

the requirements of paragraph (o)(1) of this section.

[77 FR 16601, Mar. 21, 2012, as amended at 79 FR 8085, Feb. 11, 2014; 79 FR 21616, Apr. 17, 2014; 81 FR 62008, Sept. 8, 2016; 82 FR 19, Jan. 3, 2017]

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

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

(b) The provisions of § 127.1(b) are applicable to any transfer under this section. As a condition of transferring to foreign person employees described in paragraph (a) of this section any defense article under this provision, any foreign business entity, foreign governmental entity, or international organization, as a “foreign person” within the meaning of § 120.16, that receives a defense article, must have effective procedures to prevent diversion to destinations, entities, or for purposes other than those authorized by the applicable export license or other author-

ization (e.g., written approval or exemption) in order to comply with the applicable provisions of the Arms Export Control Act and the ITAR.

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

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

(2) The end-user or consignee to have in place a process to screen its employees and to have executed a Non-Disclosure Agreement that provides assurances that the employee will not transfer any defense articles to persons or entities unless specifically authorized by the consignee or end-user. The end-user or consignee must screen its employees for substantive contacts with restricted or prohibited countries listed in § 126.1. Substantive contacts include regular travel to such countries, recent or continuing contact with agents, brokers, and nationals of such countries, continued demonstrated allegiance to such countries, maintenance of business relationships with persons from such countries, maintenance of a residence in such countries, receiving salary or other continuing monetary compensation from such countries, or acts otherwise indicating a risk of diversion. Although nationality does not, in and of itself, prohibit access to defense articles, an employee who has substantive contacts with persons from countries listed in § 126.1(d)(1) shall be presumed to raise a risk of diversion, unless DDTC determines otherwise. End-users and consignees must maintain a technology security/clearance plan that includes procedures for screening employees for such substantive contacts and maintain records of such screening for five years. The technology security/clearance plan and screening records shall be made available to DDTC or its agents for civil and criminal law enforcement purposes upon request.

(d) Notwithstanding any other provisions of this subchapter, no approval is needed from the Directorate of Defense Trade Controls (DDTC) for the reexport of unclassified defense articles or defense services to individuals who are dual national or third-country national

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employees of a foreign business entity, foreign governmental entity, or international organization, that is an authorized end-user, foreign signatory, or consignee (including approved sub-licensees) for those defense articles or defense services, when such individuals are:

(1) Regular employees of the foreign business entity, foreign governmental entity, or international organization;

(2) Nationals exclusively of countries that are members of NATO, the European Union, Australia, Japan, New Zealand, or Switzerland;

(3) Within the physical territories of the countries listed in paragraph (d)(2) of this section or the United States during the reexport;

(4) Signatory to a Non-Disclosure Agreement, unless their employer is a signatory or sublicensee to an agreement under §124.1 authorizing those defense articles or defense services; and

(5) Not the recipient of any permanent transfer of hardware.

[76 FR 28177, May 16, 2011, as amended at 81 FR 35617, June 3, 2016; 81 FR 62008, Sept. 8, 2016; 81 FR 66807, Sept. 29, 2016]

SUPPLEMENT NO. 1 TO PART 126

[Supplement No. 1—"An "X" in the chart indicates that the item is excluded from use under the exemption referenced in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
I-XXI	Classified defense articles and services. See Note 1	X	X	X
I-XXI	Defense articles listed in the Missile Technology Control Regime (MTCR) Annex.	X	X	X
I-XXI	U.S. origin defense articles and services used for marketing purposes and not previously licensed for export in accordance with this subchapter.		X	X
I-XXI	Defense services for or technical data related to defense articles identified in this supplement as excluded from the Canadian exemption.	X		
I-XXI	Any transaction involving the export of defense articles and services for which congressional notification is required in accordance with §123.15 and §124.11 of this subchapter. See Note 17.	X		
I-XXI	U.S. origin defense articles and services specific to developmental systems that have not obtained written Milestone B approval from the U.S. Department of Defense milestone approval authority, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.		X	X
I-XXI	Nuclear weapons strategic delivery systems and all components, parts, accessories, and attachments specifically designed for such systems and associated equipment.	X		
I-XXI	Defense articles and services specific to the existence or method of compliance with anti-tamper measures, where such measures are readily identifiable, made at originating Government direction.		X	X
I-XXI	Defense articles and services specific to reduced observables or counter low observables in any part of the spectrum. See Note 2.		X	X
I-XXI	Defense articles and services specific to sensor fusion beyond that required for display or identification correlation. See Note 3.		X	X
I-XXI	Defense articles and services specific to the automatic target acquisition or recognition and cueing of multiple autonomous unmanned systems.		X	X
I-XXI	Nuclear power generating equipment or propulsion equipment (e.g., nuclear reactors), specifically designed for military use and components therefor, specifically designed for military use. See also § 123.20 of this subchapter.			X
I-XXI	Libraries (parametric technical databases) specially designed for military use with equipment controlled on the USML. See Note 13.			X

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
I–XXI	Defense services or technical data specific to applied research as defined in § 125.4(c)(3) of this subchapter, design methodology as defined in § 125.4(c)(4) of this subchapter, engineering analysis as defined in § 125.4(c)(5) of this subchapter, or manufacturing know-how as defined in § 125.4(c)(6) of this subchapter. <i>See</i> Note 12.	X		
I–XXI	Defense services other than those required to prepare a quote or bid proposal in response to a written request from a department or agency of the United States Federal Government or from a Canadian Federal, Provincial, or Territorial Government; or defense services other than those required to produce, design, assemble, maintain or service a defense article for use by a registered U.S. company, or a U.S. Federal Government Program, or for end-use in a Canadian Federal, Provincial, or Territorial Government Program. <i>See</i> Note 14.	X		
I	Firearms, close assault weapons, and combat shotguns	X		
II(k)	Software source code related to USML Category II(c), II(d), or II(j). <i>See</i> Note 4.		X	X
II(k)	Manufacturing know-how related to USML Category II(d). <i>See</i> Note 5.	X	X	X
III	Ammunition for firearms, close assault weapons, and combat shotguns listed in USML Category I.	X		
III	Defense articles and services specific to ammunition and fuse setting devices for guns and armament controlled in USML Category II.			X
III(e)	Manufacturing know-how related to USML Category III(d)(1) or III(d)(2) and their specially designed components. <i>See</i> Note 5.	X	X	X
III(e)	Software source code related to USML Category III(d)(1) or III(d)(2). <i>See</i> Note 4.		X	X
IV	Defense articles and services specific to man-portable air defense systems (MANPADS). <i>See</i> Note 6.	X	X	X
IV	Defense articles and services specific to rockets, designed or modified for non-military applications that do not have a range of 300 km (<i>i.e.</i> , not controlled on the MTCR Annex).			X
IV	Defense articles and services specific to torpedoes		X	X
IV	Defense articles and services specific to anti-personnel landmines. <i>See</i> Note 15.	X	X	X
IV	Defense articles and services specific to cluster munitions	X	X	X
IV(i)	Software source code related to USML Category IV(a), IV(b), IV(c), or IV(g). <i>See</i> Note 4.		X	X
IV(i)	Manufacturing know-how related to USML Category IV(a), IV(b), IV(d), or IV(g) and their specially designed components. <i>See</i> Note 5.	X	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)(38); c. Iron powder (CAS 7439–89–6) with particle size of 3 micrometers or less produced by reduction of iron oxide with hydrogen; d. BOBBA–8 (bis(2-methylaziridiny)2-(2-hydroxypropanoxy)propylamino phosphine oxide), and other MAPO derivatives; e. N-methyl-p-nitroaniline (CAS 100–15–2); or f. Trinitrophenylmethylnitramine (tetryl) (CAS 479–45–8).			X
V(a)(13)	ANF or ANAZF as described in USML Category V(a)(13)(iii) and (iv).			X
V(a)(23)	Difluorinated derivative of RDX as described in USML Category V(a)(23)(iii).			X
V(c)(7)	Pyrotechnics and pyrophorics specifically formulated for military purposes to enhance or control radiated energy in any part of the IR spectrum.			X
V(d)(3)	Bis-2, 2-dinitropropylnitrate (BDNPN)			X

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
V(i)	Developmental explosives, propellants, pyrotechnics, fuels, oxidizers, binders, additives, or precursors therefor, funded by the Department of Defense via contract or other funding authorization in accordance with notes 1 to 3 for USML Category V(i). This exclusion does not apply if such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.		X	X
VI	Defense articles and services specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (-170 °C).			X
VI	Defense articles and services specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators which have single-pole normal metal armatures that rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VI	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. See Note 10.		X	X
VI(a)	Nuclear powered vessels.	X	X	X
VI(e)	Defense articles and services specific to naval nuclear propulsion equipment. See Note 7.	X	X	X
VI(g)	Software source code related to USML Category VI(a) or VI(c). See Note 4.		X	X
VII	Defense articles and services specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (-170 °C).			X
VII	Defense articles and services specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators which have single-pole normal metal armatures that rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VIII	Defense articles and services specific to cryogenic equipment, and specially designed components and accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (-170 °C).			X
VIII	Defense articles and services specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators which have single-pole normal metal armatures that rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
VIII(a)	All USML Category VIII(a) items.	X		
VIII(f)	Developmental aircraft parts, components, accessories, and attachments identified in USML Category VIII(f).	X		
VIII(i)	Manufacturing know-how related to USML Category VIII(a) or VIII(e), and specially designed parts or components therefor. See Note 5.	X	X	X
VIII(i)	Software source code related to USML Category VIII(a) or VIII(e). See Note 4.		X	X
IX	Training or simulation equipment for Man Portable Air Defense Systems (MANPADS). See Note 6.		X	X
IX(e)	Software source code related to USML Category IX(a) or IX(b). See Note 4.		X	X
IX(e)	Software that is both specifically designed or modified for military use and specifically designed or modified for modeling or simulating military operational scenarios.			X
X(e)	Manufacturing know-how related to USML Category X(a)(1) or X(a)(2), and specially designed components therefor. See Note 5.	X	X	X
XI(a) XI(c), XI(d)	Defense articles and services specific to countermeasures and counter- countermeasures See Note 9.		X	X
XI(a)	High Frequency and Phased Array Microwave Radar systems, with capabilities such as search, acquisition, tracking, moving target indication, and imaging radar systems. See Note 16.		X	
XI(a), XI(c), XI(d)	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. See Note 10.		X	X
XI(a), XI(c), XI(d)	Defense articles and services specific to USML Category XI(b) (e.g., communications security (COMSEC) and TEMPEST).		X	X
XI(d)	Software source code related to USML Category XI(a). See Note 4.		X	X
XII(d)	Manufacturing know-how related to USML Category XI(a)(3) or XI(a)(4), and specially designed components therefor. See Note 5.	X	X	X
XII	Defense articles and services specific to countermeasures and counter- countermeasures. See Note 9.		X	X
XII	Defense articles and services specific to USML Category XII(c) articles, except any 1st- and 2nd-generation image intensification tubes and 1st- and 2nd-generation image intensification night sighting equipment. End-items in USML Category XII(c) and related technical data limited to basic operations, maintenance, and training information as authorized under the exemption in § 125.4(b)(5) of this subchapter may be exported directly to a Canadian Government entity (i.e., federal, provincial, territorial, or municipal) consistent with § 126.5, other exclusions, and the provisions of this subchapter.	X		
XII	Technical data or defense services for night vision equipment beyond basic operations, maintenance, and training data. However, the AS and UK Treaty exemptions apply when such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.	X	X	X
XII(f)	Manufacturing know-how related to USML Category XII(d) and specially designed components therefor. See Note 5.	X	X	X
XII(f)	Software source code related to USML Category XII(a), XII(b), XII(c), or XII(d). See Note 4.		X	X
XIII(b)	Defense articles and services specific to USML Category XIII(b) (Military Information Security Assurance Systems, cryptographic devices, software, and components).		X	X
XIII(d)	Carbon/carbon billets and preforms which are reinforced in three or more dimensional planes, specifically designed, developed, modified, configured or adapted for defense articles.			X

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
XIII(e)	Defense articles and services specific to armored plate manufactured to comply with a military standard or specification or suitable for military use. <i>See</i> Note 11.			X
XIII(g)	Defense articles and services related to concealment and deception equipment and materials.			X
XIII(h)	Energy conversion devices other than fuel cells			X
XIII(j)	Defense articles and services related to hardware associated with the measurement or modification of system signatures for detection of defense articles as described in Note 2.		X	X
XIII(l)	Software source code related to USML Category XIII(a). <i>See</i> Note 4.		X	X
XIV	Defense articles and services related to toxicological agents, including chemical agents, biological agents, and associated equipment.		X	X
XIV(a), XIV(b), XIV(d), XIV(e), XIV(f)	Chemical agents listed in USML Category XIV(a), (d) and (e), biological agents and biologically derived substances in USML Category XIV(b), and equipment listed in USML Category XIV(f) for dissemination of the chemical agents and biological agents listed in USML Category XIV(a), (b), (d), and (e).	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	X
XV(b)	Defense articles and services specific to ground control stations for spacecraft telemetry, tracking, and control. Defense articles and services are not excluded under this entry if they do not control the spacecraft. Receivers for receiving satellite transmissions are also not excluded under this entry.		X	X
XV(c)	Defense articles and services specific to GPS/PPS security modules.		X	X
XV(c)	Defense articles controlled in USML Category XV(c) except end-items for end-use by the Federal Government of Canada exported directly or indirectly through a Canadian-registered person.	X		
XV(e)	Anti-jam systems with the ability to respond to incoming interference by adaptively reducing antenna gain (nulling) in the direction of the interference.	X		
XV(e)(1)	Antennas having any of the following: a. Aperture (overall dimension of the radiating portions of the antenna) greater than 30 feet; b. All sidelobes less than or equal to –35 dB relative to the peak of the main beam; or c. Designed, modified, or configured to provide coverage area on the surface of the earth less than 200 nautical miles in diameter, where “coverage area” is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam).	X		
XV(e)(12)	Propulsion systems which permit acceleration of the satellite on-orbit (<i>i.e.</i> , after mission orbit injection) at rates greater than 0.1 g.	X		
XV(e)(10)	Attitude determination and control systems designed to provide spacecraft pointing determination and control or payload pointing system control better than 0.02 degrees per axis.	X		
XV(e)	All parts, components, accessories, attachments, equipment, or systems for USML Category XV(a) items, except when specially designed for use in commercial communications satellites.	X		
XV(e)	Defense articles and services specific to spacecraft, ground control station systems (only for spacecraft control as controlled in USML Category XV(b)), subsystems, components, parts, accessories, attachments, and associated equipment controlled in Category XV.		X	X

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
XV(f)	Technical data and defense services directly related to the other defense articles excluded from the exemptions for USML Category XV.	X	X	X
XVI	Defense articles and services specific to design and testing of nuclear weapons.	X	X	X
XVII	Classified articles, and technical data and defense services relating thereto, not elsewhere enumerated. See Note 1.	X	X	X
XVIII	Defense articles and services specific to directed energy weapon systems.		X	X
XIX(e), XIX(f)(1), XIX(f)(2), XIX(g).	Defense articles and services specific to gas turbine engine hot section components and to Full Authority Digital Engine Control Systems (FADEC) or Digital Electronic Engine Controls (DEEC). See Note 8.		X	X
XIX(g)	Technical data and defense services for gas turbine engine hot sections. (This does not include hardware). See Note 8.	X	X	X
XX	Defense articles and services related to submersible vessels, oceanographic, and associated equipment.	X	X	X
XX	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. See Note 10.		X	X
XX	Defense articles specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (–170 °C).			X
XX	Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
XX(a)	Nuclear powered vessels.	X	X	X
XX(b)	Defense articles and services specific to naval nuclear propulsion equipment. See Note 7.	X	X	X
XX(c)	Defense articles and services specific to submarine combat control systems.		X	X
XX(d)	Software source code related to USML Category XX(a). See Note 4.		X	X
XXI	Articles, and technical data and defense services relating thereto, not otherwise enumerated on the USML, but placed in this category by the Director, Office of Defense Trade Controls Policy.	X	X	X

NOTE 1: Classified defense articles and services are not eligible for export under the Canadian exemptions. U.S. origin articles, technical data, and services controlled in USML Category XVII are not eligible for export under the UK Treaty exemption. U.S. origin classified defense articles and services are not eligible for export under either the UK or AS Treaty exemptions except when being released pursuant to a U.S. Department of Defense written request, directive, or contract that provides for the export of the defense article or service.

NOTE 2: The phrase “any part of the spectrum” includes radio frequency (RF), infrared (IR), electro-optical, visual, ultraviolet (UV), acoustic, and magnetic. Defense articles related to reduced observables or counter reduced observables are defined as:

(a) Signature reduction (radio frequency (RF), infrared (IR), Electro-Optical, visual, ultraviolet (UV), acoustic, magnetic, RF emissions) of defense platforms, including systems, subsystems, components, materials (including dual-purpose materials used for Electromagnetic Interference (EM) reduction), technologies, and signature prediction, test and measurement equipment and software, and material transmissivity/reflectivity prediction codes and optimization software.

(b) Electronically scanned array radar, high power radars, radar processing algorithms, periscope-mounted radar systems (PATRIOT), LADAR, multistatic and IR focal plane array-based sensors, to include systems, subsystems, components, materials, and technologies.

NOTE 3: Defense articles and services related to sensor fusion beyond that required for display or identification correlation is defined as techniques designed to automatically combine information from two or more sensors/sources for the purpose of target identification, tracking, designation, or passing of data in support of surveillance or weapons engagement. Sensor fusion involves sensors such as acoustic, infrared, electro optical, frequency, etc. Display or identification correlation refers to the combination of target detections from multiple sources for assignment of common target track designation.

NOTE 4: Software source code beyond that source code required for basic operation, maintenance, and training for programs, systems, and/or subsystems is not eligible for use of the UK or AS Treaty exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.

NOTE 5: Manufacturing know-how, as defined in § 125.4(c)(6) of this subchapter, is not eligible for use of the UK or AS Treaty exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.

NOTE 6: Defense articles and services specific to Man Portable Air Defense Systems (MANPADS) includes missiles that can be used without modification in other applications. It also includes production and test equipment and components specifically designed or modified for MANPAD systems, as well as training equipment specifically designed or modified for MANPAD systems.

NOTE 7: Naval nuclear propulsion plants includes all of USML Category VI(e). Naval nuclear propulsion information consists of technical data that concern the design, arrangement, development, manufacture, testing, operation, administration, training, maintenance, and repair of the propulsion plants of naval nuclear-powered ships and prototypes, including the associated ship-board and shore-based nuclear support facilities. Examples of defense articles covered by this exclusion include nuclear propulsion plants and nuclear submarine technologies or systems; nuclear powered vessels (see USML Categories VI and XX).

NOTE 8: A complete gas turbine engine with embedded hot section components or digital engine controls is eligible for export or transfer under the Treaties. Technical data, other than those data required for routine external maintenance and operation, related to the hot section is not eligible for export under the Canadian exemption. Technical data, other than those data required for routine external maintenance and operation, related to the hot section or digital engine controls, as well as individual hot section parts or components are not eligible for the Treaty exemption whether shipped separately or accompanying a complete engine. Gas turbine engine hot section exempted defense article components and technology are combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles. Examples of gas turbine engine hot section developmental technologies are Integrated High Performance Turbine Engine Technology (IHPTET), Versatile, Affordable Advanced Turbine Engine (VAATE), and Ultra-Efficient Engine Technology (UEET), which are also excluded from export under the exemptions.

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

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

NOTE 10: Examples of defense articles covered by this exclusion include underwater acoustic vector sensors; acoustic reduction; off-board, underwater, active and passive sensing, propeller/propulsor technologies; fixed mobile/floating/powered detection systems which include in-buoy signal processing for target detection and classification; autonomous underwater vehicles capable of long endurance in ocean environments (manned submarines excluded); automated control algorithms embedded in on-board autonomous platforms which enable (a) group behaviors for target detection and classification, (b) adaptation to the environment or tactical situation for enhancing target detection and classification; "intelligent autonomy" algorithms that define the status, group (greater than 2) behaviors, and responses to detection stimuli by autonomous, underwater vehicles; and low frequency, broad band "acoustic color," active acoustic "fingerprint" sensing for the purpose of long range, single pass identification of ocean bottom objects, buried or otherwise (controlled under Category USML XI(a)(1), (a)(2), (b), (c), and (d)).

NOTE 11: This exclusion does not apply to the platforms (e.g., vehicles) for which the armored plates are applied. For exclusions related to the platforms, refer to the other exclusions in this list, particularly for the category in which the platform is controlled.

The excluded defense articles include constructions of metallic or non-metallic materials or combinations thereof specially designed to provide protection for military systems. The phrase "suitable for military use" applies to any articles or materials which have been tested to level IIIA or above IAW NJ standard 0108.01 or comparable national standard. This exclusion does not include military helmets, body armor, or other protective garments which may be exported IAW the terms of the AS or UK Treaty.

NOTE 12: Defense services or technical data specific to applied research (§ 125.4(c)(3) of this subchapter), design methodology (§ 125.4(c)(4) of this subchapter), engineering analysis (§ 125.4(c)(5) of this subchapter), or manufacturing know-how (§ 125.4(c)(6) of this subchapter) are not eligible for export under the Canadian exemptions. However, this exclusion does not include defense services or technical data specific to build-to-print as defined in § 125.4(c)(1) of this subchapter, build/design-to-specification as defined in § 125.4(c)(2) of this subchapter, or basic research as defined in § 125.4(c)(3) of this subchapter, or maintenance (*i.e.*, inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items parts or components, but excluding any modification, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item) of non-excluded defense articles which may be exported subject to other exclusions or terms of the Canadian exemptions.

NOTE 13: The term "libraries" (parametric technical databases) means a collection of technical information of a military nature, reference to which may enhance the performance of military equipment or systems.

NOTE 14: In order to utilize the authorized defense services under the Canadian exemption, the following must be complied with:

(a) The Canadian contractor and subcontractor must certify, in writing, to the U.S. exporter that the technical data and defense services being exported will be used only for an activity identified in Supplement No. 1 to part 126 of this subchapter and in accordance with § 126.5 of this subchapter; and

(b) A written arrangement between the U.S. exporter and the Canadian recipient must:

(1) Limit delivery of the defense articles being produced directly to an identified manufacturer in the United States registered in accordance with part 122 of this subchapter, a department or agency of the United States Federal Government; a Canadian-registered person authorized in writing to manufacture defense articles by and for the Government of Canada; a Canadian Federal, Provincial, or Territorial Government;

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

(3) Provide that any subcontract contain all the limitations of § 126.5 of this subchapter;

(4) Require that the Canadian contractor, including subcontractors, destroy or return to the U.S. exporter in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of the contract, unless for use by a Canadian or United States Government entity that requires in writing the technical data be maintained. The U.S. exporter must be provided written certification that the technical data is being retained or destroyed; and

(5) Include a clause requiring that all documentation created from U.S. origin technical data contain the statement that, "This document contains technical data, the use of which is restricted by the U.S. Arms Export Control Act. This data has been provided in accordance with, and is subject to, the limitations specified in § 126.5 of the International Traffic in Arms Regulations (ITAR). By accepting this data, the consignee agrees to honor the requirements of the ITAR."

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

NOTE 15: This exclusion does not apply to demining equipment in support of the clearance of landmines and unexploded ordnance for humanitarian purposes.

As used in this exclusion, “anti-personnel landmine” means any mine placed under, on, or near the ground or other surface area, or delivered by artillery, rocket, mortar, or similar means or dropped from an aircraft and which is designed to be detonated or exploded by the presence, proximity, or contact of a person; any device or material which is designed, constructed, or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act; any manually-emplaced munition or device designed to kill, injure, or damage and which is actuated by remote control or automatically after a lapse of time.

NOTE 16: The radar systems described are controlled in USML Category XI(a)(3)(i) through (v). As used in this entry, the term “systems” includes equipment, devices, software, assemblies, modules, components, practices, processes, methods, approaches, schema, frameworks, and models.

NOTE 17: This exclusion does not apply to the export of defense articles previously notified to Congress pursuant to § 123.15 or § 124.11 of this subchapter. For use of the Australian and UK exemptions for congressional notification, see § 126.16(o) and § 126.17(o).

[79 FR 77885, Dec. 29, 2014]

PART 127—VIOLATIONS AND PENALTIES

Sec.

- 127.1 Violations.
- 127.2 Misrepresentation and omission of facts.
- 127.3 Penalties for violations.
- 127.4 Authority of U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers.
- 127.5 Authority of the Defense Security Service.
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- 127.11 Past violations.
- 127.12 Voluntary disclosures.

AUTHORITY: Sections 2, 38, and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129; Pub. L. 114–74, 129 Stat. 584.

SOURCE: 58 FR 39316, July 22, 1993, unless otherwise noted.

§ 127.1 Violations.

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

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

(2) To reexport or retransfer or attempt to reexport or retransfer any defense article, technical data, or defense service from one foreign end-user, end-use, or destination to another foreign end-user, end-use, or destination for which a license or written approval is required by this subchapter, including, as specified in § 126.16(h) and § 126.17(h)

of this subchapter, any defense article, technical data, or defense service that was exported from the United States without a license pursuant to any exemption under this subchapter;

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

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

(5) To possess or attempt to possess any defense article with intent to export or transfer such defense article in violation of 22 U.S.C. 2778 and 2779, or any regulation, license, approval, or order issued thereunder.

(b) It is unlawful:

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

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

(3) To engage in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services without complying with the registration requirements. For the purposes of this subchapter,