

Department of State

§ 122.1

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 replace-

ment by DTC's updated version section 6(l) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(l)), as amended. In accordance with this provision, the list of MTCR Annex items shall constitute all items on the U.S. Munitions List in §121.16.

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

Sec.

122.1 Registration requirements.

122.2 Submission of registration statement.

122.3 Registration fees.

122.4 Notification of changes in information furnished by registrants.

122.5 Maintenance of records by registrants.

AUTHORITY: Secs. 2 and 38, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 1977 Comp. p. 79; 22 U.S.C. 2658.

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 either manufacturing or exporting defense articles or furnishing defense services is required to register with the Office of Defense Trade Controls. Manufacturers who do not engage in exporting must nevertheless register.

(b) *Exemptions.* Registration is not required for:

(1) Officers and employees of the United States Government acting in an official capacity.

(2) Persons whose pertinent business activity is confined to the production of unclassified technical data only.

(3) Persons all of whose manufacturing and export activities are licensed under the Atomic Energy Act of 1954, as amended.

(4) Persons who engage only in the fabrication of articles for experimental or scientific purpose, including research and development.

(c) *Purpose.* Registration is primarily a means to provide the U.S. Government with necessary information on who is involved in certain manufacturing and exporting activities. Registration does not confer any export rights or privileges. It is generally a precondition to the issuance of any license or other approval under this subchapter.

§ 122.2 Submission of registration statement.

(a) *General.* The Department of State Form DSP-9 (Registration Statement) and the transmittal letter required by paragraph (b) of this section must be submitted by an intended registrant with a payment by check or money order payable to the Department of State of one of the fees prescribed in § 122.3(a) of this subchapter. The Registration Statement and transmittal letter must be signed by a senior officer who has been empowered by the intended registrant to sign such documents. The intended registrant shall also submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Office of Defense Trade Controls will return to the sender any Registration Statement that is incomplete, or that is not accompanied by the required letter or payment of the proper registration fee.

(b) *Transmittal letter.* A letter of transmittal, signed by an authorized senior officer of the intended registrant, shall accompany each Registration Statement.

(1) The letter shall state whether the intended registrant, chief executive officer, president, vice-presidents, other senior officers or officials (e.g. comptroller, treasurer, general counsel) or any member of the board of directors:

(i) Has ever been indicted for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(ii) Is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government.

(2) The letter shall also declare whether the intended registrant is owned or controlled by foreign persons (as defined in § 120.16 of this subchapter). If the intended registrant is owned or controlled by foreign persons, the letter shall also state whether the intended registrant is incorporated or otherwise authorized to engage in business in the United States.

(c) *Definition.* For purposes of this section, *ownership* means that more than 50 percent of the outstanding vot-

ing securities of the firm are owned by one or more foreign persons. *Control* means that one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Control is presumed to exist where foreign persons own 25 percent or more of the outstanding voting securities if no U.S. persons control an equal or larger percentage. The standards for control specified in 22 CFR 60.2(c) also provide guidance in determining whether control in fact exists.

§ 122.3 Registration fees.

(a) A person who is required to register may do so for a period up to 5 years upon submission of a completed form DSP-9, transmittal letter, and payment of a fee as follows:

1 year	\$250
2 years	500
3 years	700
4 years	850
5 years	1,000

(b) *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.

(c) *Refund of fee.* Fees paid in advance for future years of a multiple year registration will be refunded upon request if the registrant ceases to engage in the manufacture or export of defense articles and defense services. A request for a refund must be submitted to the Office of Defense Trade Controls prior to the beginning of any year for which a refund is claimed.

§ 122.4 Notification of changes in information furnished by registrants.

(a) A registrant must, within five days of the event, notify the Office of Defense Trade Controls by registered mail if:

(1) Any of the persons referred to in § 122.2(b) are indicted for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter, or become ineligible to contract with, or to receive a license or

other approval to export or temporarily import defense articles or defense services from any agency of the U.S. government; or

(2) There is a material change in the information contained in the Registration Statement, including a change in the senior officers; the establishment, acquisition or divestment of a subsidiary or foreign affiliate; a merger; a change of location; or the dealing in an additional category of defense articles or defense services.

(b) A registrant must notify the Office 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 Office of Defense Trade Controls with the information necessary to determine whether the authority of section 38(g)(6) of the Arms Export Control Act regarding licenses or other approvals for certain sales or transfers of articles or data 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 Office 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 Office 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 Office 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 Office of Defense Trade Controls is required for any amendment making a substantive change.

§122.5 Maintenance of records by registrants.

(a) A person who is required to register must maintain records concerning the manufacture, acquisition and disposition of defense articles; the provision of defense services; and information on political contributions, fees, or commissions furnished or obtained, as required by part 130 of this subchapter. All such records must be maintained for a period of five years from the expiration of the license or other approval. The Director, Office of Defense Trade Controls, 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 Director, Office of Defense Trade Controls or a person designated by the Director (the Director of the Diplomatic Security Service or a person designated by the Director of the Diplomatic Security Service or another designee), or the Commissioner of the U.S. Customs Service or a person designated by the Commissioner.

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

Sec.

123.1 Requirement for export or temporary import licenses.

123.2 Import jurisdiction.

123.3 Temporary import licenses.

123.4 Temporary import license exemptions.

123.5 Temporary export licenses.

123.6 Foreign trade zones and U.S. Customs bonded warehouses.

123.7 Exports to warehouses or distribution points outside the United States.

123.8 Special controls on vessels, aircraft and satellites covered by the U.S. Munitions List.

123.9 Country of ultimate destination and approval of reexports or retransfers.

123.10 Non-transfer and use assurances.