

**PART 126—GENERAL POLICIES AND PROVISIONS**

## Sec.

- 126.1 Prohibited exports, imports, and sales to or from certain countries.
- 126.2 Temporary suspension or modification of this subchapter.
- 126.3 Exceptions.
- 126.4 Transfers by or for the United States Government.
- 126.5 Canadian exemptions.
- 126.6 Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program.
- 126.7 Denial, revocation, suspension, or amendment of licenses and other approvals.
- 126.8 [Reserved]
- 126.9 Advisory opinions and related authorizations.
- 126.10 Disclosure of information.
- 126.11 Relations to other provisions of law.
- 126.12 Continuation in force.
- 126.13 Required information.
- 126.14 Special comprehensive export authorizations for NATO, Australia, Japan, and Sweden.
- 126.15 Expedited processing of license applications for the export of defense articles and defense services to Australia or the United Kingdom.
- 126.16 Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and Australia.
- 126.17 Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom.
- 126.18 Exemptions regarding intra-company, intra-organization, and intra-governmental transfers to employees who are dual nationals or third-country nationals.

## SUPPLEMENT NO. 1 TO PART 126

AUTHORITY: 22 U.S.C. 2752, 2778, 2780, 2791, and 2797; 22 U.S.C. 2651a; 22 U.S.C. 287c; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117; Pub. L. 111-266; Sections 7045 and 7046, Pub. L. 112-74; E.O. 13637, 78 FR 16129.

SOURCE: 58 FR 39312, July 22, 1993, unless otherwise noted.

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

(a) *General.* It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in certain countries. The exemptions provided in this subchapter, except §§ 123.17, 126.4(a)(1) or (3) and (b)(1), and

126.4(a)(2) or (b)(2) when the export is destined for Russia and in support of government space cooperation, and § 126.6, or when the recipient is a U.S. government department or agency, do not apply with respect to defense articles or defense services originating in or for export to any proscribed countries, areas, or persons. (See § 129.7 of this subchapter, which imposes restrictions on brokering activities similar to those in this section).

(b) *Shipments.* A defense article licensed or otherwise authorized for export, temporary import, reexport, or retransfer under this subchapter may not be shipped on a vessel, aircraft, spacecraft, or other means of conveyance that is owned by, operated by, leased to, or leased from any of the proscribed countries, areas, or other persons referred to in this section.

(c) Identification in § 126.1 of the ITAR may derive from:

(1) *Exports and sales prohibited by United Nations Security Council sanctions measures.* Whenever the United Nations Security Council mandates sanctions measures, all transactions that are prohibited by the aforementioned measures and involve U.S. persons (see § 120.15 of this subchapter) inside or outside of the United States, or any person in the United States, and defense articles or defense services described on the United States Munitions List (22 CFR part 121), irrespective of origin, are prohibited under the ITAR for the duration of the sanction, unless the Department of State publishes a notice in the FEDERAL REGISTER specifying different measures.

(2) *Terrorism.* Exports or temporary imports of defense articles or defense services to countries that the Secretary of State has determined to be State Sponsors of Terrorism are prohibited under the ITAR. These countries have repeatedly provided support for acts of international terrorism, which is contrary to the foreign policy of the United States and thus subject to the policy specified in paragraph (a) of this section and the requirements of section 40 of the Arms Export Control Act (22 U.S.C. 2780) and the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986 (22 U.S.C. 4801). Exports to countries that the Secretary

§ 126.1

22 CFR Ch. I (4–1–22 Edition)

of State has determined and certified to Congress, pursuant to section 40A of the Arms Export Control Act (22 U.S.C. 2781) and Executive Order 13637, are not cooperating fully with United States antiterrorism efforts are subject to the policy specified in paragraph (a) of this section. The Secretary of State makes such determinations and certifications annually.

(3) *Arms embargoes and sanctions.* The policy specified in paragraph (a) of this section applies to countries subject to a United States arms embargo or sanctions regime, such as those described in the Foreign Assistance Act of 1961 (22 U.S.C. 2151 *et seq.*), the International Religious Freedom Act of 1998 (22 U.S.C. 6401 *et seq.*), or the Child Soldiers Prevention Act of 2008 (22 U.S.C. 2370c–2370c–2), or whenever an export of defense articles or defense services would not otherwise be in furtherance

of world peace and the security and foreign policy of the United States.

(d) *Countries subject to certain prohibitions:*

(1) For defense articles and defense services, the following countries have a policy of denial:

TABLE 1 TO PARAGRAPH (D)(1)

Country
Belarus.
Burma.
China.
Cuba.
Iran.
North Korea.
Syria.
Venezuela.

(2) For defense articles and defense services, a policy of denial applies as specified in the associated paragraphs in the following table:

TABLE 2 TO PARAGRAPH (d)(2)

Country	Country specific paragraph location
Afghanistan .....	See also paragraph (g) of this section.
Cambodia .....	See also paragraph (o) of this section.
Central African Republic .....	See also paragraph (u) of this section.
Cyprus .....	See also paragraph (r) of this section.
Democratic Republic of Congo .....	See also paragraph (i) of this section.
Ethiopia .....	See also paragraph (n) of this section.
Eritrea .....	See also paragraph (h) of this section.
Haiti .....	See also paragraph (j) of this section.
Iraq .....	See also paragraph (f) of this section.
Lebanon .....	See also paragraph (t) of this section.
Libya .....	See also paragraph (k) of this section.
Russia .....	See also paragraph (l) of this section.
Somalia .....	See also paragraph (m) of this section.
South Sudan .....	See also paragraph (w) of this section.
Sudan .....	See also paragraph (v) of this section.
Zimbabwe .....	See also paragraph (s) of this section.

(e)(1) *Proposed and final sales.* No sale, export, transfer, reexport, or retransfer of, and no proposal or presentation to sell, export, transfer, reexport, or retransfer, any defense articles or defense services subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of the Directorate of Defense Trade Controls. However, in accordance with paragraph (a) of this section, it is the policy of the

Department of State to deny licenses and approvals in such cases.

(2) *Duty to notify.* Any person who knows or has reason to know of a proposed, final, or actual sale, export, transfer, reexport, or retransfer of articles, services, or data as described in paragraph (e)(1) of this section must immediately inform the Directorate of Defense Trade Controls. Such notifications should be submitted to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.

NOTE TO PARAGRAPH (e): “Proposal” and “presentation” mean the communication of information in sufficient detail that it would permit an intended purchaser to decide to

## Department of State

## § 126.1

acquire the article in question or to enter into an agreement as described in part 124 of this subchapter. For example, communicating information on the equipment's performance characteristics, price, and probable availability for delivery would be a proposal or presentation requiring a license or other approval.

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

(1) Non-lethal military equipment; and

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

(g) *Afghanistan*. It is the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services, destined for or originating in Afghanistan, except that a license or other approval may be issued, on a case-by-case basis, for the Government of Afghanistan or coalition forces. In addition, the names of individuals, groups, undertakings, and entities subject to arms embargoes, due to their affiliation with the Taliban, Al-Qaida, or those associated with them, are published in lists maintained by the United Nations Security Council's Sanctions Committees (established pursuant to United Nations Security Council resolutions (UNSCR) 1267, 1988, and 1989).

(h) *Eritrea*. It is the policy of the United States to deny licenses or other approvals for exports of defense articles or defense services destined to or for the armed forces, police, intelligence, or other internal security forces of Eritrea.

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

(1) Defense articles and defense services for the Government of the Democratic Republic of the Congo as notified in advance to the Committee of

the Security Council concerning the Democratic Republic of the Congo;

(2) Defense articles and defense services intended solely for the support of or use by the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) or the African Union-Regional Task Force;

(3) Protective clothing, including flak jackets and military helmets, temporarily exported to the Democratic Republic of the Congo by United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only;

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

(5) Defense articles and defense services as approved by the relevant committee of the Security Council.

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

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

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

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

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

(k) *Libya*. It is the policy of the United States to deny licenses or other

§ 126.1

22 CFR Ch. I (4-1-22 Edition)

approvals for exports or imports of defense articles and defense services destined for or originating in Libya, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Arms and related materiel intended solely for security or disarmament assistance to the Libyan government, notified to the Committee of the Security Council concerning Libya in advance and in the absence of a negative decision by the Committee within five working days of such a notification;

(2) Non-lethal military equipment when intended solely for security or disarmament assistance to the Libyan government;

(3) The provision of any technical assistance or training when intended solely for security or disarmament assistance to the Libyan government;

(4) Small arms, light weapons, and related materiel temporarily exported to Libya for the sole use of United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, notified to the Committee of the Security Council concerning Libya in advance and in the absence of a negative decision by the Committee within five working days of such a notification;

(5) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training; or

(6) Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee of the Security Council concerning Libya.

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

(1) For government space cooperation; and

(2) Prior to September 1, 2021, for commercial space launches.

(m) *Somalia*. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services des-

tinued for or originating in Somalia, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services intended solely for the support of or use by the following:

(i) The African Union Mission in Somalia (AMISOM);

(ii) United Nations personnel, including the United Nations Assistance Mission in Somalia (UNSAM);

(iii) AMISOM's strategic partners, operating solely under the African Union (AU) Strategic Concept of January 5, 2012 (or subsequent AU strategic concepts), and in cooperation and coordination with AMISOM; or

(iv) The European Union Training Mission (EUTM) in Somalia.

(2) Defense articles and defense services intended solely for the development of the Security Forces of the Federal Government of Somalia, to provide security for the Somali people, notified to the relevant committee of the Security Council at least five days in advance, except in relation to deliveries of the following articles, the supply of which needs to be approved in advance by the relevant committee of the Security Council:

(i) Surface to air missiles, including Man-Portable Air-Defense Systems (MANPADS);

(ii) Guns, howitzers, and cannons with a caliber greater than 12.7 mm, and ammunition and components specially designed for these (this does not include shoulder fired anti-tank rocket launchers such as RPGs or LAWs, rifle grenades, or grenade launchers);

(iii) Mortars with a caliber greater than 82 mm;

(iv) Anti-tank guided weapons, including Anti-tank Guided Missiles (ATGMs) and ammunition and components specially designed for these items;

(v) Charges and devices intended for military use containing energetic material; mines, and related materiel; and

(vi) Weapon sights with a night vision capability.

(3) Defense articles and defense services supplied by United Nations member states or international, regional, or subregional organizations intended

## Department of State

## § 126.1

solely for the purposes of helping develop Somali security sector institutions, other than the Security Forces of the Federal Government of Somalia, and in the absence of a negative decision by the relevant committee of the Security Council within five working days of receiving a notification of any such assistance from the supplying State, international, regional or sub-regional organization;

(4) Defense articles for the sole use by United Nations member states or international, regional, or subregional organizations undertaking measures to suppress acts of piracy and armed robbery at sea off the coast of Somalia, upon the request of the Federal Government of Somalia for which it has notified the Secretary-General, and provided that any measures undertaken shall be consistent with applicable international humanitarian and human rights laws;

(5) Personal protective clothing, including flak jackets and military helmets, temporarily exported to Somalia by United Nations personnel, representatives of the media, humanitarian or development workers, or associated personnel for their personal use only; or

(6) Supplies of non-lethal defense articles intended solely for humanitarian or protective use, notified to the relevant committee of the Security Council five days in advance for its information only, by the supplying State, international, regional, or subregional organization.

(n) *Ethiopia*. It is the policy of the United States to deny licenses or other approvals for exports of defense articles or defense services destined to or for the armed forces, police, intelligence, or other internal security forces of Ethiopia.

(o) *Cambodia*. It is the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services destined for or originating in Cambodia, except that a license or other approval may be issued, on a case-by-case basis, for defense articles and defense services in furtherance of conventional weapons destruction or humanitarian mine action activities.

(p)–(q) [Reserved]

(r) *Cyprus*. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Cyprus, except that a license or other approval may be issued, on a case-by-case basis, for the United Nations Forces in Cyprus (UNFICYP) or for civilian end-users. This policy of denial does not apply to exports, reexports, retransfers, and temporary imports of non-lethal defense articles and defense services destined for or originating in Cyprus if:

(1) The request is made by or on behalf of the Government of the Republic of Cyprus;

(2) The end-user of such defense articles or defense services is the Government of the Republic of Cyprus; and

(3) There are no credible human rights concerns.

(s) *Zimbabwe*. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Zimbabwe, except that a license or other approval may be issued, on a case-by-case basis, for the temporary export of firearms and ammunition for personal use by individuals (not for resale or retransfer, including to the Government of Zimbabwe).

(t) *Lebanon*. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Lebanon, except that a license or other approval may be issued, on a case-by-case basis, for the United Nations Interim Force in Lebanon (UNIFIL) or as authorized by the Government of Lebanon.

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

(1) Defense articles intended solely for the support of or use by the UN Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) and the European

Union training missions deployed to the Central African Republic; French forces within the provisions of their bilateral agreement with the Central African Republic and the limits of their capacities and areas of deployment, and other Member States' forces providing training and assistance as notified in advance to the Committee of the Security Council concerning the Central African Republic;

(2) Non-lethal equipment and the provision of assistance, including operational and non-operational training to the Central African Republic security forces, including state civilian law enforcement institutions, intended solely for the support of or use in the Central African Republic process of security sector reform, in coordination with MINUSCA, and as notified in advance to the Committee of the Security Council concerning the Central African Republic;

(3) Supplies brought into the Central African Republic by Chadian or Sudanese forces solely for their use in international patrols of the tripartite force to enhance security in the common border areas, in cooperation with MINUSCA, as approved in advance by the Committee of the Security Council concerning the Central African Republic;

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

(5) Personal protective equipment temporarily exported to the Central African Republic by United Nations personnel, representatives of the media, and humanitarian and developmental workers and associated personnel, for their personal use only;

(6) Small arms and related equipment intended solely for use in international-led patrols providing security in the Sangha River Tri-national Protected Area and by armed wildlife rangers of the Chinko Project and the Bamingui-Bangoran National Park to defend against poaching, smuggling of ivory and arms, and other activities contrary to the laws of the Central African Republic or its international

legal obligations, as notified in advance to the Committee of the Security Council concerning the Central African Republic;

(7) Defense articles with a caliber of 14.5mm or less, and ammunition and components specially designed for such weapons, and defense articles that are unarmed ground military vehicles and ground military vehicles mounted with weapons with a caliber of 14.5mm or less, to the Central African Republic security forces, including state civilian law enforcement institutions, and intended solely for the support of or use in the Central African Republic security sector reform process, as notified in advance to the Committee of the Security Council concerning the Central African Republic;

(8) Defense articles and any related lethal equipment that are not listed in (u)(7) to the Central African Republic security forces, including state civilian law enforcement institutions, and intended solely for the support of or use in the Central African Republic process of security sector reform, as approved in advance by the Committee of the Security Council concerning the Central African Republic; or

(9) Other sales or supply of defense articles and related materiel, or provision of assistance or personnel, as approved in advance by the Committee of the Security Council concerning the Central African Republic.

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

(1) Supplies and related technical training and assistance to monitoring, verification, or peace support operations, including those authorized by the United Nations or operating with the consent of the relevant parties;

(2) Supplies of non-lethal military equipment intended solely for humanitarian, human rights monitoring, or protective uses and related technical training and assistance;

## Department of State

## § 126.4

(3) Personal protective gear for the personal use of United Nations personnel, human rights monitors, representatives of the media, and humanitarian and development workers and associated personnel; or

(4) Assistance and supplies provided in support of implementation of the Comprehensive Peace Agreement.

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

(1) Defense articles and defense services for monitoring, verification, or peacekeeping support operations, including those authorized by the United Nations or operating with the consent of the relevant parties;

(2) Defense articles and defense services intended solely for the support of, or use by, African Union Regional Task Force (AU-RTF) or United Nations entities operating in South Sudan, including but not limited to the United Nations Mission in the Republic of South Sudan (UNMISS), the United Nations Mine Action Service (UNMAS), the United Nations Police (UNPOL), or the United Nations Interim Security Force for Abyei (UNISFA);

(3) Defense articles and defense services intended solely for the support of or use by non-governmental organizations in furtherance of conventional weapons destruction or humanitarian demining activities;

(4) Non-lethal defense articles intended solely for humanitarian or protective use and related technical training and assistance;

(5) Personal protective equipment including flak jackets and helmets, temporarily exported to South Sudan by United Nations personnel, human rights monitors, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only; or

(6) Any defense articles and defense services provided in support of implementation of the Comprehensive Peace Agreement, the Agreement on the Resolution of the Conflict in the Republic

of South Sudan, or any successor agreement.

[58 FR 39312, July 22, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 126.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

EFFECTIVE DATE NOTE 1: At 85 FR 60699, Sept. 28, 2020, § 126.1 was amended by revising paragraph (r), effective Oct. 1, 2020 until Sept. 30, 2021. At 86 FR 54044, Sept. 30, 2021, the effective date was extended through Sept. 30, 2022.

EFFECTIVE DATE NOTE 2: At 87 FR 16424, Mar. 23, 2022, in § 126.1 in (c)(1) remove the reference “§ 120.15” and add in its place “§ 120.62”, effective Sept. 6, 2022.

### § 126.2 Temporary suspension or modification of this subchapter.

The Deputy Assistant Secretary for Defense Trade Controls may order the temporary suspension or modification of any or all of the regulations of this subchapter in the interest of the security and foreign policy of the United States.

[79 FR 8085, Feb. 11, 2014]

### § 126.3 Exceptions.

In a case of exceptional or undue hardship, or when it is otherwise in the interest of the United States Government, the Deputy Assistant Secretary of State for Defense Trade Controls may make an exception to the provisions of this subchapter.

[79 FR 8085, Feb. 11, 2014]

### § 126.4 Transfers by or for the United States Government.

(a) *By a department or agency*. A license is not required for the export, re-export, retransfer, or temporary import of a defense article or the performance of a defense service, when made by a department or agency of the U.S. Government:

(1) For official use by a department or agency of the U.S. Government, including:

(i) By employees of the U.S. Government acting within their official capacity; or

(ii) By persons or entities in a contractual relationship with the U.S. Government using the defense article

## § 126.4

## 22 CFR Ch. I (4-1-22 Edition)

or performing the defense service to conduct the contracted-for activities within the scope of the contractual relationship and:

(A) Within a U.S. Government-controlled facility;

(B) When an employee of the U.S. Government is empowered and responsible to ensure that the defense article is not diverted and is only used within the scope of the contractual relationship; or

(C) Use of the exemption in paragraph (a)(1)(ii) is authorized by the Deputy Assistant Secretary of State for Defense Trade Controls at the request of a department or agency of the U.S. Government.

(D) The provision in this paragraph (a)(1)(ii) may not be used to release technical data to a person or entity of a country identified in §126.1.

(2) For carrying out a cooperative project, program, or other activity in furtherance of an agreement or arrangement that provides for the export, reexport, retransfer, or temporary import of the defense article, or the performance of activities that constitute the defense service, and is one of the following:

(i) A binding international agreement to which the United States or any agency thereof is a party; or

(ii) An arrangement with international partners authorized by Title 10 or 22 of the United States Code or pertinent National Defense Authorization Act provisions.

(3) For carrying out any foreign assistance or sales program authorized by law and subject to control by the President by other means.

(4) For any other security cooperation programs and activities of the Department of Defense authorized by law and subject to control by the President by other means.

(i) For purposes of this paragraph (a)(4), “security cooperation programs and activities of the Department of Defense” means any program, activity, or interaction of the Department of Defense with the security establishment of a foreign country to:

(A) Build and develop allied and friendly security capabilities for self-defense and multinational operations;

(B) Provide the armed forces with access to the foreign country during peacetime or a contingency operation; or

(C) Build relationships that promote specific United States security interests.

(ii) The U.S. Government must obtain appropriate end-use and retransfer assurances from the foreign party and to ensure that the recipient is aware of and will comply with paragraph (f) of this section.

(5) Authorization under this section is for compliance with the ITAR only and does not constitute any other U.S. Government approval that may be required prior to the transfer of a defense article, and does not satisfy other obligations of U.S. law or regulation, or applicable Government process, procedure, or practice, including the requirement that any export of an item listed on the MTCR Annex receive the case-by-case review called for in the MTCR Guidelines.

(6) The exemption in this paragraph (a) does not apply when a U.S. Government department or agency acts as a transmittal agent on behalf of a private individual or firm, either as a convenience or in satisfaction of security requirements.

(7) The authorization requirement expressed in paragraph (f) of this section does not apply to defense articles and services exported from the United States pursuant to paragraphs (a)(1) and (3) of this section, provided the defense articles and services are subject to the terms thereof.

(b) *By a person on behalf of a department or agency.* A license is not required for the export, reexport, retransfer, or temporary import of a defense article or the performance of a defense service, when made by another person for a department or agency of the U.S. Government:

(1) To a department or agency of the U.S. Government at its request; or

(2) To an entity other than the U.S. Government at the written direction of a department or agency of the U.S. Government or pursuant to an international agreement or arrangement, for an activity authorized for that department or agency in paragraphs (a)(1) through (4) of this section.



## Department of State

## § 126.5

(c) *Return to the United States.* No license is required under this subchapter for the return to the United States of a defense article exported pursuant to this section and not subsequently reexported or retransferred other than pursuant to this section, to:

(1) A department or agency of the U.S. Government; or

(2) The person who exported the item.

(d) *Prohibited activities and arms embargoes.* This section does not authorize any department or agency of the U.S. Government to make or authorize any export that is otherwise prohibited by any other administrative provisions or by any statute or that is inconsistent with U.S. arms embargoes or United Nations Security Council Resolutions (see § 126.1).

(e) *Export clearance.* For exports shipped other than by a U.S. diplomatic pouch or a U.S. Government aircraft, vehicle, or vessel, an Electronic Export Information (EEI) filing must be submitted to U.S. Customs and Border Protection using its electronic system(s) at the time of export, unless electronic submission of such information is unavailable, in which case U.S. Customs and Border Protection or the Department of Defense transmittal authority will issue instructions.

(f) *Change in end-use or end-user.* Any change in end-use or end-user of a defense article, to any party or use not authorized by this section, requires approval of the Directorate of Defense Trade Controls through a license or other approval.

[84 FR 16401, Apr. 19, 2019]

### § 126.5 Canadian exemptions.

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

(b) *Permanent and temporary export of defense articles.* Except as provided in Supplement No. 1 to part 126 of this subchapter and for exports that transit

third countries, Port Directors of U.S. Customs and Border Protection and postmasters shall permit, when for end-use in Canada by Canadian Federal or Provincial governmental authorities acting in an official capacity or by a Canadian-registered person, or for return to the United States, the permanent and temporary export to Canada without a license of unclassified defense articles and defense services identified on the U.S. Munitions List (22 CFR 121.1). The exceptions are subject to meeting the requirements of this subchapter, to include 22 CFR 120.1(c) and (d), parts 122 and 123 (except insofar as exemption from licensing requirements is herein authorized) and § 126.1, and the requirement to obtain non-transfer and use assurances for all significant military equipment. For purposes of this section, “Canadian-registered person” is any Canadian national (including Canadian business entities organized under the laws of Canada), dual citizen of Canada and a third country other than a country listed in § 126.1 of this subchapter, and permanent resident registered in Canada in accordance with the Canadian Defense Production Act, and such other Canadian Crown Corporations identified by the Department of State in a list of such persons publicly available through the Internet Web site of the Directorate of Defense Trade Controls and by other means.

(c) [Reserved]

(d) *Reexports/retransfer.* Reexport/retransfer in Canada to another end-user or end-use or from Canada to another destination, except the United States, must in all instances have the prior approval of the Directorate of Defense Trade Controls. Unless otherwise exempt in this subchapter, the original exporter is responsible, upon request from a Canadian-registered person, for obtaining or providing reexport/retransfer approval. In any instance when the U.S. exporter is no longer available to the Canadian end-user the request for reexport/retransfer may be made directly to the Directorate of Defense Trade Controls. All requests must include the information in § 123.9(c) of this subchapter. Reexport/retransfer approval is acquired by:

(1) If the reexport/retransfer being requested could be made pursuant to this section (*i.e.*, a retransfer within Canada to another eligible Canadian recipient under this section) if exported directly from the U.S., upon receipt by the U.S. company of a request by a Canadian end user, the original U.S. exporter is authorized to grant on behalf of the U.S. Government by confirming in writing to the Canadian requester that the reexport/retransfer is authorized subject to the conditions of this section; or

(2) If the reexport/retransfer is to an end use or end user that, if directly exported from the U.S. requires a license, retransfer must be handled in accordance with §123.9 of this subchapter.

NOTES TO §126.5: 1. In any instance when the exporter has knowledge that the defense article exempt from licensing is being exported for use other than by a qualified Canadian-registered person or for export to another foreign destination, other than the United States, in its original form or incorporated into another item, an export license must be obtained prior to the transfer to Canada.

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

[66 FR 10576, Feb. 16, 2001; 66 FR 36834, July 13, 2001, as amended at 67 FR 78686, Dec. 26, 2002; 70 FR 34654, June 15, 2005; 70 FR 39919, July 12, 2005; 70 FR 50964, Aug. 29, 2005; 71 FR 20546, Apr. 21, 2006; 77 FR 16600, Mar. 21, 2012]

EFFECTIVE DATE NOTE: At 87 FR 16424, Mar. 23, 2022, in §126.5:

a. In paragraph (a), remove the phrase “(see §120.6 of this subchapter)”;

b. In paragraph (b):

i. Remove the reference “22 CFR 120.1(c) and (d)” and add in its place “§§120.15(d) and 120.16”;

ii. Remove the reference “§126.1 of this subchapter” and add in its place “§126.1”, effective Sept. 6, 2022.

**§ 126.6 Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program.**

(a) A license from the Directorate of Defense Trade Controls is not required if:

(1) The article or technical data to be exported was sold, leased, or loaned by the Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended, and

(2) The article or technical data is delivered to representatives of such a country or organization in the United States; and

(3) The article or technical data is to be exported from the United States on a military aircraft or naval vessel of that government or organization or via the Defense Transportation Service (DTS).

(b) *Foreign military aircraft and naval vessels.* A license is not required for the entry into the United States of military aircraft or naval vessels of any foreign state if no overhaul, repair, or modification of the aircraft or naval vessel is to be performed. However, Department of State approval for overflight (pursuant to the 49 U.S.C. 40103) and naval visits must be obtained from the Bureau of Political-Military Affairs, Office of International Security Operations.

(c) *Foreign Military Sales Program.* A license from the Directorate of Defense Trade Controls is not required if the defense article or technical data or a defense service to be transferred was sold, leased or loaned by the Department of Defense to a foreign country or international organization under the Foreign Military Sales (FMS) Program of the Arms Export Control Act pursuant to an Letter of Offer and Acceptance (LOA) authorizing such transfer which meets the criteria stated below:

(1) Transfers of the defense articles, technical data or defense services using this exemption may take place only during the period which the FMS Letter of Offer and Acceptance (LOA) and implementing USG FMS contracts and subcontracts are in effect and serve as authorization for the transfers hereunder in lieu of a license. After the USG FMS contracts and subcontracts have expired and the LOA no longer serves as such authorization, any further provision of defense articles, technical data or defense services shall not

## Department of State

## § 126.7

be covered by this section and shall instead be subject to other authorization requirements of this subchapter; and

(2) The defense article, technical data or defense service to be transferred are specifically identified in an executed LOA, in furtherance of the Foreign Military Sales Program signed by an authorized Department of Defense Representative and an authorized representative of the foreign government, and

(3) The transfer of the defense article and related technical data is effected during the duration of the relevant Letter of Offer and Acceptance (LOA), similarly a defense service is to be provided only during the duration of the USG FMS contract or subcontract and not to exceed the specified duration of the LOA, and

(4) The U.S. person responsible for the transfer maintains records of all transfers in accordance with part 122 of this subchapter, and

(5) For transfers of defense articles and technical data,

(i) The transfer is made by the relevant foreign diplomatic mission of the purchasing country or its authorized freight forwarder, provided that the freight forwarder is registered with the Directorate of Defense Trade Controls pursuant to part 122 of this subchapter, and

(ii) At the time of shipment, U.S. Customs and Border Protection is provided the Electronic Export Information, Internal Transaction Number and any other documents required by U.S. Customs and Border Protection in carrying out its responsibilities. The invoices for the shipment must be annotated: "This shipment is authorized for export pursuant to 22 CFR 126.6(c), under FMS Case [insert case identification]. The U.S. Government point of contact is \_\_\_\_, telephone number \_\_\_\_,," and

(iii) Any classified hardware and related technical data involved in the transfer must have the requisite U.S. Government security clearance and transportation plan and be shipped in accordance with the Department of Defense National Industrial Security Program Operating Manual. The exporter shall provide an electronic copy of the transportation plan via the U.S. Customs

and Border Protection's electronic system(s), unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions, or

(6) For transfers of defense services:

(i) A contract or subcontract between the U.S. person(s) responsible for providing the defense service and the USG exists that:

(A) Specifically defines the scope of the defense service to be transferred;

(B) Identifies the FMS case identifier,

(C) Identifies the foreign recipients of the defense service

(D) Identifies any other U.S. or foreign parties that may be involved and their roles/responsibilities, to the extent known when the contract is executed,

(E) Provides a specified period of duration in which the defense service may be performed, and

(ii) The U.S. person(s) identified in the contract maintain a registration with the Directorate of Defense Trade Controls for the entire time that the defense service is being provided. In any instance when the U.S. registered person(s) identified in the contract employs a subcontractor, the subcontractor may only use this exemption when registered with DDTC, and when such subcontract meets the above stated requirements, and

(iii) In instances when the defense service involves the transfer of classified technical data, the U.S. person transferring the defense service must have the appropriate USG security clearance and a transportation plan, if appropriate, in compliance with the Department of Defense National Industrial Security Program Operating Manual.

[65 FR 45287, July 21, 2000, as amended at 70 FR 50964, Aug. 29, 2005; 71 FR 20546, Apr. 21, 2006; 79 FR 77885, Dec. 29, 2014; 82 FR 19, Jan. 3, 2017]

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

(a) *Policy.* Licenses or approvals shall be denied or revoked whenever required by any statute of the United States

(see §§127.7 and 127.11 of this subchapter). Any application for an export license or other approval under this subchapter may be disapproved, and any license or other approval or exemption granted under this subchapter may be revoked, suspended, or amended without prior notice whenever:

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

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

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

(4) An applicant or any party to the export or the agreement has been convicted of violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter; or

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

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

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

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

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

(b) *Notification.* The Directorate of Defense Trade Controls will notify applicants or licensees or other appropriate United States persons of actions taken pursuant to paragraph (a) of this section. The reasons for the action will be stated as specifically as security and foreign policy considerations permit.

(c) *Reconsideration.* If a written request for reconsideration of an adverse decision is made within 30 days after a person has been informed of the decision, the U.S. person will be accorded an opportunity to present additional information. The case will then be reviewed by the Directorate of Defense Trade Controls.

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

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

(1) The chief executive officer, president, vice-presidents, other senior officers and officials (e.g., comptroller, treasurer, general counsel) and any

## Department of State

## § 126.10

member of the board of directors of the applicant;

(2) The freight forwarders or designated exporting agent of the applicant; and

(3) Any consignee or end-user of any item to be exported.

[58 FR 39312, July 22, 1993, as amended at 71 FR 20546, Apr. 21, 2006; 77 FR 16600, Mar. 21, 2012]

EFFECTIVE DATE NOTE: At 88 FR 16424, Mar. 23, 2022, § 126.7 was removed and reserved, effective Sept. 6, 2022.

### § 126.8 [Reserved]

### § 126.9 Advisory opinions and related authorizations.

(a) *Preliminary authorization determinations.* A person may request information from the Directorate of Defense Trade Controls as to whether it would likely grant a license or other approval for a particular defense article or defense service to a particular country. Such information from the Directorate of Defense Trade Controls is issued on a case-by-case basis and applies only to the particular matters presented to the Directorate of Defense Trade Controls. These opinions are not binding on the Department of State and may not be used in future matters before the Department. A request for an advisory opinion must be made in writing and must outline in detail the equipment, its usage, the security classification (if any) of the articles or related technical data, and the country or countries involved.

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

(c) *Interpretations of the ITAR.* Any person may request an interpretation of the requirements set forth in this subchapter in the form of an advisory

opinion. A request for an advisory opinion must be made in writing. Any response to an advisory opinion provided by the Directorate of Defense Trade Controls pursuant to this paragraph shall not be an authorization to export and shall not bind the Department to grant or deny any such authorization.

[71 FR 20547, Apr. 21, 2006, as amended at 81 FR 54737, Aug. 17, 2016; 81 FR 87430, Dec. 5, 2016]

EFFECTIVE DATE NOTE: At 88 FR 16424, Mar. 23, 2022, § 126.9 was removed and reserved, effective Sept. 6, 2022.

### § 126.10 Disclosure of information.

(a) *Freedom of information.* Subchapter R of this title contains regulations on the availability to the public of information and records of the Department of State. The provisions of subchapter R apply to such disclosures by the Directorate of Defense Trade Controls.

(b) *Determinations required by law.* Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) provides, by reference to section 12(c) of the Export Administration Act (50 U.S.C. 2411), that information obtained for the purpose of consideration of, or concerning, license applications shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Section 38(e) of the Arms Export Control Act further provides that, the names of countries and types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless certain determinations are made that the release of such information would be contrary to the national interest. Such determinations required by section 38(e) shall be made by the Assistant Secretary of State for Political-Military Affairs.

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

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

## § 126.11

are in the national interest of the United States:

(1) Furnishing information to foreign governments for law enforcement or regulatory purposes; and

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

[58 FR 39312, July 22, 1993, as amended at 62 FR 67276, Dec. 24, 1997; 70 FR 50965, Aug. 29, 2005; 71 FR 20547, Apr. 21, 2006; 81 FR 87430, Dec. 5, 2016]

EFFECTIVE DATE NOTE: At 88 FR 16424, Mar. 23, 2022, § 126.10 was removed and reserved, effective Sept. 6, 2022.

### § 126.11 Relations to other provisions of law.

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

[71 FR 20547, Apr. 21, 2006]

EFFECTIVE DATE NOTE: At 88 FR 16424, Mar. 23, 2022, § 126.11 was removed and reserved, effective Sept. 6, 2022.

### § 126.12 Continuation in force.

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

## 22 CFR Ch. I (4–1–22 Edition)

EFFECTIVE DATE NOTE: At 88 FR 16424, Mar. 23, 2022, § 126.12 was removed and reserved, effective Sept. 6, 2022.

### § 126.13 Required information.

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

(1) The applicant or the chief executive officer, president, vice-presidents, secretary, partner, member, other senior officers or officials (e.g., controller, treasurer, general counsel) or any member of the board of directors is the subject of an indictment or has been otherwise charged (e.g., by criminal information in lieu of indictment) for, or has been convicted of, violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter;

(2) The applicant or the chief executive officer, president, vice-presidents, secretary, partner, member, other senior officers or officials (e.g., controller, treasurer, general counsel) or any member of the board of directors is ineligible to contract with, or to receive a license or other approval to temporarily import or export defense articles or defense services from any agency of the U.S. Government;

(3) To the best of the applicant's knowledge, any party to the export as defined in § 126.7(e) has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter, or is ineligible to contract with, or to receive a license or other approval to temporarily import or export defense articles or defense services from any agency of the U.S. government; and

(4) The natural person signing the application, notification, or other request for approval (including the statement required by this subchapter) is a citizen or national of the United States, has been lawfully admitted to the United States for permanent residence (and maintains such lawful permanent

residence status) under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(20), 66 Stat. 163), or is an official of a foreign government entity in the United States, or is a foreign person making a request pursuant to § 123.9 of this subchapter.

(b) In addition, all applications for licenses must include the complete names and addresses of all U.S. consignors and freight forwarders, and all foreign consignees and foreign intermediate consignees involved in the transaction. Port Directors of U.S. Customs and Border Protection and Department of Defense transmittal authorities will permit only those U.S. consignors or freight forwarders listed on the license to make shipments under the license, and only to those foreign consignees and foreign intermediate consignees listed on the license. Applicants should list all freight forwarders who may be involved with shipments under the license to ensure that the list is complete and to avoid the need for amendments after the license has been approved. If there are unusual or extraordinary circumstances that preclude the specific identification of all the U.S. consignors and freight forwarders and all foreign consignees and foreign intermediate consignees, the applicant must provide a letter of explanation with each application.

(c) In cases when natural foreign persons are employed at or assigned to security-cleared facilities, provision by the applicant of a technology control plan will facilitate processing.

[58 FR 39312, July 22, 1993, as amended at 70 FR 50965, Aug. 29, 2005; 71 FR 20547, Apr. 21, 2006; 75 FR 52624, Aug. 27, 2010; 77 FR 16601, Mar. 21, 2012; 78 FR 52688, Aug. 26, 2013]

EFFECTIVE DATE NOTE: At 87 FR 16424, Mar. 23, 2022, § 126.13 was amended in paragraph (a)(1) by removing the reference “§ 120.27” and adding in its place “§ 120.6”; and in paragraph (a)(3), by removing the references “§ 126.7(e)” and “§ 120.27” adding in their places “§ 120.68(a) of this subchapter” and “§ 120.6,” respectively, effective Sept. 6, 2022.

**§ 126.14 Special comprehensive export authorizations for NATO, Australia, Japan, and Sweden.**

(a) *Comprehensive authorizations.* With respect to NATO members, Australia, Japan, and Sweden, the Directorate of

Defense Trade Controls may provide the comprehensive authorizations described in paragraphs (a) and (b) of this section for circumstances where the full parameters of a commercial export endeavor including the needed defense exports can be well anticipated and described in advance, thereby making use of such comprehensive authorizations appropriate.

(1) *Major project authorization.* With respect to NATO members, Australia, Japan, and Sweden, the Directorate of Defense Trade Controls may provide comprehensive authorizations for well circumscribed commercially developed “major projects”, where a principal registered U.S. exporter/prime contractor identifies in advance the broad parameters of a commercial project including defense exports needed, other participants (e.g., exporters with whom they have “teamed up,” or subcontractors), and foreign government end users. Projects eligible for such authorization may include a commercial export of a major weapons system for a foreign government involving, for example, multiple U.S. suppliers under a commercial teaming agreement to design, develop and manufacture defense articles to meet a foreign government’s requirements. U.S. exporters seeking such authorization must provide detailed information concerning the scope of the project, including other exporters, U.S. subcontractors, and planned exports (including re-exports) of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

(2) *Major program authorization.* With respect to NATO members, Australia, Japan, and Sweden, the Directorate of Defense Trade Controls may provide comprehensive authorizations for well circumscribed commercially developed “major program”. This variant would be available where a single registered U.S. exporter defines in advance the parameters of a broad commercial program for which the registrant will be providing all phases of the necessary support (including the needed hardware, technical data, defense services, development, manufacturing, and logistic support). U.S. exporters seeking

such authorization must provide detailed information concerning the scope of the program, including planned exports (including re-exports) of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

(3)(i) *Global project authorization.* With respect to NATO members, Australia, Japan, and Sweden, the Directorate of Defense Trade Controls may provide a comprehensive “Global Project Authorization” to registered U.S. exporters for exports of defense articles, technical data or defense services in support of government to government cooperative projects (covering research and development or production) with one of these countries undertaken pursuant to an agreement between the U.S. Government and the government of such country, or a memorandum of understanding/agreement between the Department of Defense and the country’s Ministry of Defense.

(ii) A set of standard terms and conditions derived from and corresponding to the breadth of the activities and phases covered in such a cooperative MOU will provide the basis for this comprehensive authorization for all U.S. exporters (and foreign end users) identified by DoD as participating in such cooperative project. Such authorizations may cover a broad range of defined activities in support of such programs including multiple shipments of defense articles and technical data and performance of defense services for extended periods, and re-exports to approved end users.

(iii) Eligible end users will be limited to ministries of defense of MOU signatory countries and foreign companies serving as contractors of such countries.

(iv) Any requirement for non-transfer and use assurances from a foreign government may be deemed satisfied by the signature by such government of a cooperative agreement or by its ministry of defense of a cooperative MOU/MOA where the agreement or MOU contains assurances that are comparable to that required by a DSP-83 with respect to foreign governments and that clarifies that the government

is undertaking responsibility for all its participating companies. The authorized non-government participants or end users (e.g., the participating government’s contractors) will still be required to execute DSP-83s.

(4) *Technical data supporting an acquisition, teaming arrangement, merger, joint venture authorization.* With respect to NATO member countries, Australia, Japan, and Sweden, the Directorate of Defense Trade Controls may provide a registered U.S. defense company a comprehensive authorization to export technical data in support of the U.S. exporter’s consideration of entering into a teaming arrangement, joint venture, merger, acquisition, or similar arrangement with prospective foreign partners. Specifically, the authorization is designed to permit the export of a broadly defined set of technical data to qualifying well established foreign defense firms in NATO countries, Australia, Japan, or Sweden in order to better facilitate a sufficiently in depth assessment of the benefits, opportunities and other relevant considerations presented by such prospective arrangements. U.S. exporters seeking such authorization must provide detailed information concerning the arrangement, joint venture, merger or acquisition, including any planned exports of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

(b) *Provisions and requirements for comprehensive authorizations.* Requests for the special comprehensive authorizations set forth in paragraph (a) of this section should be by letter addressed to the Directorate of Defense Trade Controls. With regard to a commercial major program or project authorization, or technical data supporting a teaming arrangement, merger, joint venture or acquisition, registered U.S. exporters may consult the Deputy Assistant Secretary of State for Defense Trade Controls about eligibility for and obtaining available comprehensive authorizations set forth in paragraph (a) of this section or pursuant to §126.9(b) of this subchapter.



## Department of State

## § 126.16

(1) Requests for consideration of all such authorizations should be formulated to correspond to one of the authorizations set out in paragraph (a) of this section, and should include:

(i) A description of the proposed program or project, including where appropriate a comprehensive description of all phases or stages; and

(ii) Its value; and

(iii) Types of exports needed in support of the program or project; and

(iv) Projected duration of same, within permissible limits; and

(v) Description of the exporter's plan for record keeping and auditing of all phases of the program or project; and

(vi) In the case of authorizations for exports in support of government to government cooperative projects, identification of the cooperative project.

(2) Amendments to the requested authorization may be requested in writing as appropriate, and should include a detailed description of the aspects of the activities being proposed for amendment.

(3) The comprehensive authorizations set forth in paragraph (a) of this section may be made valid for the duration of the major commercial program or project, or cooperative project, not to exceed 10 years.

(4) Included among the criteria required for such authorizations are those set out in part 124, e.g., §§124.7, 124.8 and 124.9, as well as §§125.4 (technical data exported in furtherance of an agreement) and 123.16 (hardware being included in an agreement). Provisions required will also take into account the congressional notification requirements in §§123.15 and 124.11 of the ITAR. Specifically, comprehensive congressional notifications corresponding to the comprehensive parameters for the major program or project or cooperative project should be possible, with additional notifications such as those required by law for changes in value or other significant modifications.

(5) All authorizations will be consistent with all other applicable requirements of the ITAR, including requirements for non-transfer and use assurances (see §§123.10 and 124.10), congressional notifications (e.g., §§123.15

and 124.11), and other documentation (e.g., §§123.9 and 126.13).

(6) Special auditing and reporting requirements will also be required for these authorizations. Exporters using special authorizations are required to establish an electronic system for keeping records of all defense articles, defense services and technical data exported and comply with all applicable requirements for submitting shipping or export information within the allotted time.

[65 FR 45285, July 21, 2000, as amended at 66 FR 35900, July 10, 2001; 71 FR 20548, Apr. 21, 2006; 79 FR 8085, Feb. 11, 2014]

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

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

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

[70 FR 39919, July 12, 2005]

### **§ 126.16 Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and Australia.**

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

(ii) A *transfer* means, for purposes of this section only, the movement of a previously exported defense article or defense service by a member of the

Australian Community within the Australian Community, or between a member of the United States Community and a member of the Australian Community.

(iii) *Reexport and retransfer*. (A) Reexport means, for purposes of this section only, the movement of previously Exported Defense Articles by a member of the Australian Community from the Approved Community to a location outside the Territory of Australia.

(B) Retransfer means, for purposes of this section only, the movement of previously Exported Defense Articles by a member of the Australian Community from the Approved Community to a location within the Territory of Australia;

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

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

the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 CFR parts 447, 478, and 479, which are unaffected by the Defense Trade Cooperation Treaty between the United States and Australia.

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

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

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

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

(iv) The export must be for an end-use specified in the Defense Trade Cooperation Treaty between the United States and Australia and mutually agreed to by the U.S. Government and the Government of Australia pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and the Implementing Arrangement thereto (the Australia Implementing Arrangement) (*see* paragraphs

## Department of State

## § 126.16

(e) and (f) of this section regarding authorized end-uses);

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

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

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

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

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

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

(iii) The transfer is required for an end-use specified in the Defense Trade Cooperation Treaty between the United States and Australia and mutually agreed to by the Government of the United States and the Government of Australia pursuant to the terms of the Defense Trade Cooperation Treaty be-

tween the United States and Australia and the Australia Implementing Arrangement (*see* paragraphs (e) and (f) of this section regarding authorized end-uses);

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

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

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

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

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

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

(2) Non-governmental U.S. persons registered with DDTC and eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency

of the U.S. Government without restriction, including their employees acting in their official capacity with, as appropriate, a security clearance and a need-to-know.

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

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

(1) Government of Australia authorities with entities identified as members of the Approved Community through the DDTC Web site at the time of a transaction under this section; and

(2) The non-governmental Australian entities and facilities identified as members of the Approved Community through the DDTC Web site at the time of a transaction under this section; non-governmental Australian entities and facilities that become ineligible for such membership will be removed from the Australian Community.

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

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

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

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

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

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

(1) Operations, programs, and projects that can be publicly identified will be posted on the DDTC Web site;

(2) Operations, programs, and projects that cannot be publicly identified will be confirmed in written correspondence from DDTC; or

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

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

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

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

(2) The export of any defense article specific to the existence of (e.g., reveals the existence of or details of) anti-tamper measures made at U.S. Government direction always requires prior written approval from DDTC.

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

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

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

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

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

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

(2) Any transfer or other provision of a defense article or defense service for

an end-use that is not authorized by the exemption provided by this section is prohibited without a license or the prior written approval of DDTC (see paragraphs (e) and (f) of this section regarding authorized end-uses).

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

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

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

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

their export, transfer, reexport, or retransfer).

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

(i) The transfer of defense articles or defense services is made by a member of the United States Community to Australian Department of Defence (ADOD) elements deployed outside the Territory of Australia and engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using ADOD transmission channels or the provisions of this section (Note: For purposes of paragraph (h)(7)(i) through (iv) of this section, per Section 9(9) of the Australia Implementing Arrangement, “ADOD Transmission channels” includes electronic transmission of a defense article and transmission of a defense article by an ADOD contracted carrier or freight forwarder that merely transports or arranges transport for the defense article in this instance.);

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

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

(iv) The reexport is made by a member of the Australian Community to an Approved Community member (either United States or Australian) that is operating in direct support of ADOD elements deployed outside the Territory of Australia engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-

uses) using ADOD transmission channels or the provisions of this section; or

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

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

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

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

(i) The U.S. exporter must submit a written request to DDTC, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were originally exported, and the Treaty-eligible end-use for which the defense articles or defense services will be used. Any license(s) filed with U.S. Customs and Border Protection

should remain on file until the exporter has received approval from DDTC to retire the license(s) and transition to this section. When this approval is conveyed to U.S. Customs and Border Protection by DDTC, the license(s) will be returned to DDTC by U.S. Customs and Border Protection in accord with existing procedures for the return of expired licenses in § 123.22(c) of this subchapter.

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

(3) If a member of the Australian Community desires to transition defense articles received under an existing license or other approval to the processes established under the Treaty, the Australian Community member must submit a written request to the Government of Australia. The Government of Australia will submit the request to DDTC for review and approval. The defense article or defense service shall remain subject to the conditions and limitations of the existing license or other approval until the Australian Community member has received via the Government of Australia the approval from DDTC.

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

(5) Any defense article or defense service transitioned from a license or other approval to treatment under this section must be marked in accordance

with the requirements of paragraph (j) of this section.

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

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

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

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

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

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

(ii) Technical data (including data packages, technical papers, manuals, presentations, specifications, guides and reports), regardless of media or means of transmission (physical, oral, or electronic), shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and

(j)(2) of this section; or, where such labeling is impractical shall be accompanied by documentation (such as contracts or invoices) or verbal notification clearly associating the technical data with the appropriate markings as detailed in paragraphs (j)(1)(i) and (j)(1)(ii) of this section; and

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

(5) The exporter shall incorporate the following statement as an integral part of the bill of lading and the invoice whenever defense articles are to be exported: “These U.S. Munitions List commodities are authorized by the U.S. Government under the U.S.-Australia Defense Trade Cooperation Treaty for export only to Australia for use in approved projects, programs or operations by members of the Australian Community. They may not be retransferred or reexported or used outside of an approved project, program, or operation, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.”

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

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

(A) Exporters registered with DDTC and eligible;

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

(C) Commercial air freight and surface shipment carriers, freight forwarders, or other parties not exempt from registration under §129.3(b)(3) of this subchapter, that are identified at the time of export as being on the U.S. Department of Defense Civil Reserve Air Fleet (CRAF) list of approved air carriers, a link to which is available on the DDTC Web site; or

(ii) Australian intermediate consignees who are:

(A) Members of the Australian Community; or

(B) Freight forwarders, customs brokers, commercial air freight and surface shipment carriers, or other Australian parties that are identified at the time of export as being on the list of Authorized Australian Intermediate Consignees, which is available on the DDTC Web site.

(2) Classified exports must comply with the security requirements of the National Industrial Security Program Operating Manual (DoD 5220.22-M and supplements or successors).

(1) *Records.* (1) All exporters authorized pursuant to paragraph (b)(2) of this section who export defense articles or defense services pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section shall maintain detailed records of their exports, imports, and transfers. Exporters shall also maintain detailed records of any reexports and retransfers approved or otherwise authorized by DDTC of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and Australia and this section. These records shall be maintained for a minimum of five years from the date of export, import, transfer, reexport, or retransfer and shall be made available upon request to DDTC or a person designated by DDTC (e.g., the Diplomatic Security Service) or U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection. Records in an electronic format must be maintained using a process or system capable of reproducing all records on paper. Such records when displayed on a viewer, monitor, or reproduced on paper, must exhibit a high degree of legibility and readability. (For the purpose of this section, “legible” and “legibility” mean the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. “Readable” and “readability” means the quality of a group of letters or numerals being recognized as complete words or numbers.). These records shall consist of the following:

(i) Port of entry/exit;

(ii) Date of export/import;

(iii) Method of export/import;



## Department of State

## § 126.16

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

(v) Value of export;

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

(vii) End-user/end-use;

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

(ix) How the export was marked;

(x) Security classification of the export;

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

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

(xiii) Purchase order or contract;

(xiv) Technical data actually exported;

(xv) The Internal Transaction Number for the Electronic Export Information filing using U.S. Customs and Border Protection's electronic system(s);

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

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

(2) *Filing of export information.* All exporters of defense articles under the Defense Trade Cooperation Treaty between the United States and Australia and this section must electronically file Electronic Export Information (EEI) using U.S. Customs and Border Protection's electronic system(s), citing one of the four below referenced codes in the appropriate field in the EEI for each shipment:

(i) For exports in support of United States and Australian combined military or counter-terrorism operations identify §126.16(e)(1) (the name or an appropriate description of the operation shall be placed in the appropriate field in the EEI, as well);

(ii) For exports in support of United States and Australian cooperative security and defense research, development, production, and support programs identify §126.16(e)(2) (the name or an appropriate description of the program shall be placed in the appropriate field in the EEI, as well);

(iii) For exports in support of mutually determined specific security and defense projects where the Government of Australia is the end-user identify §126.16(e)(3) (the name or an appropriate description of the project shall be placed in the appropriate field in the EEI, as well); or

(iv) For exports that will have a U.S. Government end-use identify §126.16(e)(4) (the U.S. Government contract number or solicitation number (e.g., "U.S. Government contract number XXXXX") shall be placed in the appropriate field in the EEI, as well). Such exports must meet the required export documentation and filing guidelines, including for defense services, of §123.22(a), (b)(1), and (b)(2) of this subchapter.

(m) *Fees and commissions.* All exporters authorized pursuant to paragraph (b)(2) of this section shall, with respect to each export, transfer, reexport, or retransfer, pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section, submit a statement to DDTC containing the information identified in §130.10 of this subchapter relating to fees, commissions, and political contributions on contracts or other instruments valued in an amount of \$500,000 or more.

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

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

(3) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers have the authority to investigate, detain, or seize

any export or attempted export of defense articles or technical data that does not comply with this section or that is otherwise unlawful.

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

(o) *Procedures for legislative notification.* (1) Exports pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section by any person identified in paragraph (b)(2) of this section shall not take place until 30 days after DDTC has acknowledged receipt of a written notification from the exporter notifying the Department of State if the export involves one or more of the following:

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

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

(iii) A contract, regardless of value, for the manufacturing abroad of any item of significant military equipment (see § 120.7 of this subchapter); or

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

(2) The written notification required in paragraph (o)(1) of this section shall indicate the item/model number, general item description, U.S. Munitions List category, value, and quantity of items to be exported pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section, and shall be accom-

panied by the following additional information:

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

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

(iii) A copy of the signed contract; and

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

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

[78 FR 21526, Apr. 11, 2013, as amended at 81 FR 62008, Sept. 8, 2016; 82 FR 19, Jan. 3, 2017]

EFFECTIVE DATE NOTE: At 87 FR 16424, Mar. 23, 2022, § 126.16 was amended by in paragraph (g)(1) removing the reference “§120.17” and adding in its place “§120.50”; and in paragraph (o)(1)(iii), removing the phrase “see §120.7” and adding in its place “see §120.36”, effective Sept. 6, 2022.

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

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

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

(iii) *Reexport and retransfer.* (A) *Reexport* means, for purposes of this section only, movement of previously Exported Defense Articles by a member of the United Kingdom Community from the Approved Community to a location

outside the Territory of the United Kingdom.

(B) *Retransfer* means, for purposes of this section only, the movement of previously Exported Defense Articles by a member of the United Kingdom Community from the Approved Community to a location within the Territory of the United Kingdom.

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

(2) Persons or entities exporting or transferring defense articles or defense services are exempt from the otherwise applicable licensing requirements if such persons or entities comply with the regulations set forth in this section. Except as provided in Supplement No. 1 to part 126 of this subchapter, Port Directors of U.S. Customs and Border Protection and postmasters shall permit the permanent and temporary export without a license from members of the United States Community to members of the United Kingdom Community (see paragraph (d) of this section regarding the identification of members of the United Kingdom Community) of defense articles and defense services not listed in Supplement No. 1 to part 126 of this subchapter, for the end-uses specifically identified pursuant to paragraphs (e) and (f) of this section. The purpose of this section is to specify the requirements to export, transfer, reexport, retransfer, or otherwise dispose of a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom. All persons must continue to comply with statutory and regulatory requirements outside of this subchapter concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 CFR parts 447, 478, and 479, which are unaffected by the Defense Trade Cooperation Treaty between the United States and the United Kingdom and

continue to apply fully to defense articles and defense services subject to either of the aforementioned treaties and the exemptions contained in this section.

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

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

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

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

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

(v) The defense article or defense service is not excluded from the scope

of the Defense Trade Cooperation Treaty between the United States and the United Kingdom (*see* paragraph (g) of this section and Supplement No. 1 to part 126 of this subchapter for specific information on the scope of items excluded from export under this exemption) and is marked or identified, at a minimum, as “Restricted USML” (*see* paragraph (j) of this section for specific requirements on marking exports);

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

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

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

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

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

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

this section regarding authorized end-uses);

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

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

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

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

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

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

(2) Non-governmental U.S. persons registered with DDTC and eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other form of authorization to export) from any agency of the U.S. Government without restriction, including their employees acting

## Department of State

## § 126.17

in their official capacity with, as appropriate, a security clearance and a need-to-know.

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

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

(1) Her Majesty's Government entities and facilities identified as members of the Approved Community through the DDTC Web site at the time of a transaction under this section; and

(2) The non-governmental United Kingdom entities and facilities identified as members of the Approved Community through the DDTC Web site ([www.pmddtc.state.gov](http://www.pmddtc.state.gov)) at the time of a transaction under this section; non-governmental United Kingdom entities and facilities that become ineligible for such membership will be removed from the United Kingdom Community.

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

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

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

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

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

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

(1) Operations, programs, and projects that can be publicly identified will be posted on the DDTC Web site;

(2) Operations, programs, and projects that cannot be publicly identified will be confirmed in written correspondence from DDTC; or

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

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

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

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

(2) The export of any defense article specific to the existence of (e.g., reveals the existence of or details of) anti-tamper measures made at U.S. Government direction always requires prior written approval from DDTC.

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

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

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

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

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

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

(h) *Transfers, retransfers, and reexports.* (1) Any transfer of a defense article or defense service not exempted in Supplement No. 1 to part 126 of this subchapter by a member of the United Kingdom Community (*see* paragraph (d) of this section for specific information on the identification of the Commu-

nity) to another member of the United Kingdom Community or the United States Community for an end-use that is authorized by this exemption (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) is authorized under this exemption.

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

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

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

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

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

change in end-use of any such embedded defense article (for example, USML Category XI(a)(3) electronically scanned array radar systems that are excluded from this section by Supplement No. 1 to part 126 of this subchapter, Note 2 that are incorporated in an aircraft that is eligible to ship under this section continue to require separate authorization from DDTC for their export, transfer, reexport, or retransfer).

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

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

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

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

(iv) The reexport is made by a member of the United Kingdom Community to an Approved Community member (either U.S. or UK) that is operating in direct support of UK MOD elements deployed outside the Territory of the United Kingdom engaged in an author-

ized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section; or

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

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

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

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

(i) The U.S. exporter must submit a written request to DDTC, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were originally exported, and the Treaty-eligible end-use for which the defense articles or defense services

will be used. Any license(s) filed with U.S. Customs and Border Protection should remain on file until the exporter has received approval from DDTC to retire the license(s) and transition to this section. When this approval is conveyed to U.S. Customs and Border Protection by DDTC, the license(s) will be returned to DDTC by U.S. Customs and Border Protection in accord with existing procedures for the return of expired licenses in § 123.22(c) of this subchapter.

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

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

(4) Authorized exporters identified in paragraph (b)(2) of this section who have exported a defense article or defense service that has subsequently been placed on the list of exempted items in Supplement No. 1 to part 126 of this subchapter must review and adhere to the requirements in the relevant FEDERAL REGISTER notice announcing such removal. Once removed, the defense article or defense service will no longer be subject to this section, and such defense article or defense service previously exported shall remain on the U.S. Munitions List and be subject to the requirements of this

subchapter unless the applicable FEDERAL REGISTER notice states otherwise. Subsequent reexport or retransfer must be made pursuant to § 123.9 of this subchapter.

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

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

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

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

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

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

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



## Department of State

## § 126.17

as detailed in paragraphs (j)(1)(i) and (j)(1)(ii) of this section;

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

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

(5) The exporter shall incorporate the following statement as an integral part of the bill of lading and the invoice whenever defense articles are to be exported: "These U.S. Munitions List commodities are authorized by the U.S. Government under the U.S.-UK Defense Trade Cooperation Treaty for export only to United Kingdom for use in approved projects, programs or operations by members of the United Kingdom Community. They may not be retransferred or reexported or used outside of an approved project, program, or operation, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State."

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

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

(A) Exporters registered with DDTC and eligible;

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

(C) Commercial air freight and surface shipment carriers, freight forwarders, or other parties not exempt from registration under §129.3(b)(3) of

this subchapter, that are identified at the time of export as being on the U.S. Department of Defense Civil Reserve Air Fleet (CRAF) list of approved air carriers, a link to which is available on the DDTC Web site; or

(ii) United Kingdom intermediate consignees who are:

(A) Members of the United Kingdom Community; or

(B) Freight forwarders, customs brokers, commercial air freight and surface shipment carriers, or other United Kingdom parties that are identified at the time of export as being on the list of Authorized United Kingdom Intermediate Consignees, which is available on the DDTC Web site.

(2) Classified exports must comply with the security requirements of the National Industrial Security Program Operating Manual (DoD 5220.22-M and supplements or successors).

(1) *Records.* (1) All exporters authorized pursuant to paragraph (b)(2) of this section who export defense articles or defense services pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section shall maintain detailed records of their exports, imports, and transfers. Exporters shall also maintain detailed records of any reexports and retransfers approved or otherwise authorized by DDTC of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section. These records shall be maintained for a minimum of five years from the date of export, import, transfer, reexport, or retransfer and shall be made available upon request to DDTC or a person designated by DDTC (e.g., U.S. Department of State's Bureau of Diplomatic Security) or U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection. Records in an electronic format must be maintained using a process or system capable of reproducing all records on paper. Such records when displayed on a viewer, monitor, or reproduced on paper, must exhibit a high degree of legibility and readability. (For the purpose of this section, "legible" and "legibility" mean the quality of a letter or numeral that enables the

observer to identify it positively and quickly to the exclusion of all other letters or numerals. “Readable” and “readability” means the quality of a group of letters or numerals being recognized as complete words or numbers.) These records shall consist of the following:

- (i) Port of entry/exit;
- (ii) Date of export/import;
- (iii) Method of export/import;
- (iv) Commodity code and description of the commodity, including technical data;
- (v) Value of export;
- (vi) Reference to this section and justification for export under the Treaty;
- (vii) End-user/end-use;
- (viii) Identification of all U.S. and foreign parties to the transaction;
- (ix) How the export was marked;
- (x) Security classification of the export;
- (xi) All written correspondence with the U.S. Government on the export;
- (xii) All information relating to political contributions, fees, or commissions furnished or obtained, offered, solicited, or agreed upon as outlined in paragraph (m) of this section;
- (xiii) Purchase order or contract;
- (xiv) Technical data actually exported;
- (xv) The Internal Transaction Number for the Electronic Export Information filing using U.S. Customs and Border Protection’s electronic system(s);
- (xvi) All shipping documentation (including, but not limited to the airway bill, bill of lading, packing list, delivery verification, and invoice); and
- (xvii) Statement of Registration (Form DS–2032).

(2) *Filing of export information.* All exporters of defense articles under the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section must electronically file Electronic Export Information (EEI) using U.S. Customs and Border Protection’s electronic system(s), citing one of the four below referenced codes in the appropriate field in the EEI for each shipment:

(i) For exports in support of United States and United Kingdom combined military or counter-terrorism operations identify §126.17(e)(1) (the name or an appropriate description of the op-

eration shall be placed in the appropriate field in the EEI, as well);

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

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

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

(m) *Fees and commissions.* All exporters authorized pursuant to paragraph (b)(2) of this section shall, with respect to each export, transfer, reexport, or retransfer, pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section, submit a statement to DDTC containing the information identified in §130.10 of this subchapter relating to fees, commissions, and political contributions on contracts or other instruments valued in an amount of \$500,000 or more.

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

(2) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers may take

## Department of State

## § 126.18

appropriate action to ensure compliance with this section as to the export or the attempted export of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft.

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

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

(o) *Procedures for legislative notification.* (1) Exports pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section by any person identified in paragraph (b)(2) of this section shall not take place until 30 days after DDTC has acknowledged receipt of a written notification from the exporter notifying the Department of State if the export involves one or more of the following:

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

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

(iii) A contract, regardless of value, for the manufacturing abroad of any item of significant military equipment (see § 120.7 of this subchapter); or

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

(2) The written notification required in paragraph (o)(1) of this section shall indicate the item/model number, general item description, U.S. Munitions List category, value, and quantity of items to be exported pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section, and shall be accompanied by the following additional information:

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

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

(iii) A copy of the signed contract; and

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

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

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

EFFECTIVE DATE NOTE: At 87 FR 16424, Mar. 23, 2022, § 126.17 was amended in paragraph (g)(1) by removing the reference “§ 120.17” and adding in its place “§ 120.50”; and in paragraph (o)(1)(iii), removing the phrase “see § 120.7” and adding in its place “see § 120.36”, effective Sept. 6, 2022.

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

(a) Subject to the requirements of paragraphs (b) and (c) of this section and notwithstanding any other provisions of this part, and where the exemption provided in paragraph (d) of this section cannot be implemented because of applicable domestic laws, no approval is needed from the Directorate of Defense Trade Controls

(DDTC) for the transfer of unclassified defense articles, which includes technical data (see §120.6), to or within a foreign business entity, foreign governmental entity, or international organization that is an authorized end-user or consignee (including approved sub-licensees) for those defense articles, including the transfer to dual nationals or third-country nationals who are bona fide regular employees, directly employed by the foreign consignee or end-user. The transfer of defense articles pursuant to this section must take place completely within the physical territory of the country where the end-user is located, where the governmental entity or international organization conducts official business, or where the consignee operates, and be within the scope of an approved export license, other export authorization, or license exemption.

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

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

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

(2) The end-user or consignee to have in place a process to screen its employees and to have executed a Non-Disclosure Agreement that provides assurances that the employee will not transfer any defense articles to persons or entities unless specifically authorized by the consignee or end-user. The end-user or consignee must screen its employees for substantive contacts with

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

(d) Notwithstanding any other provisions of this subchapter, no approval is needed from the Directorate of Defense Trade Controls (DDTC) for the reexport of unclassified defense articles or defense services to individuals who are dual national or third-country national employees of a foreign business entity, foreign governmental entity, or international organization, that is an authorized end-user, foreign signatory, or consignee (including approved sub-licensees) for those defense articles or defense services, when such individuals are:

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

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

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

(4) Signatory to a Non-Disclosure Agreement, unless their employer is a

Department of State

Pt. 126, Supp. No. 1

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]

EFFECTIVE DATE NOTE: At 87 FR 16425, Mar. 23, 2022, §126.18 was amended in paragraph (a) by removing the phrase “(see §120.6)” and in paragraph (b), removing the references “§127.1(b) and ” and “§120.16” and add in their places “§127.1(b) of this subchapter” and “§120.63 of this subchapter,” respectively, effective Sept. 6, 2022.

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
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. See Note 12.	X		

Pt. 126, Supp. No. 1

22 CFR Ch. I (4-1-22 Edition)

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
I-XXI	Defense services other than those required to prepare a quote or bid proposal in response to a written request from a department or agency of the United States Federal Government or from a Canadian Federal, Provincial, or Territorial Government; or defense services other than those required to produce, design, assemble, maintain or service a defense article for use by a registered U.S. company, or a U.S. Federal Government Program, or for end-use in a Canadian Federal, Provincial, or Territorial Government Program. See Note 14.	X		
I	Firearms, close assault weapons, and combat shotguns	X		
II(k)	Software source code related to USML Category II(c), II(d), or II(j). See Note 4.		X	X
II(k)	Manufacturing know-how related to USML Category II(d). See Note 5.	X	X	X
III	Ammunition for firearms, close assault weapons, and combat shotguns listed in USML Category I.	X		
III	Defense articles and services specific to ammunition and fuse setting devices for guns and armament controlled in USML Category II.			X
III(e)	Manufacturing know-how related to USML Category III(d)(1) or III(d)(2) and their specially designed components. See Note 5.	X	X	X
III(e)	Software source code related to USML Category III(d)(1) or III(d)(2). See Note 4.		X	X
IV	Defense articles and services specific to man-portable air defense systems (MANPADS). See Note 6.	X	X	X
IV	Defense articles and services specific to rockets, designed or modified for non-military applications that do not have a range of 300 km (i.e., not controlled on the MTCR Annex).			X
IV	Defense articles and services specific to torpedoes		X	X
IV	Defense articles and services specific to anti-personnel landmines. See Note 15.	X	X	X
IV	Defense articles and services specific to cluster munitions	X	X	X
IV(i)	Software source code related to USML Category IV(a), IV(b), IV(c), or IV(g). See 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. See 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-methylaziridinyl)2-(2-hydroxypropanoxy) propylamino phosphine oxide), and other MAPO derivatives; e. N-methyl-p-nitroaniline (CAS 100-15-2); or f. Trinitrophenylmethyl nitramine (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)	Difluoraminated derivative of RDX as described in USML Category V(a)(23)(iii).			X
V(c)(7)	Pyrotechnics and pyrophorics specifically formulated for military purposes to enhance or control radiated energy in any part of the IR spectrum.			X
V(d)(3)	Bis-2, 2-dinitropropyl nitrate (BDNPN)			X
V(i)	Developmental explosives, propellants, pyrotechnics, fuels, oxidizers, binders, additives, or precursors thereof, 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

Department of State

Pt. 126, Supp. No. 1

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
VI .....	Defense articles and services specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (-170 °C).			X
VI .....	Defense articles and services specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators which have single-pole normal metal armatures that rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VI .....	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. See Note 10.		X	X
VI(a) .....	Nuclear powered vessels. ....	X	X	X
VI(e) .....	Defense articles and services specific to naval nuclear propulsion equipment. See Note 7.	X	X	X
VI(g) .....	Software source code related to USML Category VI(a) or VI(c). See Note 4.		X	X
VII .....	Defense articles and services specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (-170 °C).			X
VII .....	Defense articles and services specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators which have single-pole normal metal armatures that rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VIII .....	Defense articles and services specific to cryogenic equipment, and specially designed components and accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (-170 °C).			X
VIII .....	Defense articles and services specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators which have single-pole normal metal armatures that rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VIII(a) .....	All USML Category VIII(a) items. ....	X		
VIII(f) .....	Developmental aircraft parts, components, accessories, and attachments identified in USML Category VIII(f).	X		
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

Pt. 126, Supp. No. 1

22 CFR Ch. I (4–1–22 Edition)

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
IX(e) .....	Software source code related to USML Category IX(a) or IX(b). <i>See</i> 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. <i>See</i> Note 5.	X	X	X
XI(a) XI(c), XI(d) .....	Defense articles and services specific to countermeasures and counter- countermeasures <i>See</i> 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. <i>See</i> 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. <i>See</i> 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). <i>See</i> Note 4.	.....	X	X
XI(d) .....	Manufacturing know-how related to USML Category XI(a)(3) or XI(a)(4), and specially designed components therefor. <i>See</i> Note 5.	X	X	X
XII .....	Defense articles and services specific to countermeasures and counter- countermeasures. <i>See</i> 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>i.e.</i> , 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. <i>See</i> Note 5.	X	X	X
XII(f) .....	Software source code related to USML Category XII(a), XII(b), XII(c), or XII(d). <i>See</i> Note 4.	.....	X	X
XIII(b) .....	Defense articles and services specific to USML Category XIII(b) (Military Information Security Assurance Systems, cryptographic devices, software, and components).	.....	X	X
XIII(d) .....	Carbon/carbon billets and preforms which are reinforced in three or more dimensional planes, specifically designed, developed, modified, configured or adapted for defense articles.	.....	.....	X
XIII(e) .....	Defense articles and services specific to armored plate manufactured to comply with a military standard or specification or suitable for military use. <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(i) .....	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(i) .....	Software source code related to USML Category XIII(a). <i>See</i> Note 4.	.....	X	X



Department of State

Pt. 126, Supp. No. 1

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
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
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

Pt. 126, Supp. No. 1

22 CFR Ch. I (4–1–22 Edition)

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
XIX(g)	Technical data and defense services for gas turbine engine hot sections. (This does not include hardware). See Note 8.	X	X	X
XX	Defense articles and services related to submersible vessels, oceanographic, and associated equipment.	X	X	X
XX	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. See Note 10.		X	X
XX	Defense articles specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (–170 °C).			X
XX	Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
XX(a)	Nuclear powered vessels.	X	X	X
XX(b)	Defense articles and services specific to naval nuclear propulsion equipment. See Note 7.	X	X	X
XX(c)	Defense articles and services specific to submarine combat control systems.		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 shipboard and shore-based nuclear support facilities. Examples of defense articles covered by this exclusion include nuclear propulsion plants and nuclear submarine technologies or systems; nuclear powered vessels (see USML Categories VI and XX).

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

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

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

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

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

The excluded defense articles include constructions of metallic or non-metallic materials or combinations thereof specially designed to provide protection for military systems. The phrase "suitable for military use" applies to any articles or materials which have been tested to level IIIA or above IAW NIJ standard 0108.01 or comparable national standard. This exclusion does not include military helmets, body armor, or 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).

EFFECTIVE DATE NOTE: At 87 FR 16425, Mar. 23, 2022, Supplement No. 1 to Part 126 was amended by:

- a. In the table, revise the 14th entry “I-XXI”;
- b. In Note 5:
  - i. Remove the reference “§125.4(c)(6)” and add in its place “§120.43(g)”;
  - ii. Remove the reference “(e)(1), (e)(2), or (e)(4)” and add in its place “(e)(1), (2), or (4)”;
- c. In Note 12:
  - i. Remove the phrase “applied research (§125.4(c)(3) of this subchapter)” and add in its place “applied research (§120.43(i) of this subchapter)”;
  - ii. Remove the reference “§125.4(c)(4)” and add in its place “§120.43(c)”;

- iii. Remove the reference “§125.4(c)(5)” and add in its place “§120.43(d)”;
- iv. Remove the reference “§125.4(c)(6)” and add in its place “§120.43(e)”;
- v. Remove the reference “§125.4(c)(1)” and add in its place “§120.43(f)”;
- vi. Remove the reference “§125.4(c)(2)” and add in its place “§120.43(g)”;
- vii. Remove the phrase “basic research as defined in §125.4(c)(3) of this subchapter” and add in its place “basic research as defined in §120.43(h) of this subchapter”.

The revision reads as follows:

SUPPLEMENT NO. 1 TO PART 126

USML category	Exclusion	(CA) § 126.5	(AS) § 126.16	(JK) § 126.17
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
I-XXI	Defense services or technical data specific to applied research as defined in § 120.43(i) of this subchapter, design methodology as defined in § 120.43(c) of this subchapter, engineering analysis as defined in § 120.43(d) of this subchapter, or manufacturing know-how as defined in § 120.43(e) of this subchapter. See Note 12.	X		
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**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.
- 126.6 Seizure and forfeiture in attempts at illegal exports.
- 127.7 Debarment.
- 127.8 [Reserved]
- 127.9 Applicability of orders.
- 127.10 Civil penalty.
- 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;