Technology" "required" for the "development," "production," operation, installation, maintenance, repair, overhaul, or refurbishing of the following if controlled by ECCN 3A611, including 3A611.x:

b.1 Helix traveling wave tubes (TWTs);
   b.2 Transmit/receive or transmit modules;

c. through x. [Reserved]
y. "Technology" "required" for the "production," "development," operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software enumerated in ECCNs 3A611.y or 3D611.y.


4A611   Computers, and "parts," "components," "accessories," and "attachments" "specially designed" thefear, "specially designed" for a military application that are not enumerated in any USML category are controlled by ECCN 3A611.

[79 FR 37573, Jul. 1, 2014]

5A611   Telecommunications equipment, and "parts," "components," "accessories," and "attachments" "specially designed" thefear, "specially designed" for a military application that are not enumerated in any USML category are controlled by ECCN 3A611.

[79 FR 37573, Jul. 1, 2014]

6A611   Acoustic systems and equipment, radar, and "parts," "components," "accessories," and "attachments" "specially designed" thefear, "specially designed" for a military application that are not enumerated in any USML category or other ECCN are controlled by ECCN 3A611.

[79 FR 37573, Jul. 1, 2014]

7A611   Navigation and avionics equipment and, systems and "parts," "components," "accessories," and "attachments" "specially designed" thefear, "specially designed" for a military application that are not enumerated in any USML category or another “600 series” ECCN are controlled by ECCN 3A611.

[79 FR 37573, Jul. 1, 2014]

8A609   Surface vessels of war and related commodities (see List of Items Controlled).

LICENSE REQUIREMENTS

<table>
<thead>
<tr>
<th>Control(s)</th>
<th>Country Chart (See Supp. No. 1 to part 738)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NS applies to entire entry except 8A609.y.</td>
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<tr>
<td>RS applies to entire entry except 8A609.y.</td>
<td>RS Column 1</td>
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<tr>
<td>AT applies to entire entry</td>
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<tr>
<td>UN applies to entire entry except 8A609.y.</td>
<td>See § 746.1(b) for UN controls</td>
</tr>
</tbody>
</table>

LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

LVS: $1,500
GBS: N/A
CIV: N/A

STA: (1) Paragraph (c)(1) of License Exception STA (§740.20(c)(1) of the EAR) may not be used for any item in 8A609.a, unless determined by BIS to be eligible for License Exception STA in accordance with §740.20(g) (License Exception STA eligibility requests for “600 series” end items). (2) Paragraph (c)(2) of License Exception STA (§740.20(c)(2) of the EAR) may not be used for any item in 8A609.

LIST OF ITEMS CONTROLLED
Related Controls: Technical data directly related to articles enumerated or otherwise described in USML Category VI are controlled under USML Category VI(g).

Related Definitions: N/A

Items:

a. Surface vessels of war “specially designed” for a military use and not enumerated or otherwise described in the USML.

Note 1: 8A609.a includes: (i) Underway replenishment ships; (ii) surface vessel and submarine tender and repair ships, except vessels that are “specially designed” to support naval nuclear propulsion plants; (iii) non-submersible submarine rescue ships; (iv) other auxiliaries (e.g., AGDS, AGF, AGM, AGOR, AGOS, AH, AP, ARL, AVB, AVM, and AVT); (v) amphibious warfare craft, except those that are armed; and (vi) unarmored and unarmed coastal, patrol, roadstead, and Coast Guard and other patrol craft with mounts or hard points for firearms of .50 caliber or less.

Note 2: For purposes of paragraph .a, surface vessels of war includes vessels “specially designed” for military use that are not identified in paragraph (a) of ITAR §121.15, including any demilitarized vessels, regardless of origin or designation, manufactured prior to 1950 and that have not been modified since 1949. For purposes of this note, the term modified does not include incorporation of safety features required by law, cosmetic changes (e.g., different paint), or the addition of “parts” or “components” available prior to 1950.

b. Non-magnetic diesel engines with a power output of 50 hp or more and either of the following:

b.1. Non-magnetic content exceeding 25% of total weight; or

b.2. Non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines.

c. through w. [RESERVED]

x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity enumerated or otherwise described in ECCN 8A609 (except for 8A609.y) or a defense article enumerated or otherwise described in USML Category VI and not elsewhere specified on the USML, in 8A609.y or 3A611.y.

Note 1: 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 commodities controlled by ECCN 8A609.x are controlled by ECCN 8A609.x.

Note 2: “Parts,” “components,” “accessories” and “attachments” specified in USML subcategory VI(f) are subject to the controls of that paragraph. “Parts,” “components,” “accessories,” and “attachments” specified in ECCN 8A609.y are subject to the controls of that paragraph.

y. Specific “parts,” “components,” “accessories” and “attachments” “specially designed” for a commodity subject to control in this ECCN or for a defense article in USML Category VI and not elsewhere specified in the USML, as follows and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor:

y.1. Public address (PA) systems;

y.2. Filters and filter assemblies, hoses, lines, fittings, couplings, and brackets for pneumatic, hydraulic, oil and fuel systems;

y.3. Galleys;

y.4. Lavatories;

y.5. Magnetic compass, magnetic azimuth detector;

y.6. Medical facilities;

y.7. Potable water tanks, filters, valves, hoses, lines, fittings, couplings, and brackets;

y.8. Panel knobs, indicators, switches, buttons, and dials whether unfiltered or filtered for use with night vision imaging systems;
y.9. Emergency lighting;
y.10. Gauges and indicators;
y.11. Audio selector panels.


8E609 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 8A609, 8B609, or 8C609, or “software” controlled by 8D609 (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT, UN

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LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

CIV: N/A
TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§740.20(c)(2) of the EAR) may not be used for any “technology” in 8E609.

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: Technical data directly related to articles enumerated in USML Category VI are controlled under USML Category VI(g).
Related Definitions: N/A

Items:

a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 8A609, 8B609, or 8C609 (except for commodities controlled by ECCN 8A609.y), or “software” controlled by ECCN 8D609.

b. through .x [RESERVED]

y. Specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software in ECCN 8A609.y or 8D609.y.

[78 FR 40918, Jul. 8, 2013]
**8A620** Submersible vessels, oceanographic and associated commodities (see List of Items Controlled).

**LICENSE REQUIREMENTS**

*Reason for Control: NS, RS, AT, UN*

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<td>AT applies to entire entry</td>
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<td>UN applies to entire entry except 8A620.y.</td>
<td>See §746.1(b) for UN controls</td>
</tr>
</tbody>
</table>

**LIST BASED LICENSE EXCEPTIONS (See Part 740 for a description of all license exceptions)**

- **LVS:** $1,500
- **GBS:** N/A
- **CIV:** N/A
- **STA:**
  1. Paragraph (c)(1) of License Exception STA (§740.20(c)(1) of the EAR) may not be used for any item in 8A620.a or .b, unless determined by BIS to be eligible for License Exception STA in accordance with §740.20(g) (License Exception STA eligibility requests for “600 series” end items).
  2. Paragraph (c)(2) of License Exception STA (§740.20(c)(2) of the EAR) may not be used for any item in 8A620.

**LIST OF ITEMS CONTROLLED**

*Related Controls:* Technical data directly related to articles enumerated or otherwise described in USML Category XX are controlled under USML Category XX(d).

*Related Definitions:* N/A

**Items:**

- a. Submersible and semi-submersible vessels “specially designed” for a military use and not enumerated or otherwise described in the USML.
  
  *NOTE:* 8A620.a includes submarine rescue vehicles and Deep Submergence Vehicles (DSV).

- b. Submersible and semi-submersible vessels “specially designed” for cargo transport and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor.

- c. Harbor entrance detection devices (magnetic, pressure, and acoustic) and controls therefor, not elsewhere specified on the USML or the CCL.

- d. Diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over “specially designed” for submarines.
  
  *NOTE:* Propulsion systems not specified in ECCN 8A620.d that are “specially designed” for an article controlled by USML Category XX are controlled by USML XX(b) or (c).

- e. Submarine nets and torpedo nets.

- f. Closed and semi-closed circuit (rebreathing) apparatus specially designed for military use and not enumerated elsewhere in the CCL or in the USML, and specially designed components for use in the conversion of open-circuit apparatus to military use.

- g. through w. [RESERVED]

- x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity enumerated or otherwise described in ECCN 8A620 (except for 8A620.b or 8A620.y) and not elsewhere specified on the USML, in 8A620.y or 3A611.y.
  
  *NOTE 1:* 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 commodities controlled by ECCN 8A620.x are controlled by ECCN 8A620.x.
NOTE 2: “Parts,” “components,” “accessories” and “attachments” specified in ECCN 8A620.y are subject to the controls of that paragraph.
y. Specific “parts,” “components,” “accessories” and “attachments” “specially designed” for a commodity subject to control in this ECCN, as follows and “parts,” “components,” “accessories,” and “attachments” “specially designed” therefor:
y.1. Public address (PA) systems;
y.2. Filters and filter assemblies, hoses, lines, fittings, couplings, and brackets for pneumatic, hydraulic, oil and fuel systems;
y.3. Galleys;
y.4. Lavatories;
y.5. Magnetic compass, magnetic azimuth detector;
y.6. Medical facilities;
y.7. Potable water tanks, filters, valves, hoses, lines, fittings, couplings, and brackets;
y.8. Panel knobs, indicators, switches, buttons, and dials whether unfiltered or filtered for use with night vision imaging systems;
y.9. Emergency lighting;
y.10. Gauges and indicators;
y.11. Audio selector panels.


8E620 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 8A620 or 8B620, or “software” controlled by 8D620 (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT, UN

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<td>See § 746.1(b) for UN controls</td>
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LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

CIV: N/A
TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§740.20(c)(2) of the EAR) may not be used for any “technology” in 8E620.

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: Technical data directly related to articles enumerated in USML Category XX are controlled under USML Category XX(d).

Related Definitions: N/A

Items:
a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 8A620 or
8B620 or “software” controlled by ECCN 8D620 (except for commodities controlled by ECCN 8A620.b or .y or ECCN 8B620.b or “software” controlled by 8D620.b or .y).

b. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 8A620.b or 8B620.b or “software” controlled by ECCN 8D620.b.

c. through .x [RESERVED]

y. Specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul or refurbishing of commodities or software in ECCN 8A620.y or 8D620.y.

[78 FR 40916, Jul. 8, 2013]

9A515 “Spacecraft” and related commodities, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, RS, MT, AT

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<tr>
<td>NS applies to entire entry, except .e and .y</td>
<td>NS Column 1</td>
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<tr>
<td>RS applies to entire entry, except .e and .y</td>
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<tr>
<td>RS applies to 9A515.e</td>
<td>RS Column 2</td>
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<tr>
<td>MT applies to microcircuits in 9A515.d and 9A515.e.2 when “usable in” “missiles” for protecting “missiles” against nuclear effects (e.g. Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects).</td>
<td>MT Column 1</td>
</tr>
<tr>
<td>AT applies to entire entry</td>
<td>AT Column 1</td>
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</tbody>
</table>

LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE Exceptions)

LVS: $1500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for “spacecraft” in 9A515.a that provide space-based logistics, assembly or servicing of any spacecraft (e.g., refueling), unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for certain “500 series” and “600 series” end items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A515.

LIST OF ITEMS CONTROLLED

Related Controls: Spacecraft, launch vehicles and related articles that are enumerated in the USML, and technical data (including “software”) directly related thereto, and all services (including training) directly related to the integration of any satellite or spacecraft to a launch vehicle, including both planning and onsite support, or furnishing any assistance (including training) in the launch failure analysis or investigation for items in 9A515.a, are “subject to the ITAR.” All other “spacecraft,” as enumerated below and defined in section 772.1, are subject to the controls of this ECCN. See also ECCNs 3A001, 3A002, 3A991, 3A992, 6A002, 6A004, 6A008, and 6A998 for specific “space-qualified” items, 7A004 and 7A104 for star trackers, and 9A004 for the International Space Station and specially designed part and components therefor. See USML Category XI(c) for controls on microwave monolithic integrated circuits (MMICs) that are “specially designed” for defense articles. See FCCN 9A610.g for pressure suits used for high altitude aircraft.
Related Definitions: ‘Microcircuit’ means a device in which a number of passive or active elements are considered as indivisibly associated on or within a continuous structure to perform the function of a circuit.

**Items:**

“Spacecraft” and other items described in ECCN 9A515 remain subject to the EAR even if exported, reexported, or transferred (in-country) with defense articles “subject to the ITAR” integrated into and included therein as integral parts of the item. In all other cases, such defense articles are subject to the ITAR. For example, a 9A151.a “spacecraft” remains “subject to the EAR” even when it is exported, reexported, or transferred (in-country) with a “hosted payload” described in USML Category XV(e)(17) incorporated therein. In all other cases, a “hosted payload” performing a function described in USML Category XV(a) always remains a USML item.

- “Spacecraft,” including satellites, and space vehicles, whether designated developmental, experimental, research or scientific, not enumerated in USML Category XV or described in 9A004.

**NOTE:** ECCN 9A515.a includes commercial communications satellites, remote sensing satellites, planetary rovers, planetary and interplanetary probes, and in-space habitats, not identified in USML Category XV(a).

**[EDITORIAL NOTE: ECCN 9A004 controls the International Space Station and specially designed part and components therefor.]**

- Ground control systems and training simulators “specially designed” for telemetry, tracking, and control of the “spacecraft” controlled in paragraph 9A515.a
- c. [RESERVED]
- d. Microelectronic circuits (e.g., integrated circuits, microcircuits, MOSFETs) and discrete electronic components rated, certified, or otherwise specified or described as meeting or exceeding all the following characteristics and that are “specially designed” for defense articles, “600 series” items, or items controlled by 9A515:
  - d.1. A total dose of \(5 \times 10^5\) Rads (Si) \((5 \times 10^3\) Gy (Si));
  - d.2. A dose rate upset threshold of \(5 \times 10^6\) Rads (Si)/sec \((5 \times 10^8\) Gy (Si)/sec);
  - d.3. A neutron dose of \(1 \times 10^{14}\) n/cm\(^2\) \((1\) MeV equivalent);
  - d.4. An uncorrected single event upset sensitivity of \(1 \times 10^{-10}\) errors/bit/day or less, for the CREME-MC geosynchronous orbit, Solar Minimum Environment for heavy ion flux; and
  - d.5. An uncorrected single event upset sensitivity of \(1 \times 10^{-3}\) errors/part or less for a fluence of \(1 \times 10^7\) protons/cm\(^2\) for proton energy greater than 50 MeV.
- e. Microelectronic circuits (e.g., integrated circuits, microcircuits, MOSFETs) and discrete electronic components that are rated, certified, or otherwise specified or described meeting or exceeding the characteristics in either paragraph e.1 or e.2, AND “specially designed” for defense articles controlled by USML Category XV or items controlled by 9A515:
  - e.1. A total dose \(\geq 1 \times 10^5\) Rads (Si) \((1 \times 10^3\) Gy(Si)) and \(<5 \times 10^5\) Rads (Si) \((5 \times 10^3\) Gy(Si)); and a single event effect (SEE) (i.e., single event latchup (SEL), single event burnout (SEB), or single event gate rupture (SEGR)) immunity to a linear energy transfer (LET) \(\geq 80\) MeV-cm\(^2\)/mg; or
  - e.2. A total dose \(\geq 5 \times 10^5\) Rads (Si) \((5 \times 10^3\) Gy (Si)) and not described in 9A515.d.

**NOTE 1 TO 9A515.d and .e:** Application specific integrated circuits (ASICs), integrated circuits developed and produced for a specific application or function, “specially designed” for defense articles are controlled by Category XI(c) of the USML regardless of characteristics.

**NOTE 2 TO 9A515.d and .e:** See 3A001.a for controls on radiation-hardened microelectronic circuits “subject to the EAR” that are not controlled by 9A515.d or 9A515.e.

- f. Pressure suits (i.e., space suits) capable of operating at altitudes 55,000 feet above sea level.
- g. through w. [RESERVED]

- x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for defense articles controlled by USML Category XV or items controlled by 9A515, and that are NOT:
x.1. Enumerated or controlled in the USML or elsewhere within ECCNs 9A515 or 9A004;
x.2. Microelectronic circuits and discrete electronic components;
x.3. Described in 7A004 or 7A104;
x.4. Described in an ECCN containing “space-qualified” as a control criterion (i.e.,
   3A001.b.1, 3A001.e.4, 3A002.g.1, 3A991.c, 3A992.b.3, 6A002.a.1, 6A002.b.2, 6A002.d.1,
   6A004.c and .d, 6A008.j.1, 6A998.b, or 7A003.d.2).
x.5. Microwave solid state amplifiers and microwave assemblies (refer to ECCN 3A001.b.4
   for controls on these items);
x.6. Travelling wave tube amplifiers (refer to ECCN 3A001.b.8 for controls on these items);
or
x.7. Elsewhere specified in ECCN 9A515.y.

Note to 9A515.x: “Parts,” “components,” “accessories,” and “attachments” specified in USML
subcategory XV(e) or enumerated in other USML categories are subject to the controls of that
paragraph or category.

y. Items that would otherwise be within the scope of ECCN 9A515.x but that have been
identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as
warranting control in 9A515.y.

   y.1. Discrete electronic components not specified in 9A515.e; and
   y.2. [RESERVED]


9E515 “Technology” “required” for the “development,” “production,” operation,
installation, maintenance, repair, overhaul, or refurbishing of “spacecraft” and
related commodities, as follows (see List of Items Controlled).

**LICENSE REQUIREMENTS**

*Reason for Control:* NS, MT, RS, AT

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**LIST BASED LICENSE EXCEPTIONS** *(SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE Exceptions)*

CIV: N/A

TSR: N/A

**Special Conditions for STA**

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used
for 9E515.b, .d or .e. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR)
may not be used for any “technology” in 9E515.

**LIST OF ITEMS CONTROLLED**

*Related Controls:* Technical data directly related to articles enumerated in USML Category XV
are subject to the control of USML paragraph XV(f). See also ECCNs 3E001, 3E003, 6E001, and
6E002 for specific “space-qualified” items. See 9E001 and 9E002 for technology for the
International Space Station and “parts,” “components,” “accessories,” and “attachments”
“specially designed” therefor. See USML category XV(f) for controls on technical data and
defense services related to launch vehicle integration.

*Related Definitions:* N/A

*Items:*
“Spacecraft” and other items described in ECCN 9A515 remain subject to the EAR even if exported, reexported, or transferred (in-country) with defense articles “subject to the ITAR” integrated into and included therein as integral parts of the item. In all other cases, such defense articles are subject to the ITAR. For example, a 9A515.a “spacecraft” remains “subject to the EAR” even when it is exported, reexported, or transferred (in-country) with a “hosted payload” described in USML Category XV(e)(17) incorporated therein. In all other cases, a “hosted payload” performing a function described in USML Category XV(a) always remains a USML item.

a. “Technology” “required” for the “development,” “production,” installation, repair (including on-orbit anomaly resolution and analysis beyond established procedures), overhaul or refurbishing of commodities controlled by ECCN 9A515 (except 9A515.b, .d, or .e), 9B515, or “software” controlled by 9D515.a.

b. “Technology” “required” for the “development,” “production,” failure analysis or anomaly resolution of software controlled by ECCN 9D515.b.

c. [RESERVED]

d. “Technology” “required” for the “development,” “production,” operation, failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.d.

e. “Technology” “required” for the “development,” “production,” failure analysis or anomaly resolution of commodities controlled by ECCN 9A515.e.

NOTE 1: [RESERVED]

NOTE 2: 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:

(i) “spacecraft” access, ingress, and egress, including the operation of all “spacecraft” doors, hatches, and airlocks;

(ii) physiological training (e.g., human-rated centrifuge training or parabolic flights, pressure suit or spacesuit training/operation);

(iii) medical evaluation or assessment of the spaceflight passenger or participant;

(iv) 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;

(v) viewing of the interior and exterior of the spacecraft or terrestrial mock-ups;

(vi) observing “spacecraft” operations (e.g., pre-flight checks, landing, in-flight status);

(vii) training in “spacecraft” or terrestrial mock-ups for connecting to or operating passenger or participant equipment used for purposes other than operating the “spacecraft”;

(viii) donning, wearing or utilizing the passenger’s or participant’s flight suit, pressure suit or spacesuit, and personal equipment.

f. through x. [RESERVED]

y. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software enumerated in ECCN 9A515.y or 9D515.y.

9A604  Commodities related to launch vehicles, missiles, and rockets (see list of items controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, RS, MT, AT, UN

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<tr>
<td>UN applies to entire entry</td>
<td>See § 746.1(b) for UN controls</td>
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LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

Special Conditions for STA
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this ECCN 9A604.

LIST OF ITEMS CONTROLLED

Related Controls: (1) Launch vehicles, missiles, and rockets are subject to the ITAR (see 22 CFR § 121.1, USML Category IV), (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a de minimis amount of U.S.-origin “600 series” controlled content.

Related Definitions: N/A

Items:

a. Thermal batteries “specially designed” for systems controlled under USML Category IV capable of a range equal to or greater than 300 km.

b. Thermal batteries, except for thermal batteries controlled by 9A604.a, that are “specially designed” for systems controlled under USML Category IV.

c. “Components” “specially designed” for ramjet, scramjet, pulse jet, or combined cycle engines controlled under USML Category IV, including devices to regulate combustion in such commodities.

d. “Components” “specially designed” for hybrid rocket motors controlled under USML Category IV usable in rockets, missiles, or unmanned aerial vehicles capable of a range equal to or greater than 300 km.

e. “Components” “specially designed” for pressure gain combustion-based propulsion systems controlled under USML Category IV.

f. Composite structures, laminates and manufactures thereof “specially designed” for the following items controlled under USML Category IV:

  f.1. Systems capable of a range equal to or greater than 300 km;
  f.2. Individual rocket stages usable in 9A604.f.1. systems;
  f.3. Solid propellant rocket motors or hybrid rocket motors having a total impulse capacity equal to or greater than 8.41 x 10^5 Ns;
  f.4. Liquid propellant rocket engines integrated, or designed or modified to be integrated, into a liquid propellant propulsion system which has a total impulse capacity equal to or greater than 8.41 x 10^5 Ns;
  f.5. Thrust vector control systems usable in rockets, space launch vehicles (SLVs), and missiles capable of delivering at least a 500 kg payload to a range of at least 300 km;
f.6. Re-entry vehicles or warhead heat shields usable in rockets, SLVs, and missiles capable of delivering at least a 500 kg payload to a range of at least 300 km; or

f.7. Safing, arming, fuzing, and firing components usable in rockets, SLVs, and missiles capable of delivering at least a 500 kg payload to a range of at least 300 km.

g. through w. [Reserved]

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity subject to control in paragraphs .a through .d of this ECCN, or a defense article controlled under USML Category IV, and not specified elsewhere on the USML.

NOTE 1 TO 9A604.x: 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 commodities controlled by ECCN 9A604.x, are controlled by ECCN 9A604.x.

NOTE 2 TO 9A604.x: “Parts,” “components,” “accessories,” and “attachments” specified in USML Category IV(h) are subject to the controls of that paragraph.


9E604 “Technology” “required” for the “development,” “production,” “use,” installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 9A604 or 9B604, or “software” controlled by ECCN 9D604.

LICENSE REQUIREMENTS

<table>
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<tr>
<td>MT applies to “technology,” as described in paragraph .a of this entry, for commodities and “software” controlled for MT reasons in ECCN 9A604, 9B604 or 9D604.</td>
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LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE Exceptions)

CIV: N/A

TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this ECCN 9E604.

LIST OF ITEMS CONTROLLED

Related Controls: (1) Technical data directly related to articles enumerated or otherwise described in USML Category IV is controlled under USML Category IV(i). (2) See also ECCNs 9E002, 9E101, and 9E102 for controls on “technology” for the “development,” “production,” and “use” of missiles and related items controlled on the CCL.

Related Definitions: N/A

Items:

a. “Technology” “required” for the “development,” “production,” “use,” installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 9A604 or 9B604, or “software” controlled by ECCN 9D604.

b. [Reserved]
9A610  Military aircraft and related commodities, other than those enumerated in 9A991.a (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, RS, MT, AT, UN

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<tr>
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LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

LVS: $1,500
GBS: N/A
CIV: N/A

SPECIAL CONDITIONS FOR STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 9A610.a (i.e., “end item” military aircraft), unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for “600 series” end items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A610.

LIST OF ITEMS CONTROLLED

Related Controls: Military aircraft and related articles that are enumerated in USML Category VIII, and technical data (including software) directly related thereto, are subject to the ITAR. See ECCN 0A919 for controls on foreign-made “military commodities” that incorporate more than a de minimis amount of U.S.-origin “600 series” controlled content.

Related Definitions: N/A

Items:

a. ‘Military Aircraft’ “specially designed” for a military use that are not enumerated in USML paragraph VIII(a).

   NOTE 1: For purposes of paragraph .a the term ‘Military Aircraft’ includes the following types of aircraft to the extent they were “specially designed” for a military use, and are not enumerated in USML paragraph VIII(a): trainer aircraft; cargo aircraft; utility fixed wing aircraft; military helicopters; observation aircraft; military non-expansive balloons and other lighter than air aircraft, and unarmed military aircraft, regardless of origin or designation. Aircraft with modifications made to incorporate safety of flight features or other FAA or NTSB modifications such as transponders and air data recorders are “unmodified” for the purposes of this paragraph .a.

   NOTE 2: 9A610.a does not control ‘military aircraft’ that:

   a. Were first manufactured before 1946;

   b. Do not incorporate defense articles enumerated or otherwise described on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; and

   c. Do not incorporate weapons enumerated or otherwise described on the U.S. Munitions List, unless inoperable and incapable of being returned to operation.
b. – e. [Reserved]
f. ‘Ground equipment’ “specially designed” for aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

TECHNICAL NOTE: ‘Ground equipment’ includes pressure refueling equipment and equipment designed to facilitate operations in confined areas.
g. Aircrew life support equipment, aircrew safety equipment and other devices for emergency escape from aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.
h. Parachutes, paragliders, complete canopies, harnesses, platforms, electronic release mechanisms “specially designed” for use with aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and “equipment” “specially designed” for military high altitude parachutists, such as suits, special helmets, breathing systems, and navigation equipment.
i. Controlled opening equipment or automatic piloting systems, designed for parachuted loads.
j. Ground effect machines (GEMS), including surface effect machines and air cushion vehicles, “specially designed” for use by a military.
k. through s. [Reserved]
t. Composite structures, laminates and manufactures thereof “specially designed” for unmanned aerial vehicles controlled under USML Category VIII(a) with a range equal to or greater than 300 km.
u. Apparatus and devices “specially designed” for the handling, control, activation and non-ship-based launching of UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and capable of a range equal to or greater than 300 km.
v. Radar altimeters designed or modified for use in UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and capable of delivering at least 500 kilograms payload to a range of at least 300 km.
w. Hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire systems) and attitude control equipment designed or modified for UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and capable of delivering at least 500 kilograms payload to a range of at least 300 km.
x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity enumerated or otherwise described in ECCN 9A610.x are controlled by ECCN 9A610.x.

NOTE 1: 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 commodities controlled by ECCN 9A610.x are controlled by ECCN 9A610.x.

NOTE 2: “Parts,” “components,” “accessories,” and “attachments” specified in USML subcategory VIII(f) or VIII(h) are subject to the controls of that paragraph. “Parts,” “components,” “accessories,” and “attachments” specified in ECCN 9A610.y are subject to the controls of that paragraph.
y. Specific “parts,” “components,” “accessories,” and “attachments” “specially designed” for a commodity subject to control in this ECCN or a defense article in USML Category VIII and not elsewhere specified in the USML or the CCL, and other aircraft commodities “specially designed” for a military use, as follows:
y.1. Aircraft tires;
y.2. Analog cockpit gauges and indicators;
y.3. Audio selector panels;
y.4. Check valves for hydraulic and pneumatic systems;
y.5. Crew rest equipment;
y.6. Ejection seat mounted survival aids;
y.7. Energy dissipating pads for cargo (for pads made from paper or cardboard);
y.8. Filters and filter assemblies for hydraulic, oil and fuel systems;
y.9. Galleys;
y.10. Hydraulic and fuel hoses, straight and unbent lines, fittings, couplings, and brackets;
y.11. Lavatories;
y.12. Life rafts;
y.13. Magnetic compass, magnetic azimuth detector;
y.14. Medical litter provisions;
y.15. Mirrors, cockpit;
y.16. Passenger seats including palletized seats;
y.17. Potable water storage systems;
y.18. Public address (PA) systems;
y.19. Steel brake wear pads (does not include sintered mix or carbon/carbon materials);
y.20. Underwater beacons;
y.21. Urine collection bags/pads/cups/pumps;
y.22. Windshield washer and wiper systems;
y.23. Filtered and unfiltered cockpit panel knobs, indicators, switches, buttons, and dials;
y.24. Lead-acid and Nickel-Cadmium batteries;
y.25. Propellers, propeller systems, and propeller blades used with reciprocating engines;
y.26. Fire extinguishers;
y.27. Flame and smoke/CO₂ detectors; and
y.28. Map cases.
y.29. ‘Military Aircraft’ that were first manufactured from 1946 to 1955 that do not incorporate defense articles enumerated or otherwise described on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; and do not incorporate weapons enumerated or otherwise described on the U.S. Munitions List, unless inoperable and incapable of being returned to operation.
y.30. “Parts,” “components,” “accessories,” and “attachments,” other than electronic items or navigation equipment, for use in or with a commodity controlled by ECCN 9A610.h.


9E610 Technology “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of military aircraft and related commodities controlled by 9A610, equipment controlled by 9B610, materials controlled by 9C610, or software controlled by 9D610 (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, RS, MT, AT, UN

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<thead>
<tr>
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<td>RS applies to entire entry except 9E610.y.</td>
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<tr>
<td>MT applies to “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled for MT reasons in 9A610, 9B610, or 9D610 for MT reasons.</td>
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LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

CIV: N/A
TSR: N/A

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9E610.b. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in 9E610.

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: Technical data directly related to articles enumerated or otherwise described in USML Category VIII are subject to the control of USML paragraph VIII(i).

Related Definitions: N/A

Items:

a. “Technology” (other than technology controlled by paragraphs .b or .y of this entry) “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled by ECCN 9A610, 9B610, 9C610, or 9D610.

   NOTE: “Build-to-print technology” “required” for the “production” of items described in paragraphs b.1 through b.15 of this entry is classified under 9E610.a.

b. “Technology” (other than “build-to-print technology”) “required” for the “development” or “production” of any of the following:

   b.1. Static structural members;
   b.2. Exterior skins, removable fairings, non-removable fairings, radomes, access doors and panels, and in-flight opening doors;
   b.3. Control surfaces, leading edges, trailing edges, and leading edge flap seals;
   b.4. Leading edge flap actuation system commodities (i.e., power drive units, rotary geared actuators, torque tubes, asymmetry brakes, position sensors, and angle gearboxes) “specially designed” for fighter, attack, or bomber aircraft controlled in USML Category VIII;
   b.5. Engine inlets and ducting;
   b.6. Fatigue life monitoring systems “specially designed” to relate actual usage to the analytical or design spectrum and to compute amount of fatigue life “specially designed” for aircraft controlled by either USML subcategory VIII(a) or ECCN 9A610.a, except for Military Commercial Derivative Aircraft;
   b.7. Landing gear, and “parts” and “components” “specially designed” therefor, “specially designed” for use in aircraft weighing more than 21,000 pounds controlled by either USML subcategory VIII(a) or ECCN 9A610.a, except for Military Commercial Derivative Aircraft;
   b.8. Conformal fuel tanks and “parts” and “components” “specially designed” therefor;
   b.9. Electrical “equipment,” “parts,” and “components” “specially designed” for electromagnetic interference (EMI) – i.e., conducted emissions, radiated emissions, conducted susceptibility and radiated susceptibility – protection of aircraft that conform to the requirements of MIL-STD-461;
   b.10. HOTAS (Hand-on Throttle and Stick) controls, HOCAS (Hands on Collective and Stick), Active Inceptor Systems (i.e., a combination of Active Side Stick Control Assembly, Active Throttle Quadrant Assembly, and Inceptor Control Unit), rudder pedal assemblies for digital flight control systems, and parts and components “specially designed” therefor;
   b.11. Integrated Vehicle Health Management Systems (IVHMS), Condition Based Maintenance (CBM) Systems, and Flight Data Monitoring (FDM) systems;
b.12. Equipment “specially designed” for system prognostic and health management of aircraft;

b.13. Active Vibration Control Systems; or

b.14. Self-sealing fuel bladders “specially designed” to pass a .50 caliber or larger gunfire test (MIL-DTL-5578, MIL-DTL-27422).

c. through x. [Reserved]

y. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software enumerated in ECCN 9A610.y or 9D610.y.

[78 FR 22734, Apr. 16, 2013]

9A619  Military gas turbine engines and related commodities (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT, UN

<table>
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LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

LVS: $1,500

GBS: N/A

CIV: N/A

SPECIAL CONDITIONS FOR STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in ECCN 9A619.

LIST OF ITEMS CONTROLLED

Related Controls: (1) Military gas turbine engines and related articles that are enumerated or otherwise described in USML Category XIX, and technical data (including software) directly related thereto, are subject to the jurisdiction of the International Traffic in Arms Regulations (ITAR). (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a de minimis amount of U.S.-origin “600 series” controlled content.

Related Definitions: N/A

Items:

a. “Military Gas Turbine Engines” “specially designed” for a military use that are not controlled in USML Category XIX(a), (b), (c), or (d).

NOTE: For purposes of ECCN 9A619.a, the term “military gas turbine engines” means gas turbine engines “specially designed” for “end items” enumerated in USML Categories VI, VII or VIII or on the CCL under ECCNs 0A606, 8A609 or 9A610.

b. Digital engine controls (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) “specially designed” for gas turbine engines controlled in this ECCN 9A619.

c. If “specially designed” for gas turbine engines controlled in 9A619.a, hot section components (i.e., combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles);
d. If “specially designed” for gas turbine engines controlled in 9A619.a, uncooled turbine blades, vanes, disks, and tip shrouds;

e. If “specially designed” for gas turbine engines controlled in 9A619.a, combustor cowls, diffusers, domes, and shells;

**NOTE:** 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 commodities controlled by ECCN 9A619.c are controlled by ECCN 9A619.c.

f. Engine monitoring systems (i.e., those that conduct prognostics, diagnostics, and monitor health) “specially designed” for gas turbine engines and components controlled in this ECCN 9A619.

g. through w. [Reserved]

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity enumerated or otherwise described in ECCN 9A619 (except for ECCN 9A619.c or 9A619.y) or a defense article enumerated or otherwise described in USML Category XIX and not elsewhere specified on the USML, in 9A619.y or 3A611.y.

**NOTE 1:** 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 commodities controlled by ECCN 9A619.x are controlled by ECCN 9A619.x.

**NOTE 2:** “Parts,” “components,” “accessories,” and “attachments” specified in USML subcategory XIX(f) are subject to the controls of that paragraph. “Parts,” “components,” “accessories,” and “attachments” specified in ECCN 9A619.y are subject to the controls of that paragraph.

y. Specific “parts,” “components,” “accessories,” and “attachments” “specially designed” for a commodity subject to control in this ECCN 9A619 or for a defense article in USML Category XIX and not elsewhere specified on the USML or in the CCL, and other aircraft commodities, as follows:

y.1. Oil tank and reservoirs;
y.2. Oil lines and tubes;
y.3. Fuel lines and hoses;
y.4. Fuel and oil filters;
y.5. V-Band, cushion, broomstick, hinged, and loop clamps;
y.6. Shims;
y.7. Identification plates;
y.8. Air, fuel, and oil manifolds.

**[78 FR 22731, Apr. 16, 2013; 79 FR 76877, Dec. 23, 2014]**
9E619  “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of military gas turbine engines and related commodities controlled by 9A619, equipment controlled by 9B619, materials controlled by 9C619, or software controlled by 9D619 (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT, UN

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LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

CIV: N/A

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 9E619.b. or .c. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in ECCN 9E619.

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) Technical data directly related to articles enumerated or otherwise described in USML Category XIX are subject to the control of USML Category XIX(g). (2) Technology described in ECCN 9E003 is controlled by that ECCN.

Related Definitions: N/A

Items:

a. “Technology” (other than “technology” controlled by paragraphs .b and .c of this entry) “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of items controlled by ECCN 9A619 (except 9A619.y), ECCN 9B619 (except 9B619.y), ECCN 9C619, or ECCN 9D619 (except 9D619.y).

Example: “Build-to-print technology” “required” for the “production” of items described in paragraphs b.1 through b.9 of this entry is classified under 9E619.a.

b. “Technology” (other than “build-to-print technology”) “required” for the “development” or “production” of any of the following:

b.1. Front, turbine center, and exhaust frames;

b.2. Low pressure compressor (i.e., fan) “components” and “parts” as follows: nose cones and casings;

b.3. High pressure compressor “components” and “parts” as follows: casings;

b.4. Combustor “components” and “parts” as follows: casings, fuel nozzles, swirlers, swirler cups, deswirlers, valve injectors, and igniters;

b.5. High pressure turbine “components” and “parts” as follows: casings;

b.6. Low pressure turbine “components” and “parts” as follows: casings;

b.7. Augmentor “components” and “parts” as follows: casings, flame holders, spray bars, pilot burners, augmentor fuel controls, flaps (external, convergent, and divergent), guide and synchronization rings, and flame detectors and sensors;

b.8. Mechanical “components” and “parts” as follows: fuel metering units and fuel pump metering units, valves (fuel throttle, main metering, oil flow management), heat exchangers (air/air, fuel/air, fuel/oil), debris monitoring (inlet and exhaust), seals (carbon, labyrinth,
brush, balance piston, and “knife-edge”), permanent magnetic alternator and generator, eddy current sensors; or
b.9. Torquemeter assembly (i.e., housing, shaft, reference shaft, and sleeve).
c. “Technology” “required” for the “development” or “production” of any of the following:
c.1. Low pressure compressor (i.e., fan) “components” and “parts” as follows: blades, vanes, spools, shrouds, blisks, shafts and disks;
c.2. High pressure compressor “components” and “parts” as follows: blades, vanes, spools, shrouds, blisks, shafts, disks, and impellers;
c.3. Combustor “components” and “parts” as follows: diffusers, liners, chambers, cowlings, domes and shells;
c.4. High pressure turbine “components” and “parts” as follows: shafts and disks, blades, vanes, nozzles, tip shrouds;
c.5. Low pressure turbine “components” and “parts” as follows: shafts and disks, blades, vanes, nozzles, tip shrouds;
c.6. 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 ECCN; or
c.7. Engine monitoring systems (i.e., prognostics, diagnostics, and health) “specially designed” for gas turbine engines and components controlled in this ECCN.
d. through x. [Reserved]
y. Specific “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by 9A619.y or 9B619.y, or “software” controlled by ECCN 9D619.y.


9A620 Cryogenic and "superconductive" equipment, as follows (see list of items controlled).

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LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

LVS: $1,500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c) (2) of License Exception STA (§ 740.20(c) (2) of the EAR) may not be used for any item in 9A620.

LIST OF ITEMS CONTROLLED

Related Controls: (Electronic items that are enumerated in USML Category XI or other USML categories, and technical data (including software) directly related thereto, are subject to the ITAR. Related Definitions: N/A.

Items:
a. Equipment "specially designed" to be installed in a vehicle for military ground, marine, airborne, or space applications, and capable of operating while in motion and of producing or maintaining temperatures below 103 K (-170[deg]C).

**NOTE TO 9A620.a:** ECCN 9A620.a includes mobile systems incorporating or employing "accessories" or "components" manufactured from non-metallic or non-electrical conductive materials such as plastics or epoxy-impregnated materials.

b. "Superconductive" electrical equipment (rotating machinery and transformers) "specially designed" to be installed in a vehicle for military ground, marine, airborne, or space applications, and capable of operating while in motion.

**NOTE TO 9A620.b:** ECCN 9A620.b does not control 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 components in the generator.

c. through w. [Reserved].

x. "Parts," "components," "accessories" and "attachments" that are "specially designed" for a commodity controlled by ECCN 9A620.

**NOTE TO 9A620.x:** Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacture where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 9A620.x are controlled by ECCN 9A620.x.

[79 FR 37570, Jul. 1, 2014]

9E620 Technology "required" for cryogenic and "superconductive" equipment, as follows (see List of Items Controlled).

**LICENSE REQUIREMENTS**

**Reason for Control:** NS, RS, AT, UN

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**LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)**

CIV: N/A

TSR: N/A

Special Conditions for STA

STA: Paragraph (c) (2) of License Exception STA (§ 740.20(c) (2) of the EAR) may not be used for any technology in 9E620.

**LIST OF ITEMS CONTROLLED**

Related Controls: Technical data directly related to articles enumerated on USML are subject to the control of that USML category.

Related Definitions: N/A

Items: “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled by ECCN 9A620, 9B620 or 9D620.

[79 FR 37570, Jul. 1, 2014]
### ANNEX G
### DTrade Country Codes

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