AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 77 Wednesday,
No. 55 March 21, 2012

Part II

Department of State

22 CFR Parts 120, 123, 124, *et al.*
Implementation of the Defense Trade Cooperation Treaty Between the United States and the United Kingdom; Final Rule

DEPARTMENT OF STATE

22 CFR Parts 120, 123, 124, 126, 127, and 129

RIN 1400–AC95

[Public Notice 7828]

Implementation of the Defense Trade Cooperation Treaty Between the United States and the United Kingdom

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to implement the Defense Trade Cooperation Treaty between the United States and the United Kingdom, and identify via a supplement the defense articles and defense services that may not be exported pursuant to the Treaty. This final rule implements only the Defense Trade Cooperation Treaty between the United States and the United Kingdom. The final rule implementing the Defense Trade Cooperation Treaty between the United States and Australia will be published later in the year once that treaty enters into force. Additionally, the Department of State amends the section pertaining to the Canadian exemption to reference the new supplement, and, with regard to Congressional certification, the Department of State adds Israel to the list of countries and entities that have a shorter certification time period and a higher dollar value reporting threshold.

DATES: This rule is effective upon the entry into force of the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (Treaty Doc. 110–7). We will publish a rule document in the **Federal Register** announcing the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Sarah Heidema, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2809 or Email *DDTCResponseTeam@state.gov.* Attn: Regulatory Change—Treaties.

SUPPLEMENTARY INFORMATON: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to implement the Defense Trade Cooperation Treaty between the United States and the United Kingdom, and identify via a supplement the defense articles and defense services that may not be exported pursuant to the Treaty. This final rule implements only the Defense Trade Cooperation Treaty between the United States and the United Kingdom.

These final amendments affect parts 120, 123, 124, 126, 127, and 129, with a new section in part 126 describing the licensing exemptions pursuant to the Treaty.

On November 22, 2011 (76 FR 72246), the Department's Directorate of Defense Trade Controls (DDTC) published for public comment a proposed rule to amend the ITAR to implement the Defense Trade Cooperation Treaty between the United States and the United Kingdom, and the Defense Trade Cooperation Treaty between the United States and Australia, and to identify, via a supplement, the defense articles and defense services that may not be exported pursuant to the Treaties. However, this rule implements only the Treaty between the United States and the United Kingdom. The final rule implementing the Treaty between the United States and Australia will be published later in the year once that treaty enters into force. The proposed rule also sought to amend the section pertaining to the Canadian exemption to reference the new supplement, and, with regard to Congressional certification, add Israel to the list of countries and entities that have a shorter certification time period and a higher dollar value reporting threshold.

The proposed rule's comment period ended December 22, 2011. Fifteen (15) parties filed comments. Having thoroughly reviewed and evaluated the comments and the recommended changes, the Department has determined that it will, and hereby does, adopt the proposed rule, with changes noted and minor edits, and promulgates it as a final rule. The Department's evaluation of the written comments and recommendations follows:

The majority of commenting parties expressed support for the intent of the Treaty, to ease export licensing burdens with one of the U.S.'s closest allies. However, the commenting parties expressed concern that the exemption is overly complicated and its requirements too burdensome to be truly workable for industry. DDTC appreciates these comments and believes the clarifying edits made in this final rule make application of the exemption clear.

One commenting party requested § 123.9(a) clarify whether the United Kingdom government could deploy items received pursuant to the Treaty. DDTC has reviewed this request and has not made changes to this paragraph. Section 126.17(h) identifies the process by which items exported pursuant to the Treaty may be deployed by the United Kingdom government.

One commenting party requested edits to the note to § 123.9(a) to use the word ''knowledge.'' DDTC rejected this request because the language in the note is sufficient, but has added clarifying language to the note.

Three commenting parties suggested that DDTC delete the reference to defense services in § 123.9(b) and (c). DDTC accepts this request and has deleted the reference.

One commenting party requested clarification of the addition and use of the word ''destination'' in § 123.9 (c). The term ''destination'' is added because while the end-user may remain the same, the destination may change, therefore requiring authorization from DDTC.

One commenting party sought clarification of whether § 123.9(c)(4) set up a different process for a retransfer request if such were submitted for articles received under the new § 126.17. Section 123.9(c)(4)does not set up a new process; it identifies who may submit a retransfer request and is language reflective of Section 9(3) of the Implementing Arrangement.

Three commenting parties noted that the proposed revised text of § 123.26 appeared to conflict with provisions of § 123.22. DDTC has considered these comments and has revised § 123.26 to clarify that its requirements are consistent with those of § 123.22.

One commenting party requested that DDTC delete the requirement in § 123.26 to record the time of the transaction. DDTC accepts this suggestion and has removed the text accordingly.

One commenting party requested § 126.5(b) be revised to reference screening programs developed pursuant to § 126.18. Guidance for using § 126.18 is available on DDTC's Web site and is not appropriate to add to this section. Therefore, no edits were made to this section.

Two commenting parties noted that the proposed rule changed the word ''or'' to ''for'' in § 126.5(b). DDTC has corrected this typographical error, and that text in the first sentence again reads, ''or for return to the United States.''

One commenting party noted that by reserving § 126.5(c) and removing the items previously controlled there to Supplement No. 1, the requirement to obtain written certifications, as well as recordkeeping requirements, were removed. Clarification was requested as to whether this was intentional. DDTC has reviewed this section and confirms that the removal of these requirements

was inadvertent. Therefore, Supplement No. 1 has been revised to clarify that all previous requirements of the Canadian exemption, including those provided in paragraph (c), remain. There is no intention to change the requirements for using the Canadian exemption.

Several commenting parties requested additional guidance with various aspects of the new § 126.17. As part of Treaty implementation, DDTC will be posting Frequently Asked Questions (FAQs) on its Web site. These FAQs will address these requests for guidance.

Two commenting parties suggested that DDTC add a definition for defense articles to § 126.17(a)(1) to clarify that the definition also includes technical data for purposes of the exemption. DDTC does not believe this change is necessary as the definition in § 120.6 clearly identifies technical data as within the scope of the ''defense article'' definition. Unless specifically indicated otherwise, the use of the term ''defense article'' includes technical data.

One commenting party requested clarification of the term ''access'' as used in § 126.17(a)(1)(iv), indicating that it is common for U.S. Customs and Border Protection (CBP) to authorize a physical manipulation of a container, which would result in an intermediate consignee having access to an item in the shipment. DDTC believes the meaning of ''access'' is plain and does not see a need to revise this paragraph. A directive from a CBP official to open a container is not the type of access that would require a license from DDTC. Another party requested DDTC place a reference to paragraph (k), which discusses intermediate consignees, in this section. DDTC accepted this suggestion and has made corresponding changes.

One commenting party expressed concerns that the process by which the U.S. Government would obtain maintained records, as provided in § 126.17(a)(3)(vi) and other sections of the exemption, is unclear. These sections are not intended to identify the process by which record requests will be made. The process will be the same as for any request currently made under the ITAR. Therefore, DDTC has not revised these paragraphs.

One commenting party noted the language in § 126.17(a)(4) seemed to limit transfers just to exports to the United States. DDTC has revised this section to clarify that it applies to transfers within the Approved Community.

Two commenting parties requested DDTC change the word ''required'' to ''pursuant to'' in § 126.17(a)(4)(iii). This change has been rejected as the word ''required'' is a requirement of the Treaty.

Two commenting parties asked DDTC to clarify the requirements in § 126.17(a)(5) related to items delivered via the Foreign Military Sales program. DDTC has revised § 126.17(a)(5) to provide clarifying language.

Three commenting parties suggested DDTC include additional information in § 126.17(d) to explain the vetting process for the UK Community. DDTC does not accept this suggestion. The vetting requirements are identified in the Treaty and Implementing Arrangement, which are available on DDTC's Web site. One commenting party noted that there was no reference to Her Majesty's Government (HMG) entities and facilities in § 126.17(d). DDTC has revised this paragraph to also reference HMG.

Three commenting parties requested DDTC provide additional guidance with respect to identification of operations, programs and projects that cannot be publicly identified (i.e., are classified). DDTC has not added additional language to § 126.17(f)(2), but will provide additional guidance on its Web site for requesting confirmation of Treaty eligibility for classified programs.

One commenting party inquired whether DDTC will post on its Web site a complete list of U.S. Government contracts that are Treaty eligible. DDTC will not do so. The U.S. Department of Defense has updated the Defense Federal Acquisition Regulation Supplement (DFARS) and certain contract clauses, which will identify treaty eligibility when incorporated into a contract.

Three commenting parties requested clarifying language be added to § 126.17(g)(1) to indicate whether this paragraph applied to marketing to members of the Approved Community. These parties also requested clarification of the term ''identical type.'' Finally, parties requested that this paragraph be removed in its entirety. DDTC cannot remove this requirement as it is part of the Treaty's Exempted Technology List. DDTC, however, has revised the paragraph to indicate that marketing may be to members of the United Kingdom Community so long as it is for an approved Treaty end-use and it meets the other requirements of § 126.17(g)(1).

One commenting party recommended removal of § 126.17(g)(4) or, in the alternative, adding a parenthetical ''(or foreign equivalent)'' after ''Milestone B.'' DDTC cannot remove this paragraph as it is part of the Treaty's Exempted Technology List. DDTC considered adding a parenthetical to include foreign equivalents, but has decided to reject this suggestion as there is no equivalent in the UK to ''Milestone B.''

One commenting party requested changes to § 126.17(g)(5) to allow for the export of embedded exempted technologies in certain circumstances. DDTC is not, at this time, prepared to broaden this paragraph to include embedded exempted technologies.

Four commenting parties expressed concerns with § 126.17(g)(8) and the reference to the European Union Dual Use List. DDTC has revised this paragraph to clarify that any such items have been included in Supplement No. 1 to Part 126.

Two commenting parties raised concerns with the complexity of using § 126.17(h) with a diverse supply chain and requested clarification on the applicability of § 123.9(e) to this exemption. DDTC appreciates the diverse nature of global supply chains, but believes the mechanisms provided in § 126.17(h) are no more onerous than current retransfer or reexport requirements. Further, as indicated in § 126.17(h)(5), any retransfer, reexport, or change in end-use under § 126.17(h) shall be made in accordance with § 123.9, which includes § 123.9(e).

One commenting party requested definition of ''United Kingdom Armed Forces transmission channels'' in § 126.17(h)(7). This language is used in the Implementing Arrangement and DDTC believes § 126.17(h)(7) and the Implementing Arrangement are clear. Therefore, DDTC has not provided an additional definition.

Two commenting parties requested DDTC delete the words ''any citizen of such countries'' from § 126.17(h)(8). DDTC accepts this suggestion and has revised this paragraph accordingly.

Three commenting parties requested clarification as to the form a written request under § 126.17(i)(2)(i) should take. Parties should submit such requests in the form of a General Correspondence (GC), the required elements of which are identified in § 126.17(i)(2)(i).

One commenting party requested clarification as to the form a written request under § 126.17(i)(3) should take. Parties should also submit such requests in the form of a GC to DDTC.

Ten commenting parties expressed concerns with the marking requirements contained in § 126.17(j). Of most concern was a perception that the requirements of this section made using the exemption overly burdensome and costly. Various suggestions were provided ranging from removal of the paragraph, to rewording of certain sections. The majority of commenting

parties requested DDTC remove the requirement in § 126.17(j)(2) for exporters to remove Treaty markings. DDTC appreciates the concerns expressed. However, the requirements contained in 126.17(j) are reflective of the requirements in the Treaty and its Implementing Arrangement. DDTC has made some minor edits to provide clarity in this paragraph, but the requirement to remove certain markings will not be removed from the regulations at this time.

One commenting party requested DDTC edit the text of the statement required by § 126.17(j)(5) to indicate the items being exported were USML items and authorized only for export to the UK under the Treaty. DDTC accepts this suggestion and has revised the text accordingly.

One commenting party requested that registered brokers be included in paragraph § 126.17(k)(1)(ii). United Kingdom intermediate consignees must meet the requirements of § 126.17(k)(1)(ii). If a registered broker meets these requirements, then it may be an intermediate consignee for purposes of this exemption. However, simply being a registered broker does not automatically qualify an entity as a United Kingdom intermediate consignee.

Five commenting parties suggested DDTC clarify the language related to recordkeeping in § 126.17(l) and ensure that it is consistent with other recordkeeping provisions in the ITAR. DDTC concurs with the need to keep ITAR sections consistent and has updated § 123.26 to reference the recordkeeping requirements of § 126.17(l). DDTC has also made clarifying edits to § 126.17(l).

One commenting party suggested changing the word ''all'' in § 126.17(l)(1) to ''their'' to acknowledge that the U.S. exporter may not be aware or have record of a reexport/retransfer request submitted by a UK Community member. DDTC agrees with this request and has revised the paragraph accordingly.

One commenting party requested clarification of § 126.17(l)(1)(x) as to whether this referred to the USML category or security classification. This is intended to refer to security classification. DDTC has revised the paragraph accordingly.

One commenting party requested DDTC delete the reference to ''defense services'' in § 126.17(l)(2). DDTC accepted this request and has revised the paragraph accordingly.

Two commenting parties asked DDTC to clarify whether § 126.17(m) required exporters to submit negative reports. DDTC confirms that reporting requirements under § 126.17(m) are contingent on meeting the requirements of ITAR § 130.9.

Two commenting parties requested clarification on whether the congressional notification requirement under the Treaty is identical to that required under normal license authorization processes. DDTC confirms that the process will be the same.

Ten commenting parties expressed various concerns regarding the scope and wording of Supplement No. 1 to Part 126. In particular, comments indicated concern that the Supplement was too broad and possibly excluded too much to make the exemption useful. DDTC appreciates these comments, and has made clarifying edits to Supplement No. 1 to the extent possible within the confines of the Treaty, the Implementing Arrangements, and the Exempted Technology List.

BILLING CODE 4710–25–P

ITAR Part	**Final Change**
Part 120	Section 120.19 revised to clarify meaning of reexport or retransfer; §120.33 added and reserved for the Treaty between the United States and Australia; §120.34 added to provide definitions of the Defense Trade Cooperation Treaty between the United States and the UK; §120.35 added and reserved for the Treaty between the United States and Australia; §120.36 added to define the implementing arrangements pursuant to the Treaty between the United States and the UK.
Part 123	Clarifying edits made throughout section and references to § 126.17 added; Israel added to §123.9(e).
Part 124	§124.11revised to add Israel to the list of countries and entities subject to the 15-day time period regarding Congressional certification.
Part 126	Clarifying edits made throughout section; §126.5(b) revised to reference the new supplement to part 126, consequently, §§126.5(b)(1) – (21) are removed; §126.5(c) changed to "reserved" and procedures and exclusions for technical data and defense services moved to Supplement 1 and its notes; §126.16 added and reserved for the Treaty between the United States and Australia; §126.17 added to describe the exemption pursuant to the Defense Trade Cooperation Treaty between the United States and the

	UK; Supplement No. 1 to part 126 added.
Part 127	Clarifying edits made though out section; revised to make reference to §126.17.
Part 129	Sections 129.6(b)(2), 129.7(a)(1)(vii), and 129.7(a)(2) revised to include Israel in the listing of countries and entities.

BILLING CODE 4710–25–C

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Nevertheless, as noted in the text above, the Department published this rule as a Notice of Proposed Rule Making on November 22, 2011 (76 FR 72246), with a 30-day comment period, and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function. This rule is effective upon the entry into force of the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (Treaty Doc. 110–7). Once the Treaty is in force, exports must be able to utilize the Treaty for qualifying exports of defense articles.

Regulatory Flexibility Act

Since this amendment is not subject to the notice-and-comment procedures of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175

The Department of State has determined that this amendment will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

The Department is of the opinion that restricting defense articles exports is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive order 12866. However, the Department has nevertheless reviewed this regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988

The Department of State has reviewed this amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Paperwork Reduction Act

This amendment does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35. The burden or number of respondents to any of the existing OMB approved information collections is not expected to change annually as a result of this rule.

List of Subjects

22 CFR Parts 120, 123, 124, and 126

Arms and munitions, Exports.

22 CFR Part 127

Arms and munitions, Crime, Exports, Penalties, Seizures and forfeitures.

22 CFR Part 129

Arms and munitions, Exports, Brokering.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 123, 124, 126, 127, and 129 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111–266.

■ 2. Section 120.1 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 120.1 General authorities and eligibility.

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

* * * * *

(c) *Receipt of Licenses and Eligibility.* (1) A U.S. person may receive a license or other approval pursuant to this subchapter. A foreign person may not receive such a license or other approval, except as follows:

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

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

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

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

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

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

* * * * *

■ 3. Section 120.19 is revised to read as follows:

§ 120.19 Reexport or retransfer.

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

■ 4. Section 120.28 is amended by revising paragraph (b)(2) to read as follows:

§ 120.28 Listing of forms referred to in this subchapter.

* * * * *

(b) * * *

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

* * * * *

■ 5. Section 120.34 is added to read as follows:

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

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

■ 6. Section 120.36 is added to read as follows:

§ 120.36 United Kingdom Implementing Arrangement.

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

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 7. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107–228.

■ 8. Section 123.4 is amended by revising paragraph (d) introductory text to read as follows:

§ 123.4 Temporary import license exemptions.

* * * * *

(d) *Procedures.* To the satisfaction of the Port Directors of U.S. Customs and Border Protection, the importer and exporter must comply with the following procedures:

* * * * *

■ 9. Section 123.9 is amended by revising paragraphs (a), (b), (c), (e) introductory text, (e)(1), (e)(3), and (e)(4), adding a note after paragraph (a), and removing and reserving paragraph (d), to read as follows:

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

(a) The country designated as the country of ultimate destination on an application for an export license, or in an Electronic Export Information filing where an exemption is claimed under this subchapter, must be the country of ultimate end-use. The written approval of the Directorate of Defense Trade Controls must be obtained before reselling, transferring, reexporting, retransferring, transshipping, or disposing of a defense article to any end-user, end-use, or destination other than as stated on the export license, or in the Electronic Export Information filing in cases where an exemption is claimed under this subchapter, except in accordance with the provisions of an exemption under this subchapter that explicitly authorizes the resell, transfer,

reexport, retransfer, transshipment, or disposition of a defense article without such approval. Exporters must determine the specific end-user, end-use, and destination prior to submitting an application to the Directorate of Defense Trade Controls or claiming an exemption under this subchapter.

Note to paragraph (a): In making the aforementioned determination, a person is expected to review all readily available information, including information readily available to the public generally as well as information readily available from other parties to the transaction.

(b) The exporter shall incorporate the following statement as an integral part of the bill of lading, airway bill, or other shipping documents, and the invoice whenever defense articles are to be exported or transferred pursuant to a license, other written approval, or an exemption under this subchapter, other than the exemptions contained in § 126.16 and § 126.17 of this subchapter (**Note:** for exports made pursuant to § 126.16 or § 126.17 of this subchapter, *see* § 126.16(j)(5) or § 126.17(j)(5)):

''These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end-user]. They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of, to any other country or end-user, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.''

(c) Any U.S. person or foreign person requesting written approval from the Directorate of Defense Trade Controls for the reexport, retransfer, other disposition, or change in end-use, end-user, or destination of a defense article initially exported or transferred pursuant to a license or other written approval, or an exemption under this subchapter, must submit all the documentation required for a permanent export license (*see* § 123.1 of this subchapter) and shall also submit the following:

(1) The license number, written authorization, or exemption under which the defense article or defense service was previously authorized for export from the United States (**Note:** For exports under exemptions at § 126.16 or § 126.17 of this subchapter, the original end-use, program, project, or operation under which the item was exported must be identified.);

(2) A precise description, quantity, and value of the defense article or defense service;

(3) A description and identification of the new end-user, end-use, and destination; and

(4) With regard to any request for such approval relating to a defense article or defense service initially exported pursuant to an exemption contained in § 126.16 or § 126.17 of this subchapter, written request for the prior approval of the transaction from the Directorate of Defense Trade Controls must be submitted: By the original U.S. exporter, provided a written request is received from a member of the Australian Community, as identified in § 126.16 of this subchapter, or the United Kingdom Community, as identified in § 126.17 of this subchapter (where such a written request includes a written certification from the member of the Australian Community or the United Kingdom Community providing the information set forth in § 126.17 of this subchapter); or by a member of the Australian Community or the United Kingdom Community, where such request provides the information set forth in this section. All persons must continue to comply with statutory and regulatory requirements outside of this subchapter concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 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;

* * * * *

(3) The person reexporting the defense article provides written notification to the Directorate of Defense Trade Controls of the retransfer not later than 30 days following the reexport. The notification must state the articles being reexported and the recipient government.

(4) The original license or other approval of the Directorate of Defense Trade Controls did not include retransfer or reexport restrictions prohibiting use of this exemption.

■ 10. Section 123.15 is amended by revising paragraphs (a)(1), (a)(2), and (b) to read as follows:

§ 123.15 Congressional certification pursuant to Section 36(c) of the Arms Export Control Act.

(a) * * *

(1) A license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more, or for defense articles and defense services sold under a contract in the amount of $50,000,000 or more, to any country that is not a member of the North Atlantic Treaty Organization (NATO), or Australia, Israel, Japan, New Zealand, or the Republic of Korea that does not authorize a new sales territory; or

(2) A license for export to a country that is a member country of NATO, or Australia, Israel, Japan, New Zealand, or the Republic of Korea, of major defense equipment sold under a contract in the amount of $25,000,000 or more, or for defense articles and defense services sold under a contract in the amount of $100,000,000 or more, and provided the transfer does not include any other countries; or

* * * * *

(b) Unless an emergency exists which requires the final export in the national security interests of the United States, approval may not be granted for any transaction until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1) involving NATO, or Australia, Israel, Japan, New Zealand, or the Republic of Korea or at least 30 calendar days have elapsed for any other country; in the case of a license for an export of a commercial communications satellite for launch from, and by nationals of, the Russian Federation, Ukraine, or Kazakhstan, until at least 15 calendar days after the Congress receives such certification.

* * * * *

■ 11. Section 123.16 is amended by revising paragraphs (a), (b)(1)(iii), and (b)(2)(vi) to read as follows:

§ 123.16 Exemptions of general applicability.

(a) The following exemptions apply to exports of unclassified defense articles for which no approval is needed from

the Directorate of Defense Trade Controls. These exemptions do not apply to: Proscribed destinations under § 126.1 of this subchapter; exports for which Congressional notification is required (*see* § 123.15 of this subchapter); MTCR articles; Significant Military Equipment (SME); and may not be used by persons who are generally ineligible as described in § 120.1(c) of this subchapter. All shipments of defense articles, including but not limited to those to Australia, Canada, and the United Kingdom, require an Electronic Export Information (EEI) filing or notification letter. If the export of a defense article is exempt from licensing, the EEI filing must cite the exemption. Refer to § 123.22 of this subchapter for EEI filing and letter notification requirements.

(b) * * *

(1) * * *

(iii) The exporter identifies in the EEI filing by selecting the appropriate code that the export is exempt from the licensing requirements of this subchapter; and

* * * * *

(2) * * *

(vi) The exporter must certify on the invoice, the bill of lading, air waybill, or shipping documents that the export is exempt from the licensing requirements of this subchapter. This is done by writing ''22 CFR 123.16(b)(2) applicable.''

* * * * *

■ 12. Section 123.22 is amended by revising paragraphs (a) introductory text and (b)(2) introductory text to read as follows:

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

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

* * * * *

(b) * * *

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

* * * * *

■ 13. Section 123.26 is revised to read as follows:

§ 123.26 Recordkeeping for exemptions.

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

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

■ 14. The authority citation for part 124 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261; Pub. L. 111–266.

■ 15. Section 124.11 is amended by revising paragraph (b) to read as follows:

§ 124.11 Congressional certification pursuant to Section 36(d) of the Arms Export Control Act.

* * * * *

(b) Unless an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States, approval may not be granted until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(d)(1) involving the North Atlantic Treaty Organization, any member country of that Organization, or Australia, Israel, Japan, New Zealand, or the Republic of Korea or at least 30 calendar days have elapsed for any other country. Approvals may not be granted when the

Congress has enacted a joint resolution prohibiting the export.

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

■ 16. The authority citation for part 126 is revised to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp. p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266.

■ 17. Section 126.1 is amended by revising paragraph (e) to read as follows:

§ 126.1 Prohibited exports, imports, and sales to or from certain countries.

* * * * *

(e) *Final sales.* No sale, export, transfer, reexport, or retransfer and no proposal to sell, export, transfer, reexport, or retransfer any defense articles or defense services subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of the Directorate of Defense Trade Controls. However, in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny licenses and approvals in such cases.

(1) *Duty to Notify:* Any person who knows or has reason to know of such a final or actual sale, export, transfer, reexport, or retransfer of such articles, services, or data must immediately inform the Directorate of Defense Trade Controls. Such notifications should be submitted to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.

(2) [Reserved]

* * * * *

■ 18. Section 126.3 is revised to read as follows:

§ 126.3 Exceptions.

In a case of exceptional or undue hardship, or when it is otherwise in the interest of the United States Government, the Managing Director, Directorate of Defense Trade Controls, may make an exception to the provisions of this subchapter.

■ 19. Section 126.4 is amended by revising paragraph (d) to read as follows:

§ 126.4 Shipments by or for United States Government agencies.

* * * * *

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

■ 20. Section 126.5 is amended by revising paragraphs (a), (b), (d) introductory text, and Notes 1 and 2, and removing and reserving paragraph (c) to read as follows:

§ 126.5 Canadian exemptions.

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

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

* * * * *

Notes to § 126.5:

1. In any instance when the exporter has knowledge that the defense article exempt from licensing is being exported for use other than by a qualified Canadian-registered person or for export to another foreign destination, other than the United States, in its original form or incorporated into another item, an export license must be obtained prior to the transfer to Canada.

2. Additional exemptions exist in other sections of this subchapter that are applicable to Canada, for example §§ 123.9, 125.4, and 124.2, that allow for the performance of defense services related to training in basic operations and maintenance, without a license, for certain defense articles lawfully exported, including those identified in Supplement No. 1 to part 126 of this subchapter.

■ 21. Section 126.7 is amended by revising the section heading and paragraphs (a)(3), (a)(7), and (e) introductory text to read as follows:

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

(a) * * *

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

* * * * *

(7) An applicant has failed to include any of the information or documentation expressly required to support a license application,

exemption, or other request for approval under this subchapter, or as required in the instructions in the applicable Department of State form or has failed to provide notice or information as required under this subchapter; or

* * * * *

(e) *Special definition.* For purposes of this subchapter, the term ''Party to the Export'' means:

* * * * *

22. Section 126.13 is amended by revising paragraphs (a) introductory text, (a)(1), and (a)(4) to read as follows:

§ 126.13 Required information.

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

(1) The applicant or the chief executive officer, president, vice-presidents, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is the subject of a criminal complaint, other criminal charge (e.g., an information), or indictment for or has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter since the effective date of the Arms Export Control Act, Public Law 94–329, 90 Stat. 729 (June 30, 1976);

* * * * *

(4) The natural person signing the application, notification or other request for approval (including the statement required by this subchapter) is a citizen or national of the United States, has been lawfully admitted to the United States for permanent residence (and maintains such lawful permanent residence status) under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a), section 101(a)20, 60 Stat. 163), or is an official of a foreign government entity in the United States, or is a foreign person making a request pursuant to § 123.9 of this subchapter.

* * * * *

■ 23. Section 126.17 is added to read as follows:

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

(a) *Scope of exemption and required conditions.* (1) *Definitions.* (i) An *export* means, for purposes of this section only, the initial movement of defense articles or defense services from the United States Community to the United Kingdom Community.

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

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

(iv) *Intermediate consignee* means, for purposes of this section, an entity or person who receives defense articles, including technical data, but who does not have access to such defense articles, for the sole purpose of effecting onward movement to members of the Approved Community (*see* paragraph (k) of this section).

(2) Persons or entities exporting or transferring defense articles or defense services are exempt from the otherwise applicable licensing requirements if such persons or entities comply with the regulations set forth in this section. Except as provided in Supplement No. 1 to part 126 of this subchapter, Port Directors of U.S. Customs and Border Protection and postmasters shall permit the permanent and temporary export without a license from members of the U.S. Community to members of the United Kingdom Community (*see* paragraph (d) of this section regarding the identification of members of the United Kingdom Community) of defense articles and defense services not listed in Supplement No. 1 to part 126, for the end-uses specifically identified pursuant to paragraphs (e) and (f) of this section. The purpose of this section is to specify the requirements to export, transfer, reexport, retransfer, or otherwise dispose of a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom. All persons must continue to comply with statutory and regulatory requirements outside of this subchapter concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 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.

(3) *Export.* In order for an exporter to export a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom, all of the following conditions must be met:

(i) The exporter must be registered with the Directorate of Defense Trade Controls and must be eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency of the U.S. Government without restriction (*see* paragraphs (b) and (c) of this section for specific requirements);

(ii) The recipient of the export must be a member of the United Kingdom Community (*see* paragraph (d) of this section regarding the identification of members of the United Kingdom Community). United Kingdom non-governmental entities and facilities that become ineligible for such membership will be removed from the United Kingdom Community;

(iii) Intermediate consignees involved in the export must not be ineligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to handle or receive a defense article or defense service without restriction (*see* paragraph (k) of this section for specific requirements);

(iv) The export must be for an end-use specified in the Defense Trade Cooperation Treaty between the United States and the United Kingdom and mutually agreed to by the U.S. Government and the Government of the United Kingdom pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and the Implementing Arrangement thereto (United Kingdom Implementing Arrangement) (*see* paragraphs (e) and (f) of this section regarding authorized end-uses);

(v) The defense article or defense service is not excluded from the scope of the Defense Trade Cooperation Treaty between the United States and the United Kingdom (*see* paragraph (g) of this section and Supplement No. 1 to part 126 of this subchapter for specific information on the scope of items excluded from export under this exemption) and is marked or identified, at a minimum, as ''Restricted USML'' (*see* paragraph (j) of this section for

specific requirements on marking exports);

(vi) All required documentation of such export is maintained by the exporter and recipient and is available upon the request of the U.S. Government (*see* paragraph (l) of this section for specific requirements); and

(vii) The Department of State has provided advance notification to the Congress, as required, in accordance with this section (*see* paragraph (o) of this section for specific requirements).

(4) *Transfers.* In order for a member of the Approved Community (i.e., the U.S. Community and United Kingdom Community) to transfer a defense article or defense service under the Defense Trade Cooperation Treaty within the Approved Community, all of the following conditions must be met:

(i) The defense article or defense service must have been previously exported in accordance with paragraph (a)(3) of this section or transitioned from a license or other approval in accordance with paragraph (i) of this section;

(ii) The transferor and transferee of the defense article or defense service are members of the United Kingdom Community (*see* paragraph (d) of this section regarding the identification of members of the United Kingdom Community) or the United States Community (*see* paragraph (b) of this section for information on the United States Community/approved exporters);

(iii) The transfer is required for an end-use specified in the Defense Trade Cooperation Treaty between the United States and the United Kingdom and mutually agreed to by the United States and the Government of United Kingdom pursuant to the terms of the Defense Trade Cooperation Treaty between the United States and the United Kingdom and the United Kingdom Implementing Arrangement (*see* paragraphs (e) and (f) of this section regarding authorized end-uses);

(iv) The defense article or defense service is not identified in paragraph (g) of this section and Supplement No. 1 to part 126 of this subchapter as ineligible for export under this exemption, and is marked or otherwise identified, at a minimum, as ''Restricted USML'' (*see* paragraph (j) of this section for specific requirements on marking exports);

(v) All required documentation of such transfer is maintained by the transferor and transferee and is available upon the request of the U.S. Government (*see* paragraph (l) of this section for specific requirements); and

(vi) The Department of State has provided advance notification to the Congress in accordance with this section (*see* paragraph (o) of this section for specific requirements).

(5) This section does not apply to the export of defense articles or defense services from the United States pursuant to the Foreign Military Sales program. Once such items are delivered to Her Majesty's Government, they may be treated as if they were exported pursuant to the Treaty and then must be marked, identified, transmitted, stored and handled in accordance with the Treaty, the United Kingdom Implementing Arrangement, and the provisions of this section.

(b) *United States Community.* The following persons compose the United States Community and may export or transfer defense articles and defense services pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom:

(1) Departments and agencies of the U.S. Government, including their personnel acting in their official capacity, with, as appropriate, a security clearance and a need-to-know; and

(2) Non-governmental U.S. persons registered with the Directorate of Defense Trade Controls and eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency of the U.S. Government without restriction, including their employees acting in their official capacity with, as appropriate, a security clearance and a need-to-know.

(c) An exporter that is otherwise an authorized exporter pursuant to paragraph (b) of this section may not export or transfer pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom if the exporter's president, chief executive officer, any vice-president, any other senior officer or official (e.g., comptroller, treasurer, general counsel); any member of the board of directors of the exporter; any party to the export; or any source or manufacturer is ineligible to receive export licenses (or other forms of authorization to export) from any agency of the U.S. Government.

(d) *United Kingdom Community.* For purposes of the exemption provided by this section, the United Kingdom Community consists of:

(1) Her Majesty's Government entities and facilities identified as members of the Approved Community through the Directorate of Defense Trade Controls 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 Directorate of Defense Trade Controls Web site at the time of a transaction under this section; non-governmental United Kingdom entities and facilities that become ineligible for such membership will be removed from the United Kingdom Community.

(e) *Authorized End-uses.* The following end-uses, subject to paragraph (f) of this section, are specified in the Defense Trade Cooperation Treaty between the United States and the United Kingdom:

(1) United States and United Kingdom combined military or counter-terrorism operations;

(2) United States and United Kingdom cooperative security and defense research, development, production, and support programs;

(3) Mutually determined specific security and defense projects where the Government of the United Kingdom is the end-user; or

(4) U.S. Government end-use.

(f) Procedures for identifying authorized end-uses pursuant to paragraph (e) of this section:

(1) Operations, programs, and projects that can be publicly identified will be posted on the Directorate of Defense Trade Controls Web site;

(2) Operations, programs, and projects that cannot be publicly identified will be confirmed in written correspondence from the Directorate of Defense Trade Controls; or

(3) U.S. Government end-use will be identified specifically in a U.S. Government contract or solicitation as being eligible under the Treaty.

(4) No other operations, programs, projects, or end-uses qualify for this exemption.

(g) *Items eligible under this section.* With the exception of items listed in Supplement No. 1 to part 126 of this subchapter, defense articles and defense services may be exported under this section subject to the following:

(1) An exporter authorized pursuant to paragraph (b)(2) of this section may market a defense article to members of the United Kingdom Community if that exporter has been licensed by the Directorate of Defense Trade Controls to export (as defined by § 120.17 of this subchapter) the identical type of defense article to any foreign person and end-use of the article is for an end-use identified in paragraph (e) of this section.

(2) The export of any defense article specific to the existence of (e.g., reveals the existence of or details of) anti-

tamper measures made at U.S. Government direction always requires prior written approval from the Directorate of Defense Trade Controls.

(3) U.S.-origin classified defense articles or defense services may be exported only pursuant to a written request, directive, or contract from the U.S. Department of Defense that provides for the export of the classified defense article(s) or defense service(s).

(4) U.S.-origin defense articles specific to developmental systems that have not obtained written Milestone B approval from the Department of Defense milestone approval authority are not eligible for export unless such export is pursuant to a written solicitation or contract issued or awarded by the Department of Defense for an end-use identified pursuant to paragraphs (e)(1), (2), or (4) of this section.

(5) Defense articles excluded by paragraph (g) of this section or Supplement No. 1 to part 126 of this subchapter (e.g., USML Category XI (a)(3) electronically scanned array radar excluded by Note 2) that are embedded in a larger system that is eligible to ship under this section (e.g., a ship or aircraft) must separately comply with any restrictions placed on that embedded defense article under this subchapter. The exporter must obtain a license or other authorization from the Directorate of Defense Trade Controls for the export of such embedded defense articles (for example, USML Category XI(a)(3) electronically scanned array radar systems that are exempt from this section that are incorporated in an aircraft that is eligible to ship under this section continue to require separate authorization from the Directorate of Defense Trade Controls for their export, transfer, reexport, or retransfer).

(6) No liability shall be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of an export conducted pursuant to this section.

(7) Sales by exporters made through the U.S. Government shall not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for information which the U.S. Government has a right to use and disclose to others, which is in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon its use and disclosure to others.

(8) Defense articles on the European Union Dual Use List (as described in Annex 1 to EC Council Regulation No. 428/2009) are not eligible for export under the Defense Trade Cooperation Treaty between the United States and the United Kingdom. These articles have been identified and included in Supplement No.1 to part 126.

(h) *Transfers, Retransfers, and Reexports.* (1) Any transfer of a defense article or defense service not exempted in Supplement No. 1 to part 126 of this subchapter by a member of the United Kingdom Community (*see* paragraph (d) of this section for specific information on the identification of the Community) to another member of the United Kingdom Community or the United States Community for an end-use that is authorized by this exemption (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) is authorized under this exemption.

(2) Any transfer or other provision of a defense article or defense service for an end-use that is not authorized by the exemption provided by this section is prohibited without a license or the prior written approval of the Directorate of Defense Trade Controls (*see* paragraphs (e) and (f) of this section regarding authorized end-uses).

(3) Any retransfer or reexport, or other provision of a defense article or defense service by a member of the United Kingdom Community to a foreign person that is not a member of the United Kingdom Community, or to a U.S. person that is not a member of the United States Community, is prohibited without a license or the prior written approval of the Directorate of Defense Trade Controls (*see* paragraph (d) of this section for specific information on the identification of the United Kingdom Community).

(4) Any change in the use of a defense article or defense service previously exported, transferred, or obtained under this exemption by any foreign person, including a member of the United Kingdom Community, to an end-use that is not authorized by this exemption is prohibited without a license or other written approval of the Directorate of Defense Trade Controls (*see* paragraphs (e) and (f) of this section regarding authorized end-uses).

(5) Any retransfer, reexport, or change in end-use requiring such approval of the U.S. Government shall be made in accordance with § 123.9 of this subchapter.

(6) Defense articles excluded by paragraph (g) of this section or Supplement No. 1 to part 126 of this subchapter (e.g., USML Category XI (a)(3) electronically scanned array radar systems) that are embedded in a larger system that is eligible to ship under this section (e.g., a ship or aircraft) must separately comply with any restrictions placed on that embedded defense article unless otherwise specified. A license or other authorization must be obtained from the Directorate of Defense Trade Controls for the export, transfer, reexport, or retransfer or change in end-use of any such embedded defense article (for example, USML Category XI(a)(3) electronically scanned array radar systems that are excluded from this section by Supplement No. 1 to part 126, Note 2 that are incorporated in an aircraft that is eligible to ship under this section continue to require separate authorization from the Directorate of Defense Trade Controls for their export, transfer, reexport, or retransfer).

(7) A license or prior approval from the Directorate of Defense Trade Controls is not required for a transfer, retransfer, or reexport of an exported defense article or defense service under this section, if:

(i) The transfer of defense articles or defense services is made by a member of the United States Community to United Kingdom Ministry of Defence elements deployed outside the Territory of the United Kingdom and engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section;

(ii) The transfer of defense articles or defense services is made by a member of the United States Community to an Approved Community member (either U.S. or UK) that is operating in direct support of United Kingdom Ministry of Defence elements deployed outside the Territory of the United Kingdom and engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section;

(iii) The reexport is made by a member of the United Kingdom Community to United Kingdom Ministry of Defence elements deployed outside the Territory of the United Kingdom engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section;

(iv) The reexport is made by a member of the United Kingdom Community to an Approved Community member (either U.S. or UK) that is operating in direct support of United Kingdom Ministry of Defence elements deployed outside the Territory of the United Kingdom engaged in an authorized end-use (*see* paragraphs (e)

and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section; or

(v) The defense article or defense service will be delivered to the United Kingdom Ministry of Defence for an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses); the United Kingdom Ministry of Defence may deploy the item as necessary when conducting official business within or outside the Territory of the United Kingdom. The item must remain under the effective control of the United Kingdom Ministry of Defence while deployed and access may not be provided to unauthorized third parties.

(8) U.S. persons registered, or required to be registered, pursuant to part 122 of this subchapter and members of the United Kingdom Community must immediately notify the Directorate of Defense Trade Controls of any actual or proposed sale, retransfer, or reexport of a defense article or defense service on the U.S. Munitions List originally exported under this exemption to any of the countries listed in § 126.1 of this subchapter or any person acting on behalf of such countries, whether within or outside the United States. Any person knowing or having reason to know of such a proposed or actual sale, reexport, or retransfer shall submit such information in writing to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.

(i) *Transitions.* (1) Any previous export of a defense article under a license or other approval of the U.S. Department of State remains subject to the conditions and limitations of the original license or authorization unless the Directorate of Defense Trade Controls has approved in writing a transition to this section.

(2) If a U.S. exporter desires to transition from an existing license or other approval to the use of the provisions of this section, the following is required:

(i) The U.S. exporter must submit a written request to the Directorate of Defense Trade Controls, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were originally exported, and the Treaty-eligible end-use for which the defense articles or defense services will be used. Any license(s) filed with U.S. Customs and Border Protection should remain on file until the exporter has received approval from the Directorate of Defense Trade Controls to retire the license(s) and transition to this section. When this approval is conveyed to U.S. Customs and Border Protection by the Directorate of Defense Trade Controls, the license(s) will be returned to the Directorate of Defense Trade Controls by U.S. Customs and Border Protection in accord with existing procedures for the return of expired licenses in § 123.22(c) of this subchapter.

(ii) Any license(s) not filed with U.S. Customs and Border Protection must be returned to the Directorate of Defense Trade Controls with a letter citing approval by the Directorate of Defense Trade Controls to transition to this section as the reason for returning the license(s).

(3) If a member of the United Kingdom Community desires to transition defense articles received under an existing license or other approval to the processes established under the Treaty, the United Kingdom Community member must submit a written request to the Directorate of Defense Trade Controls, either directly or through the original U.S. exporter, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were received, and the Treaty-eligible end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) for which the defense articles or defense services will be used. The defense article or defense service shall remain subject to the conditions and limitations of the existing license or other approval until the United Kingdom Community member has received approval from the Directorate of Defense Trade Controls to transition to this section.

(4) Authorized exporters identified in paragraph (b)(2) of this section who have exported a defense article or defense service that has subsequently been placed on the list of exempted items in Supplement No. 1 to part 126 of this subchapter must review and adhere to the requirements in the relevant **Federal Register** notice announcing such removal. Once removed, the defense article or defense service will no longer be subject to this section, such defense article or defense service previously exported shall remain on the U.S. Munitions List and be subject to the International Traffic in Arms Regulations unless the applicable **Federal Register** notice states otherwise. Subsequent reexport or retransfer must be made pursuant to § 123.9 of this subchapter.

(5) Any defense article or defense service transitioned from a license or other approval to treatment under this section must be marked in accordance with the requirements of paragraph (j) of this section.

(j) *Marking of Exports.* (1) All defense articles and defense services exported or transitioned pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section shall be marked or identified as follows:

(i) For classified defense articles and defense services the standard marking or identification shall read: ''// CLASSIFICATION LEVEL USML//REL GBR and USA Treaty Community//.'' For example, for defense articles classified SECRET, the marking or identification shall be ''//SECRET USML//REL GBR and USA Treaty Community//.''

(ii) Unclassified defense articles and defense services exported under or transitioned pursuant to this section shall be handled while in the UK as ''Restricted USML'' and the standard marking or identification shall read ''// RESTRICTED USML//REL GBR and USA Treaty Community//.''

(2) Where U.S.-origin defense articles are returned to a member of the United States Community identified in paragraph (b) of this section, any defense articles marked or identified pursuant to paragraph (j)(1)(ii) of this section as ''//RESTRICTED USML//REL GBR and USA Treaty Community//'' will be considered unclassified and the marking or identification shall be removed; and

(3) The standard marking and identification requirements are as follows:

(i) Defense articles (other than technical data) shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section; or, where such labeling is impracticable (e.g., propellants, chemicals), shall be accompanied by documentation (such as contracts or invoices) clearly associating the defense articles with the appropriate markings as detailed in paragraph (j)(1)(i) and (ii) of this section;

(ii) Technical data (including data packages, technical papers, manuals, presentations, specifications, guides and reports), regardless of media or means of transmission (physical, oral, or electronic), shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section; or, where such labeling is impracticable shall be accompanied by documentation (such as contracts or invoices) or verbal notification clearly

associating the technical data with the appropriate markings as detailed in paragraph (j)(1)(i) and (ii) of this section; and

(4) Defense services shall be accompanied by documentation (contracts, invoices, shipping bills, or bills of lading) clearly labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section.

(5) The exporter shall incorporate the following statement as an integral part of the bill of lading and the invoice whenever defense articles are to be exported:

''These U.S. Munitions List commodities are authorized by the U.S. Government under the U.S.-UK Defense Trade Cooperation Treaty for export only to United Kingdom for use in approved projects, programs or operations by members of the United Kingdom Community. They may not be retransferred or reexported or used outside of an approved project, program, or operation, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.''

(k) *Intermediate Consignees.* (1) Unclassified exports under this section may only be handled by:

(i) U.S. intermediate consignees who are:

(A) Exporters registered with the Directorate of Defense Trade Controls and eligible;

(B) Licensed customs brokers who are subject to background investigation and have passed a comprehensive examination administered by U.S. Customs and Border Protection; or

(C) Commercial air freight and surface shipment carriers, freight forwarders, or other parties not exempt from registration under § 129.3(b)(3) of this subchapter, that are identified at the time of export as being on the U.S. Department of Defense Civil Reserve Air Fleet (CRAF) list of approved air carriers, a link to which is available on the Directorate of Defense Trade Controls 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 Directorate of Defense Trade Controls 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 pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section shall maintain detailed records of their exports, imports, and transfers made by that exporter of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section. Exporters shall also maintain detailed records of any reexports and retransfers approved or otherwise authorized by the Directorate of Defense Trade Controls of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section. These records shall be maintained for a minimum of five years from the date of export, import, transfer, reexport, or retransfer and shall be made available upon request to the Directorate of Defense Trade Controls or a person designated by the Directorate of Defense Trade Controls (e.g. the Diplomatic Security Service) or U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection. Records in an electronic format must be maintained using a process or system capable of reproducing all records on paper. Such records when displayed on a viewer, monitor, or reproduced on paper, must exhibit a high degree of legibility and readability. (For the purpose of this section, ''legible'' and ''legibility'' mean the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. ''Readable'' and ''readability'' means the quality of a group of letters or numerals being recognized as complete words or numbers.) These records shall consist of the following:

(i) Port of entry/exit;

(ii) Date of export/import;

(iii) Method of export/import;

(iv) Commodity code and description of the commodity, including technical data;

(v) Value of export;

(vi) Reference to this section and justification for export under the Treaty;

(vii) End-user/end-use;

(viii) Identification of all U.S. and foreign parties to the transaction;

(ix) How the export was marked;

(x) Security classification of the export;

(xi) All written correspondence with the U.S. Government on the export;

(xii) All information relating to political contributions, fees, or commissions furnished or obtained, offered, solicited, or agreed upon as outlined in paragraph (m) of this section;

(xiii) Purchase order or contract;

(xiv) Technical data actually exported;

(xv) The Internal Transaction Number for the Electronic Export Information filing in the Automated Export System;

(xvi) All shipping documentation (including, but not limited to the airway bill, bill of lading, packing list, delivery verification, and invoice); and

(xvii) Statement of Registration (Form DS–2032).

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

(i) For exports in support of United States and United Kingdom combined military or counter-terrorism operations identify § 126.17(e)(1) (the name or an appropriate description of the operation shall be placed in the appropriate field in the EEI, as well);

(ii) For exports in support of United States and United Kingdom cooperative security and defense research, development, production, and support programs identify § 126.17(e)(2) (the name or an appropriate description of the program shall be placed in the appropriate field in the EEI, as well);

(iii) For exports in support of mutually determined specific security and defense projects where the Government of the United Kingdom is the end-user identify 126.17(e)(3) (the name or an appropriate description of the project shall be placed in the appropriate field in the EEI, as well); or

(iv) For exports that will have a U.S. Government end-use identify 126.17(e)(4) (the U.S. Government contract number or solicitation number (e.g., ''U.S. Government contract number XXXXX'') shall be placed in the appropriate field in the EEI, as well). Such exports must meet the required export documentation and filing guidelines, including for defense services, of §§ 123.22(a), (b)(1), and (b)(2) of this subchapter.

(m) *Fees and Commissions.* All exporters authorized pursuant to paragraph (b)(2) of this section shall,

with respect to each export, transfer, reexport, or retransfer, pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section, submit a statement to the Directorate of Defense Trade Controls containing the information identified in § 130.10 of this subchapter relating to fees, commissions, and political contributions on contracts or other instruments valued in an amount of $500,000 or more.

(n) *Violations and Enforcement.* (1) Exports, transfers, reexports, and retransfers that do not comply with the conditions prescribed in this section will constitute violations of the Arms Export Control Act and this subchapter, and are subject to all relevant criminal, civil, and administrative penalties (*see* § 127.1 of this subchapter), and may also be subject to penalty under other statutes or regulations.

(2) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers may take appropriate action to ensure compliance with this section as to the export or the attempted export of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft.

(3) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers have the authority to investigate, detain, or seize any export or attempted export of defense articles or technical data that does not comply with this section or that is otherwise unlawful.

(4) The Directorate of Defense Trade Controls or a person designated by the Directorate of Defense Trade Controls (*e.g.,* the Diplomatic Security Service) or U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection may require the production of documents and information relating to any actual or attempted export, transfer, reexport, or retransfer pursuant to this section. Any foreign person refusing to provide such records within a reasonable period of time shall be suspended from the United Kingdom Community and ineligible to receive defense articles or defense services pursuant to the exemption under this section or otherwise.

(o) *Procedures for Legislative Notification.* (1) Exports pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section by any person identified in paragraph (b)(2) of this section shall not take place until 30 days after the Directorate of Defense Trade Controls has acknowledged receipt of a Form DS–4048 (entitled, ''Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act'') from the exporter notifying the Department of State if the export involves one or more of the following:

(i) A contract or other instrument for the export of major defense equipment in the amount of $25,000,000 or more, or for defense articles and defense services in the amount of $100,000,000 or more;

(ii) A contract for the export of firearms controlled under Category I of the U.S. Munitions List of the International Traffic in Arms Regulations in an amount of $1,000,000 or more;

(iii) A contract, regardless of value, for the manufacturing abroad of any item of significant military equipment; or

(iv) An amended contract that meets the requirements of paragraphs (o)(1)(i) through (o)(1)(iii) of this section.

(2) The Form DS–4048 required in paragraph (o)(1) of this section shall be accompanied by the following additional information:

(i) The information identified in § 130.10 and § 130.11 of this subchapter;

(ii) A statement regarding whether any offset agreement is final to be entered into in connection with the export and a description of any such offset agreement;

(iii) A copy of the signed contract; and

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

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

■ 24. Supplement No. 1 to Part 126 is added to read as follows:

BILLING CODE 4710–25–P

Supplement No. 1*

USML Category	Exclusion	(CA) §126.5	[Reserved for (AS) §126.16]	(UK) §126.17
I-XXI	Classified defense articles and services. *See* Note 1.	X		X
I-XXI	Defense articles listed in the Missile Technology Control Regime (MTCR) Annex.	X		X
I-XXI	U.S. origin defense articles and services used for marketing purposes and not previously licensed for export in accordance with this subchapter.			X
I-XXI	Defense services for or technical data related to defense articles identified in this supplement as excluded from the Canadian exemption.	X		

I-XXI	Any transaction involving the export of defense articles and services for which congressional notification is required in accordance with §123.15 and §124.11 of this subchapter.	X		
I-XXI	U.S. origin defense articles and services specific to developmental systems that have not obtained written Milestone B approval from the U.S. Department of Defense milestone approval authority, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in paragraphs (e)(1), (2), or (4) of §126.16 or §126.17 of this subchapter and is consistent with other exclusions of this supplement.			X

I-XXI	Nuclear weapons strategic delivery systems and all components, parts, accessories, and attachments specifically designed for such systems and associated equipment.	X		
I-XXI	Defense articles and services specific to the existence or method of compliance with anti-tamper measures made at U.S. Government direction.			X
I-XXI	Defense articles and services specific to reduced observables or counter low observables in any part of the spectrum. *See* Note 2.			X
I-XXI	Defense articles and services specific to sensor fusion beyond that required for display or identification correlation. *See* Note 3.			X
I-XXI	Defense articles and services specific to the automatic target			X

	acquisition or recognition and cueing of multiple autonomous unmanned systems.			
I-XXI	Nuclear power generating equipment or propulsion equipment (e.g., nuclear reactors), specifically designed for military use and components therefore, specifically designed for military use. *See* also §123.20 of this subchapter.			X
I-XXI	Libraries (parametric technical databases) specially designed for military use with equipment controlled on the USML. *See* Note 13.			X
I-XXI	Defense services or technical data specific to applied research as defined in §125.4(c)(3) of this subchapter, design methodology as defined in §125.4(c)(4) of this	X		

	subchapter, engineering analysis as defined in §125.4(c)(5) of this subchapter, or manufacturing know-how as defined in §125.4(c)(6) of this subchapter. *See* Note 12.			
I-XXI	Defense services other than those required to prepare a quote or bid proposal in response to a written request from a Department or Agency of the United States Federal Government or from a Canadian Federal, Provincial, or Territorial Government; or defense services other than those required to produce, design, assemble, maintain or service a defense article for use by a registered U.S. company, or a U.S. Federal Government Program, or for end-use in a Canadian Federal,	X		

	Provincial, or Territorial Government Program. *See* Note 14.			
I	Defense articles and services related to firearms, close assault weapons, and combat shotguns.	X		
II(k)	Software source code related to Categories II(c), II(d), or II(i). *See* Note 4.			X
II(k)	Manufacturing know-how related to Category II(d). *See* Note 5.	X		X
III	Defense articles and services related to ammunition for firearms, close assault weapons, and combat shotguns listed in Category I.	X		
III	Defense articles and services specific to ammunition and fuse setting devices for guns and armament controlled in Category II.			X
III(e)	Manufacturing know-how related	X		X

	to Categories III(d)(1) or III(d)(2) and their specially designed components. *See* Note 5.			
III(e)	Software source code related to Categories III(d)(1) or III(d)(2). *See* Note 4.			X
IV	Defense articles and services specific to man-portable air defense systems (MANPADS). *See* Note 6.	X		X
IV	Defense articles and services specific to rockets, designed or modified for non-military applications that do not have a range of 300 km (i.e., not controlled on the MTCR Annex).			X
IV	Defense articles and services specific to torpedoes.			X
IV	Defense articles and services specific to anti-personnel landmines.	X		X

IV	Defense Articles specific to cluster munitions that are controlled by The Convention on Cluster Munitions of 3 December 2008.	X		X
IV(i)	Software source code related to Categories IV(a), IV(b), IV(c), or IV(g). *See* Note 4.			X
IV(i)	Manufacturing know-how related to Categories IV(a), IV(b), IV(d), or IV(g) and their specially designed components. *See* Note 5.	X		X
V	The following energetic materials and related substances: a. TATB (triaminotrinitrobenzene) (CAS 3058-38-6); b. Explosives controlled in USML Category V(a)(32) or V(a)(33); c. Iron powder (CAS 7439-89-6) with particle size of 3			X

	micrometers or less produced by reduction of iron oxide with hydrogen; d. BOBBA-8 (bis(2-methylaziridinyl)2-(2-hydroxypropanoxy) propylamino phosphine oxide), and other MAPO derivatives; e. N-methyl-p-nitroaniline (CAS 100-15-2); or f. Trinitrophenylmethylnitramine (tetryl) (CAS 479-45-8)			
V(c)(7)	Pyrotechnics and pyrophorics specifically formulated for military purposes to enhance or control radiated energy in any part of the IR spectrum.			X
V(d)(3)	Bis-2, 2-dinitropropylnitrate (BDNPN).			X
VI	Defense articles specific to			X

	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).			
VI	Defense Articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar			X

	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.			
VI	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10.			X
VI(a)	Nuclear powered vessels.	X		X
VI(c)	Defense articles and services specific to submarine combat control systems.			X
VI(d)	Harbor entrance detection devices.			X
VI(e)	Defense articles and services specific to naval nuclear propulsion equipment. *See* Note 7.	X		X

VI(g)	Technical data and defense services for gas turbine engine hot sections related to Category VI(f). *See* Note 8.	X		X
VI(g)	Software source code related to Categories VI(a) or VI(c). *See* Note 4.			X
VII	Defense articles specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (-170°C).			X
VII	Defense articles specific to superconductive electrical equipment (rotating machinery and			X

	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.			
VII	Armored all wheel drive vehicles, other than vehicles specifically designed or modified for military use, fitted with, or designed or modified to be fitted with, a plough			X

	or flail for the purpose of land mine clearance.			
VII(e)	Amphibious vehicles.			X
VII(f)	Technical data and defense services for gas turbine engine hot sections. *See* Note 8.	X		X
VIII	Defense articles specific to cryogenic equipment, and specially designed components and accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (-170°C).			X
VIII	Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or			X

	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.			
VIII(a)	All Category VIII(a) items.	X		
VIII(b)	Defense articles and services specific to gas turbine engine hot section components and digital engine controls. *See* Note 8.			X
VIII(f)	Developmental aircraft, engines and components identified in	X		

	Category VIII(f).			
VIII(g)	Ground Effect Machines (GEMS).			X
VIII(i)	Technical data and defense services for gas turbine engine hot sections related to Category VIII(b). *See* Note 8.	X		X
VIII(i)	Manufacturing know-how related to Categories VIII(a), VIII(b), or VIII(e) and their specially designed components. *See* Note 5.	X		X
VIII(i)	Software source code related to Categories VIII(a) or VIII(e). *See* Note 4.			X
IX	Training or simulation equipment for MANPADS. *See* Note 6.			X
IX(e)	Software source code related to Categories IX(a) or IX(b). *See* Note 4.			X
IX(e)	Software that is both specifically designed or modified for military use and specifically designed or			X

	modified for modeling or simulating military operational scenarios.			
X(e)	Manufacturing know-how related to Categories X(a)(1) or X(a)(2) and their specially designed components. *See* Note 5.	X		X
XI(a)	Defense articles and services specific to countermeasures and counter- countermeasures *See* Note 9.			X
XI	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10.			X
XI(b) XI(c) XI(d)	Defense articles and services specific to communications security (e.g., COMSEC and TEMPEST).			X
XI(d)	Software source code related to			X

	Category XI(a). *See* Note 4.			
XI(d)	Manufacturing know-how related to Categories XI(a)(3) or XI(a)(4) and their specially designed components. *See* Note 5.	X		X
XII	Defense articles and services specific to countermeasures and counter- countermeasures. *See* Note 9.			X
XII(c)	Defense articles and services specific to XII(c) articles, except any 1st- and 2nd-generation image intensification tubes and 1st- and 2nd-generation image intensification night sighting equipment. End items in XII(c) and related technical data limited to basic operations, maintenance, and training information as authorized under the exemption in §125.4(b)(5) of this subchapter	X		

	may be exported directly to a Canadian Government entity (i.e., federal, provincial, territorial, or municipal) consistent with §126.5, other exclusions, and the provisions of this subchapter.			
XII(c)	Technical data or defense services for night vision equipment beyond basic operations, maintenance, and training data. However, the AS and UK Treaty exemptions apply when such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in paragraphs (e)(1), (2), or (4) of §126.16 or §126.17 of this subchapter and is consistent with other exclusions of this supplement.	X		X
XII(f)	Manufacturing know-how related	X		X

	to Category XII(d) and their specially designed components. *See* Note 5.			
XII(f)	Software source code related to Categories XII(a), XII(b), XII(c), or XII(d). *See* Note 4.			X
XIII(b)	Defense articles and services specific to Military Information Security Assurance Systems.			X
XIII(c)	Defense articles and services specific to armored plate manufactured to comply with a military standard or specification or suitable for military use. *See* Note 11.			X
XIII(d)	Carbon/carbon billets and preforms which are reinforced in three or more dimensional planes, specifically designed, developed, modified, configured or adapted for defense articles.			X

XIII(f)	Structural materials.			X
XIII(g)	Defense articles and services related to concealment and deception equipment and materials.			X
XIII(h)	Energy conversion devices other than fuel cells.			X
XIII(i)	Metal embrittling agents.			X
XIII(j)	Defense articles and services related to hardware associated with the measurement or modification of system signatures for detection of defense articles as described in Note 2.			X
XIII(k)	Defense articles and services related to tooling and equipment specifically designed or modified for the production of defense articles identified in Category XIII(b).			X
XIII(l)	Software source code related to Category XIII(a). *See* Note 4.			X

XIV	Defense articles and services related to toxicological agents, including chemical agents, biological agents, and associated equipment.			X
XIV(a) XIV(b) XIV(d) XIV(e) XIV(f)	Chemical agents listed in Category XIV(a), (d) and (e), biological agents and biologically derived substances in Category XIV(b), and equipment listed in Category XIV(f) for dissemination of the chemical agents and biological agents listed in Category XIV(a), (b), (d), and (e).	X		
XV(a)	Defense articles and services specific to spacecraft/satellites. However, the Canadian exemption may be used for commercial communications satellites that have no other type of payload.	X		X
XV(b)	Defense articles and services			X

	specific to ground control stations for spacecraft telemetry, tracking, and control.			
XV(c)	Defense articles and services specific to GPS/PPS security modules.			X
XV(c)	Defense articles controlled in XV(c) except end items for end use by the Federal Government of Canada exported directly or indirectly through a Canadian-registered person.	X		
XV(d)	Defense articles and services specific to radiation-hardened microelectronic circuits.	X		X
XV(e)	Anti-jam systems with the ability to respond to incoming interference by adaptively reducing antenna gain (nulling) in the direction of the interference.	X		
XV(e)	Antennas having any of the	X		

	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).			
XV(e)	Optical intersatellite data links (cross links) and optical ground satellite terminals.	X		
XV(e)	Spaceborne regenerative baseband processing (direct up and down conversion to and from baseband) equipment.	X		
XV(e)	Propulsion systems which permit acceleration of the satellite on-orbit (i.e., after mission orbit injection) at rates greater than 0.1 g.	X		
XV(e)	Attitude control and determination systems designed to provide spacecraft pointing determination and control or payload pointing system control better than 0.02 degrees per axis.	X		
XV(e)	All specifically designed or modified systems, components, parts, accessories, attachments, and	X		

	associated equipment for all Category XV(a) items, except when specifically designed or modified for use in commercial communications satellites.			
XV(e)	Defense articles and services specific to spacecraft and ground control station systems (only for telemetry, tracking and control as controlled in XV(b)), subsystems, components, parts, accessories, attachments, and associated equipment.			X
XV(f)	Technical data and defense services directly related to the other defense articles excluded from the exemptions for Category XV.	X		X
XVI	Defense articles and services specific to design and testing of nuclear weapons.	X		X

XVI(c)	Nuclear radiation measuring devices manufactured to military specifications.	X		
XVI(e)	Software source code related to Category XVI(c). *See* Note 4.			X
XVII	Classified articles and defense services not elsewhere enumerated. *See* Note 1.	X		X
XVIII	Defense articles and services specific to directed energy weapon systems.			X
XX	Defense articles and services related to submersible vessels, oceanographic, and associated equipment.	X		X
XXI	Miscellaneous defense articles and services.	X		X
Note 1: Classified defense articles and services are not eligible for export under the Canadian exemptions. U.S. origin defense articles and services controlled in Category XVII are not eligible for export under the UK Treaty exemption. U.S.				

origin classified defense articles and services are not eligible for export under either the UK or AS Treaty exemptions except when being released pursuant to a U.S. Department of Defense written request, directive, or contract that provides for the export of the defense article or service.
Note 2: The phrase "any part of the spectrum" includes radio frequency (RF), infrared (IR), electro-optical, visual, ultraviolet (UV), acoustic, and magnetic. Defense articles related to reduced observables or counter reduced observables are defined as: 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 related to sensor fusion beyond that required for display or identification correlation is defined as techniques designed to automatically combine information from two or more sensors/sources for the purpose of target identification, tracking, designation, or passing of data in support of surveillance or weapons engagement. Sensor fusion involves sensors such as acoustic, infrared, electro optical, frequency, etc. Display or identification correlation refers to the combination of target detections from multiple sources for assignment of common target track designation.
Note 4: Software source code beyond that source code required for basic operation, maintenance, and training for programs, systems, and/or subsystems is not eligible for use of the UK or AS Treaty Exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in paragraphs (e)(1), (2), or (4) of §126.16 or §126.17 of this subchapter and is consistent with other exclusions of this supplement.
Note 5: Manufacturing know-how, as defined in §125.4(c)(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 paragraphs (e)(1), (2), or (4) of §126.16 or §126.17 of this subchapter and is consistent with other exclusions of this supplement.

Note 6: Defense Articles specific to Man Portable Air Defense Systems (MANPADS) includes missiles which can be used without modification in other applications. It also includes production and test equipment and components specifically designed or modified for MANPAD systems, as well as training equipment specifically designed or modified for MANPAD systems.
Note 7: Naval nuclear propulsion plants includes all of USML Category VI(e). Naval nuclear propulsion information is technical data that concerns the design, arrangement, development, manufacture, testing, operation, administration, training, maintenance, and repair of the propulsion plants of naval nuclear-powered ships and prototypes, including the associated shipboard and shore-based nuclear support facilities. Examples of defense articles covered by this exclusion include nuclear propulsion plants and nuclear submarine technologies or systems; nuclear powered vessels (*see* USML Categories VI and XX).
Note 8: Examples of gas turbine engine hot section exempted defense article components and technology are combustion chambers/liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; advanced cooled augmenters; and advanced cooled nozzles. Examples of gas turbine engine hot section developmental technologies are Integrated High Performance Turbine Engine Technology (IHPTET), Versatile, Affordable Advanced Turbine Engine (VAATE), Ultra-Efficient Engine Technology (UEET).

Note 9: Examples of countermeasures and counter-countermeasures related to defense articles not exportable under the AS or UK Treaty exemptions are:

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 which define the status, group (greater than 2) behaviors, and responses to detection stimuli by autonomous, underwater vehicles; and low frequency, broad-band "acoustic color," active acoustic "fingerprint" sensing for the purpose of long range, single pass identification of ocean bottom objects, buried or otherwise. (Controlled under Category XI(a), (1) and (2) and in (b), (c), and (d)).
Note 11: The defense articles include 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 Treaties.
Note 12: Defense services or technical data specific to applied research (§125.4(c)(3)), design methodology (§125.4(c)(4)), engineering analysis (§125.4(c)(5)), or manufacturing know-how (§125.4(c)(6)) are not eligible for export under the Canadian exemptions. However, this exclusion does not include defense services or technical data specific to build-to-print as defined in §125.4(c)(1), build/design-to-specification as defined in §125.4(c)(2), or basic research as defined in §125.4(c)(3), or maintenance (i.e., inspection, testing,

calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items parts or components, but excluding any modification, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item) of non-excluded defense articles which may be exported subject to other exclusions or terms of the Canadian exemptions.
Note 13: The term 'libraries' (parametric technical databases) means a collection of technical information of a military nature, reference to which may enhance the performance of military equipment or systems.
Note 14: In order to utilize the authorized defense services under the Canadian exemption, the following must be complied with: (1) The Canadian contractor and subcontractor must certify, in writing, to the U.S. exporter that the technical data and defense services being exported will be used only for an activity identified in Supplement No. 1 and in accordance with 22 CFR 126.5; and (2) A written arrangement between the U.S. exporter and the Canadian recipient must: a. 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;

b. Prohibit the disclosure of the technical data to any other contractor or subcontractor who is not a Canadian-registered person;

c. Provide that any subcontract contain all the limitations of §126.5;

d. 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

e. 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."

(3) The U.S. exporter must provide the Directorate of Defense Trade Controls a semi-annual report of all their on-going activities authorized under §126.5. The report shall include the article(s) being produced; the end-user(s); the end item into which the product is to be incorporated; the intended end-use of the product; the name and address of all the Canadian contractors and subcontractors.

Note: An "X" in the chart indicates that the item is excluded from use under the exemption 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.

BILLING CODE 4710–25–C

PART 127—VIOLATIONS AND PENALTIES

■ 25. The authority citation for part 127 is revised to read to as follows:

Authority: Secs. 2, 38, and 42, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; Pub. L. 111–266.

■ 26. Section 127.1 is revised to read as follows:

§ 127.1 Violations.

(a) Without first obtaining the required license or other written approval from the Directorate of Defense Trade Controls, it is unlawful:

(1) To export or attempt to export from the United States any defense article or technical data or to furnish or attempt to furnish any defense service for which a license or written approval is required by this subchapter;

(2) To reexport or retransfer or attempt to reexport or retransfer any defense article, technical data, or defense service from one foreign end-user, end-use, or destination to another foreign end-user, end-use, or destination for which a license or written approval is required by this subchapter, including, as specified in § 126.16(h) and § 126.17(h) of this subchapter, any defense article, technical data, or defense service that was exported from the United States without a license pursuant to any exemption under this subchapter;

(3) To import or attempt to import any defense article whenever a license is required by this subchapter; or

(4) To conspire to export, import, reexport, retransfer, furnish or cause to be exported, imported, reexported, retransferred or furnished, any defense article, technical data, or defense service for which a license or written approval is required by this subchapter.

(b) It is unlawful:

(1) To violate any of the terms or conditions of a license or approval granted pursuant to this subchapter, any exemption contained in this subchapter, or any rule or regulation contained in this subchapter;

(2) To engage in the business of brokering activities for which registration and a license or written approval is required by this subchapter without first registering or obtaining the required license or written approval from the Directorate of Defense Trade Controls. For the purposes of this subchapter, engaging in the business of brokering activities requires only one occasion of engaging in an activity as reflected in § 129.2(b) of this subchapter.

(3) To engage in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services without complying with the registration requirements. For the purposes of this subchapter, engaging in the business of manufacturing or exporting defense articles or furnishing defense services requires only one occasion of manufacturing or exporting a defense article or furnishing a defense service.

(c) Any person who is granted a license or other approval or who acts pursuant to an exemption under this subchapter is responsible for the acts of employees, agents, and all authorized persons to whom possession of the defense article or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article or technical data abroad. All persons abroad subject to U.S. jurisdiction who obtain temporary or permanent custody of a defense article exported from the United States or produced under an agreement described in part 124 of this subchapter, and irrespective of the number of intermediate transfers, are bound by the regulations of this subchapter in the same manner and to the same extent as the original owner or transferor.

(d) A person with knowledge that another person is then ineligible

pursuant to §§ 120.1(c) or 126.7 of this subchapter may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to, and written authorization from, the Directorate of Defense Trade Controls:

(1) Apply for, obtain, or use any export control document as defined in § 127.2(b) of this subchapter for such ineligible person; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any transaction which may involve any defense article or the furnishing of any defense service for which a license or approval is required by this subchapter or an exemption is available under this subchapter for export, where such ineligible person may obtain any benefit therefrom or have any direct or indirect interest therein.

(e) No person may knowingly or willfully cause, or aid, abet, counsel, demand, induce, procure, or permit the commission of, any act prohibited by, or the omission of any act required by, 22 U.S.C. 2778 and 2779, or any regulation, license, approval, or order issued thereunder.

■ 27. Section 127.2 is amended by revising paragraphs (a), (b) introductory text, (b)(1), (b)(2), and adding (b)(14), to read as follows:

§ 127.2 Misrepresentation and omission of facts.

(a) It is unlawful to use or attempt to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting, transferring, reexporting, retransferring, obtaining, or furnishing any defense article, technical data, or defense service. Any false statement, misrepresentation, or omission of material fact in an export or temporary import control document will be considered as made in a matter within the jurisdiction of a department or agency of the United States for the purposes of 18 U.S.C. 1001, 22 U.S.C. 2778, and 22 U.S.C. 2779.

(b) For the purpose of this subchapter, *export or temporary import control documents* include the following:

(1) An application for a permanent export, reexport, retransfer, or a temporary import license and supporting documents.

(2) Electronic Export Information filing.

* * * * *

(14) Any other shipping document that has information related to the export of the defense article or defense service.

■ 28. Section 127.3 is revised to read as follows:

§ 127.3 Penalties for violations.

Any person who willfully:

(a) Violates any provision of § 38 or § 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or any rule or regulation issued under either § 38 or § 39 of the Act, or any undertaking specifically required by part 124 of this subchapter; or

(b) In a registration, license application, or report required by § 38 or § 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or by any rule or regulation issued under either section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be subject to a fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).

■ 29. Section 127.4 is amended by revising paragraphs (a) and (c), and adding paragraph (d), to read as follows:

§ 127.4 Authority of U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers.

(a) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers may take appropriate action to ensure observance of this subchapter as to the export or the attempted export or the temporary import of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft. This applies whether the export is authorized by license or by written approval issued under this subchapter or by exemption.

* * * * *

(c) Upon the presentation to a U.S. Customs and Border Protection Officer of a license or written approval, or claim of an exemption, authorizing the export of any defense article, the customs officer may require the production of other relevant documents and information relating to the final export. This includes an invoice, order, packing list, shipping document, correspondence, instructions, and the documents otherwise required by the U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement.

(d) If an exemption under this subchapter is used or claimed to export, transfer, reexport or retransfer, furnish, or obtain a defense article, technical data, or defense service, law enforcement officers may rely upon the authorities noted, additional authority identified in the language of the exemption, and any other lawful means or authorities to investigate such a matter.

■ 30. Section 127.7 is amended by revising paragraph (a) to read as follows:

§ 127.7 Debarment.

(a) *Debarment.* In implementing § 38 of the Arms Export Control Act, the Assistant Secretary of State for Political-Military Affairs may prohibit any person from participating directly or indirectly in the export, reexport and retransfer of defense articles, including technical data, or in the furnishing of defense services for any of the reasons listed below and publish notice of such action in the **Federal Register**. Any such prohibition is referred to as a debarment for purposes of this subchapter. The Assistant Secretary of State for Political-Military Affairs shall determine the appropriate period of time for debarment, which shall generally be for a period of three years. However, reinstatement is not automatic and in all cases the debarred person must submit a request for reinstatement and be approved for reinstatement before engaging in any export or brokering activities subject to the Arms Export Control Act or this subchapter.

* * * * *

■ 31. Section 127.10 is amended by revising paragraph (a) to read as follows:

§ 127.10 Civil penalty.

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

* * * * *

■ 32. Section 127.12 is amended by adding paragraph (b)(5), and revising paragraph (d), to read as follows:

§ 127.12 Voluntary disclosures.

* * * * *

(b) * * *

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

country, or any person acting on its behalf.

* * * * *

(d) *Documentation.* The written disclosure should be accompanied by copies of substantiating documents. Where appropriate, the documentation should include, but not be limited to:

(1) Licensing documents (e.g., license applications, export licenses, and end-user statements), exemption citation, or other authorization description, if any;

(2) Shipping documents (e.g., Electronic Export Information filing, including the Internal Transaction Number, air waybills, and bills of laden, invoices, and any other associated documents); and

(3) Any other relevant documents must be retained by the person making the disclosure until the Directorate of Defense Trade Controls requests them or until a final decision on the disclosed information has been made.

* * * * *

PART 129—REGISTRATION AND LICENSING OF BROKERS

■ 33. The authority citation for part 129 continues to read as follows:

Authority: Sec. 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778).

■ 34. Section 129.6 is amended by revising paragraph (b)(2) to read as follows:

§ 129.6 Requirements for license/approval.

* * * * *

(b) * * *

(2) Brokering activities that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, any member country of that Organization, Australia, Israel, Japan, New Zealand, or the Republic of Korea, except in the case of the defense articles or defense services specified in § 129.7(a) of this subchapter, for which prior approval is always required.

■ 35. Section 129.7 is amended by revising paragraphs (a)(1)(vii) and (a)(2) to read as follows:

§ 129.7 Prior approval (license).

(a) * * *

(1) * * *

(vii) Foreign defense articles or defense services (other than those that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, any member country of that Organization, Australia, Israel, Japan, New Zealand, or the Republic of Korea (*see* §§ 129.6(b)(2) and 129.7(a)).

(2) Brokering activities involving defense articles or defense services covered by, or of a nature described by part 121, of this subchapter, in addition to those specified in § 129.7(a), that are designated as significant military equipment under this subchapter, for or from any country not a member of the North Atlantic Treaty Organization, Australia, Israel, Japan, New Zealand, or the Republic of Korea whenever any of the following factors are present:

* * * * *

Dated: March 16, 2012.

Rose Gottemoeller,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2012–6825 Filed 3–20–12; 8:45 am]

BILLING CODE 4710–25–P