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Amendment to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform; Correction; Final Rule

DEPARTMENT OF STATE

22 CFR Parts 120, 121, 123, and 126

RIN 1400-AD37

[Public Notice 8493]

Amendment to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform; Correction

AGENCY: Department of State.

ACTION: Final rule; correction.

SUMMARY: The Department of State is correcting a final rule that appeared in the *Federal Register* of April 16, 2013.

DATES: This rule is effective October 15, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2792; email DDTCResponseTeam@state.gov. ATTN: Regulatory Change, Corrections to First ECR Final Rule.

SUPPLEMENTARY INFORMATION: The Department provides the following corrections to the rule, "Amendment to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform," published on April 16, 2013 and effective on October 15, 2013 (78 FR 22740). As part of the President's Export Control Reform (ECR) effort, that rule amended the International Traffic in Arms Regulations (ITAR) to revise four U.S. Munitions List (USML) categories, provide new definitions, and provide policies and procedures regarding the licensing of items moving from the export jurisdiction of the Department of State to the Department of Commerce.

Most of the changes in this rule are meant to clarify the regulation by correcting grammatical and punctuation errors, providing references and more appropriate arrangement of the regulation, and in a few instances correcting unintended consequences of the regulation as published on April 16. In addition, certain errors and omissions in the Transition Plan included in that rule are corrected, and a revised Supplement No. 1 to part 126, which takes into account the changes made to the USML thus far, is provided.

Pursuant to ECR, the Department of Commerce has been publishing revisions to the Export Administration Regulations, including various revisions to the Commerce Control List. Revision of the USML and CCL are coordinated so there is uninterrupted regulatory coverage for items moving from the jurisdiction of the Department of State to that of the Department of Commerce.

The Department of Commerce's companion to the rule corrected in this notice (*see* "Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform," 78 FR 22660) is also corrected in this edition of the *Federal Register*.

The following corrections are made to FR Doc. No. 2013-8351, "Amendment to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform," published on April 16, 2013:

- 1. On page 22740, in the first column, in the heading, "22 CFR Parts 120, 121, and 123" is corrected to read "22 CFR Parts 120, 121, 123, and 126."
- 2. On page 22740, in the third column, in the "Changes in This Rule" paragraph, "(v)" is changed to "(vi)," and a new "(v)" section is added as follows: "(v) updating of Supplement No. 1 to part 126 to reflect the changes to the USML in this rule;"
- 3. Starting on page 22747, in the third column, through page 22751, in the first column, "Transition Plan" is revised to read as follows:

Transition Plan

With the intention of establishing certain necessary licensing procedures stemming from ECR implementation and mitigating the impact of the changes involved in the revision of the USML and the CCL on U.S. license holders and the defense export industry, the Department implements the following "Transition Plan," which will describe (1) timelines for implementation of changes, (2) certain temporary licensing procedures for items transitioning from the USML to the CCL, and (3) certain permanent licensing procedures pertaining to the export of any item "subject to the EAR" (*see* definition of this term in this rule) to be used in or with defense articles controlled on the USML.

The Department notes the following main points regarding licensing procedure during the transition and thereafter:

- There will generally be a 180-day transition period between the publication of the final rule for each revised USML category and its effective date. This period will allow U.S. license holders time to review their current authorizations and prepare for the transition to the new Export Control Classification Numbers (ECCNs).
- A license application or other request for authorization containing only transitioning items or both USML and transitioning items will be accepted by the Department up until the effective date of the relevant revised USML category.

- A license or authorization issued by the Department will be effective for up to two years from the effective date of the revised USML category if all the items listed on the license or authorization have transitioned to the export jurisdiction of the Department of Commerce.

- A license or authorization issued by the Department will be valid until its expiration if some of the items listed on the license or authorization have transitioned to the export jurisdiction of the Department of Commerce.

- USML categories will have a new (x) paragraph, the purpose of which is to allow for Department of State licensing for commodities, software, and technical data subject to the EAR, provided those commodities, software, and technical data are to be used in or with defense articles controlled on the USML and are described in the purchase documentation submitted with the application.

The Department first presented for public comment its plan for licensing policies and procedures regarding items moving from the export jurisdiction of the Department of State to the Department of Commerce on June 21, 2012 (*see* "Export Control Reform Transition Plan," 77 FR 37346). The comment period ended August 6, 2012. Seventeen parties filed comments during the established comment period recommending changes. The Department's evaluation of the written comments and recommendations follows.

Eight commenting parties stated that the proposed 45-day transition period was insufficient time to accomplish all that was necessary to adapt company systems to the changes and recommended longer transition periods of varying lengths. The Department has accepted the recommendation for a longer transition period, and has changed the effective date of revised USML categories to 180 days from the date of publication.

In response to the recommendation of several commenting parties for shared licensing authority for items changing export jurisdiction, the Department's transition guidance will provide that, for 180 days following the publication date of a revised USML category, licenses for items moving from the USML to the CCL will be accepted by both DDTC and BIS. In addition, DDTC authorizations that pertain wholly to transitioned items will expire two years after the effective date of the relevant final rule moving the items to the CCL, and licenses that have some items remaining on the USML will be valid until expiration for all items covered by

the license at the time it was issued. Applicants should refer to the Department of Commerce's companion to this rule, which is published elsewhere in this issue of the **Federal Register**, for information related to BIS licenses during the transition period.

Two commenting parties stated that dual jurisdiction/licensing will create a heavy compliance burden for USML end-item manufacturers with international supply chains, as each of the export authorities has different compliance obligations. The commenting parties also stated that it will create confusion as foreign parties may be party to a USML technical assistance agreement and receive items for the project under a Department of Commerce license or Strategic Trade Authorization (STA) license exception. The Department acknowledges this complexity, but notes that ECR will not create a new context in this regard, as current projects routinely require both defense articles and commercial items for completion. Dual compliance requirements already exist and the Department believes the benefits derived from changes implemented under ECR outweigh these concerns.

One commenting party requested clarification of whether sending to a foreign supplier technical data on a USML end-item to allow installation of a 600 series component is both a USML technical data export and CCL installation technology export, creating dual licensing for most foreign sourced commodities. If the technical data is directly related to a defense article, the technical data will be ITAR controlled. If the technical data is for the production, development, etc., of a 600 series or CCL item to be installed in a defense article, the technical data remains EAR controlled. The jurisdiction of the technical data follows the jurisdiction of the related commodity or item.

Five commenting parties recommended that amendments to licenses and authorizations that contain transitioning and non-transitioning items or solely transitioning items should be allowed during the transition period. The Department accepted this recommendation and revised the guidance to provide that such submissions will be accepted up until the effective date of the relevant revised USML category.

Three commenting parties recommended allowing temporary import and export authorizations to last until expired or returned. As the items temporarily imported or exported are to return to their point of origin, pursuant to the requirements of the

authorizations, there is no national security risk in maintaining the original authorizations. The Department accepted this recommendation and revised the guidance accordingly.

One commenting party noted that currently approved agreements covering dual/third country national employees of the foreign party will be affected by the need to obtain deemed export licenses, and that two years may not be sufficient time to fulfill this requirement. The Department notes that as long as the currently approved agreement has been amended to provide authority for the transitioned items in accordance with the guidance in this notice, the dual/third country national authority would still apply.

Five commenting parties recommended that existing reexport/retransfer authorizations should be grandfathered without expiration. Foreign parties who purchased transitioned items under authorizations that allowed perpetual foreign sales should not have to reauthorize those sales and the U.S. Government should not re-review the authorizations. The Department accepted this recommendation and revised the guidance accordingly. The three scenarios for which this applies are: (1) Reexport/retransfer authority granted through a program status DSP-5; (2) the sales territory of a manufacturing license or warehouse and distribution agreement if the agreement continues to be the export authority; and (3) any stand-alone reexport/retransfer authorization received pursuant to ITAR § 123.9(c).

Two commenting parties recommended requiring U.S. exporters to identify ECCNs and prior USML classifications on export documentation for two years following the effective date of transitioned items and mandate prompt responses to requests for ECCNs for legacy items. The Department accepted this recommendation in part. The Department has revised ITAR § 123.9(b) to require identification of the license or other approval to the foreign party.

Seven commenting parties recommended that previously issued commodity jurisdiction (CJ) determinations designating items as not subject to the export jurisdiction of the Department remain valid. This will preserve EAR99 status for items previously so designated and would relieve exporters who have obtained CJ determinations from having to reclassify items. The Department accepted this recommendation and revised the guidance accordingly.

One commenting party inquired what Automated Export System (AES) entry would be required for items that have transitioned to control under the CCL but are to be exported under a legacy DDTC authorization. The AES entry for such exports will remain the same as is required now for a DDTC authorization.

In response to one commenting party's inquiry on what effect the transition will have on recordkeeping requirements, the Department notes records must be maintained for five years following the last transaction, regardless of jurisdiction.

After consideration of the comments received, and in furtherance of the principles of ECR, the Department has decided to institute a new permanent licensing procedure that will allow DDTC licensing for commodities, software, and technical data subject to the EAR, provided those commodities, software, and technical data are to be used in or with defense articles controlled on the USML and are described in the purchase documentation submitted with the application. This procedure is to be effected by the exporter by use of "(x) paragraph," added to USML Categories VIII and XIX in this rule, and to be added to other USML categories as they are revised. The Department will begin accepting licenses citing a (x) paragraph entry following the effective date of the relevant revised USML category. The President has provided for this delegation of authority from the Secretary of Commerce to the Secretary of State, and Executive Order 13222 has been amended accordingly (*see* 78 FR 16129). The Department has revised various sections of, and added certain sections to, the ITAR to accommodate this delegation of authority: ITAR § 120.5 to add a new paragraph (b) to address the delegation; the addition of ITAR § 120.42 to provide a definition of "subject to the EAR"; ITAR § 123.1 to provide guidance on how to use the (x) paragraph; and ITAR § 123.9(b) to identify additional requirements when using the (x) paragraph. The Department of Commerce has the authority to review "pre-positioned" license applications during the 180-day transition period for items transitioning to EAR jurisdiction. This means the Department of Commerce will be able to review and process license applications for transitioning items. However, these Department of Commerce licenses would not be issued until the effective date of the relevant final rule moving items from the USML to the CCL. Further guidance is provided in the Department of Commerce's companion to this rule (*see* "Revision to the Export

Administration Regulations: Initial Implementation of Export Control Reform," elsewhere in this edition of the **Federal Register**).

Transition Plan

Transition Period—General Policy

There will generally be a 180-day transition period between the publication of the final rule for each revised U.S. Munitions List (USML) category and its effective date. This period will allow U.S. license holders time to review their current authorizations and prepare for the transition to the new ECCNs. A license application or other request for authorization containing only transitioning items or both USML and transitioning items will be accepted by the Department up until the effective date of the relevant revised USML category. A license or authorization issued by the Department will be effective for up to two years from the effective date of the revised USML category if all the items listed on the license or authorization have transitioned to the export jurisdiction of the Department of Commerce. A license or authorization issued by the Department will be valid until its expiration if some of the items listed on the license or authorization have transitioned to the export jurisdiction of the Department of Commerce. During this period, BIS will accept license applications for items moving from the USML to the CCL, but it will not issue licenses for such items until the applicable effective date.

DSP-5 Licenses

Approvals issued for licenses submitted prior to the effective date of the relevant revised USML category that do not include any items that will remain on the USML will remain valid until expired, returned by the license holder, or for a period of two years from the effective date of the final rule, whichever occurs first, unless otherwise revoked, suspended, or terminated. Licenses containing both transitioning and non-transitioning items (mixed authorizations) will remain valid until expired or returned by the license holder, unless otherwise revoked, suspended, or terminated. Any limitation, proviso, or other requirement imposed on the DDTC authorization will remain in effect if the DDTC authorization is relied upon for export. License amendment requests (DSP-6) received by DDTC during the transition period amending licenses affected by the transition will be adjudicated on a

case-by-case basis up until the effective date of the relevant rule.

DSP-61 and DSP-73 Licenses

All temporary licenses that are issued in the period prior to the effective date of the final rule for each revised USML category will remain valid until expired or returned by the license holder, unless otherwise revoked, suspended, or terminated. Any limitation, proviso, or other requirement imposed on the DDTC authorization will remain in effect if the DDTC authorization is relied upon for export. License amendment requests (DSP-62 and DSP-74) received by DDTC during the transition period amending licenses affected by the transition will be adjudicated on a case-by-case basis until the effective date of the relevant rule.

License Applications Received After the Transition Period

All license applications, including amendments, received after the effective date for items that have transitioned to the CCL that are not identified in a (x) paragraph entry will be Returned Without Action with instructions to contact the Department of Commerce.

Technical Assistance Agreements, Manufacturing License Agreements, Warehouse and Distribution Agreements, and Related Reporting Requirements

Approvals issued for agreements submitted prior to the effective date of the relevant revised USML category that contain transitioning and non-transitioning items will remain valid until expired, unless they require an amendment, or for a period of two years from the effective date of the relevant final rule, whichever occurs first, unless otherwise revoked, suspended, or terminated. In order for an agreement to remain valid beyond two years, an amendment must be submitted to authorize the CCL items using the new (x) paragraph from the relevant USML category. Any activity conducted under an agreement will remain subject to all limitations, provisos, and other requirements stipulated in the agreement.

Approvals issued for agreements submitted prior to the effective date of the relevant revised USML category that contain solely transitioning items will remain valid for a period of two years from the effective date of the relevant USML category, unless revoked, suspended, or terminated. After the two year period ends, any on-going activity must be conducted under the appropriate Department of Commerce authorization. Agreements and

agreement amendments solely for items moving to the CCL which are received after the effective date will be Returned Without Action with instructions to contact the Department of Commerce.

All reporting requirements for Manufacturing License Agreements under ITAR § 124.9(a)(6) and Warehouse and Distribution Agreements under ITAR § 124.14(c)(6) must be complied with and such reports must be submitted to the Department of State while the agreement is relied upon as an export authorization by the exporter.

ITAR Licensing of Items Subject to the EAR

USML categories will have a new (x) paragraph, to be a permanent feature of ITAR licensing. The purpose of this procedure is to allow for ITAR licensing for commodities, software, and technical data subject to the Export Administration Regulations (EAR) provided those commodities, software, and technical data are to be used in or with defense articles controlled on the USML and are described in the purchase documentation submitted with the application.

Commodity Jurisdiction Determinations

Previously issued commodity jurisdiction (CJ) determinations for items deemed to be subject to the EAR shall remain valid. Previously issued CJ determinations for items deemed to be USML but that are subsequently transitioning to the CCL pursuant to a published final rule will be superseded by the newly revised lists. Exporters are encouraged to review each revised USML category along with its companion CCL category to determine whether the items subject to a CJ have transitioned to the jurisdiction of the Department of Commerce. These CJs are limited to the specific commodity identified in the final determination letter. Consistent with the recordkeeping requirements of the ITAR and the EAR, licensees and foreign persons subject to licenses must maintain records reflecting their assessments of the proper regulatory jurisdiction over their items. License holders unable to ascertain the proper jurisdiction of their items may request a CJ determination from DDTC through the established procedure.

License holders who are certain their items have transitioned to the CCL are encouraged to review the appropriate ECCN to determine the classification of their item. License holders who are unsure of the proper ECCN designation may submit a Commodity Classification Automated Tracking System request

(CCATS) to the Department of Commerce. See 15 CFR 748.3.

As described in EAR § 748.3(b)(3), parties making classification self-determinations or submitting CCATS requests are reminded that such determinations may not be relied upon or cited as evidence that the U.S. Government has determined that the item is not subject to the ITAR. As described in ITAR § 120.5, an item that is described on the USML is ITAR controlled regardless of whether it also within the scope of an ECCN or referred to in a CCATS.

Reexport/Retransfer of USML Items That Have Transitioned to the CCL

Following the effective date of transition, foreign persons (*i.e.*, end-users, foreign consignees, and foreign intermediate consignees) who receive, via a Department of State authorization, an item that they are certain has transitioned to the CCL (*e.g.*, confirmed in writing by manufacturer or supplier), should treat the item as such and submit requests for post-transition reexports or retransfers outside the scope of the original ITAR authorization to the Department of Commerce, as may be required by the EAR.

If reexport or retransfer was previously authorized under a DDTC authorization, then that reexport or retransfer authority remains valid. The three scenarios for which this applies are: (1) Reexport/retransfer authority granted through a program status DSP-5; (2) the sales/distribution territory of a manufacturing license or warehouse and distribution agreement if the agreement continues to provide the export authority; or (3) any stand-alone reexport/retransfer authorization received pursuant to ITAR § 123.9.

Foreign persons or U.S. persons abroad that have USML items in their inventory at the effective date of transition should review both the USML and the CCL to determine the proper jurisdiction. If the item is controlled by the Department of Commerce, any reexport or retransfer must comply with the requirements of the EAR. If doubt exists on jurisdiction of the items, the foreign person should contact the original exporter or manufacturer.

Regulatory Oversight Responsibilities

For those items transitioning from the USML to the CCL, the Department of Commerce will exercise regulatory oversight, as of the effective date, for the purposes of licensing and enforcement of exports from the United States where no Department of State authorization is being used. The Department of State will continue to exercise regulatory

oversight concerning all Department of State licenses, agreements, and other authorizations, including those where exporters, temporary importers, manufacturers, and brokers continue to use previously issued Department of State licenses and agreements, until the activity is covered by a Department of Commerce authorization.

License holders may decide to apply for and use Department of Commerce authorizations for export of the newly transitioned CCL items rather than continue to use previously issued Department of State authorizations. In such cases, license holders must return the Department of State licenses in accordance with ITAR § 123.22 after they have obtained the required Department of Commerce authorizations.

Violations and Voluntary Disclosures of Possible Violations

Exporters, temporary importers, manufacturers, and brokers are cautioned to closely monitor ITAR and EAR compliance concerning Department of State licenses and agreements for items transitioning from the USML to the CCL.

On the effective date of each rule that adds an item to the CCL that was previously subject to the ITAR, that item will be subject to the EAR. Approvals issued by DDTC for license applications and other authorization requests may continue to be used as described above by exporters, temporary importers, manufacturers, and brokers. The violation of a previously issued DDTC authorization (including any condition of a DDTC authorization) that is continued to be used as described above is a violation of the ITAR.

With respect to a transitioned item, persons who discover a possible violation of the ITAR, the EAR, or any license or authorization issued thereunder, are strongly encouraged to disclose this violation to DDTC, BIS, or both offices, as appropriate, pursuant to established procedures for submitting voluntary disclosures.

License holders and foreign persons must obtain Department of State authorization before disposing, reselling, transshipping, or otherwise transferring any item in their possession that remains on the USML.

Registration

With few exceptions, manufacturers, exporters, and brokers are required to register with the Department of State if their activities involve USML defense articles or defense services.

Registered manufacturers, exporters, temporary importers, defense service

providers and brokers ("registrants") are reminded of the requirement to notify DDTC in writing when they are no longer in the business of manufacturing, exporting, or brokering USML defense articles or defense services. Registrants who determine that all of their activities involve articles or services that will transition from the USML to the CCL and therefore are no longer required to register with the Department of State must provide such written notification to the Department of State. Instructions for providing such notification are accessible on the DDTC Web site (www.pmdt.state.gov). Note that DDTC will not cancel or revoke those registrations, but will allow the registrations to expire. Registrants who determine that all of their activities will be subject to Department of Commerce jurisdiction as a result of the transition from the USML to the CCL must nevertheless maintain registration with the Department of State until the effective date of the applicable final rule transitioning the registrant's items to the CCL.

Registrants who determine they will no longer be required to register with the Department of State after the effective date of the final rule transitioning the registrant's items to the CCL, and who have registration renewal dates that occur after publication of the final rule but before its effective date, may request to have their registration expiration date extended to the effective date of transition and not be charged a registration fee. In those cases, registrants must insert the following statement as the first paragraph in the written notification previously mentioned: "*(insert company name) requests DDTC extend our registration expiration date to the effective date of transition to CCL for USML Category (insert Category number) items and waive the registration fee. (insert company name) certifies that no changes in our eligibility from what is represented in our previously submitted DS-2032 Statement of Registration has occurred (otherwise specify change in eligibility status).*" If a registrant subsequently determines that its registration with the Department of State must instead be renewed, the registration renewal fee will be recalculated to include any Department of State licenses the registrant received during the period when the registration expiration date was extended.

Registrants that avail themselves of the opportunity to continue using previously issued Department of State authorizations (licenses and agreements) for items that have transitioned to the CCL must maintain current registration

with the Department of State, which includes payment of registration fees.

■ 4. On page 22751, in the second column, as a new last paragraph to the “Additional Required Changes” section, the following is added: “Supplement No. 1 to part 126 is revised in conformance with the revisions of USML Categories VIII, XVII, and XXI and addition of USML Category XIX.”

■ 5. On page 22752, in the third column, the list of subjects and the words of issuance are corrected to read as follows:

List of Subjects

22 CFR Parts 120 and 121

Arms and munitions, Classified information, Exports.

22 CFR Part 123

Arms and munitions, Exports, Reporting and recordkeeping requirements.

22 CFR Part 126

Arms and munitions, Exports.

“Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 121, 123, and 126 are amended as follows.”

PART 120 [CORRECTED]

§ 120.5 [Corrected]

■ 6. On page 22753, in the third column, in paragraph (a), in the sentence beginning, “In carrying out the functions delegated to the Attorney General . . .,” the comma after “security” is removed. In the sentence beginning, “The Department of Commerce regulates the export . . .,” “(CCL)” is removed.

§ 120.10 [Corrected]

■ 7. On page 22754, in the first column, in paragraph (b), commas are placed after “mathematical” and “colleges,” and “of this subchapter” is placed after “§ 120.11.”

§ 120.29 [Corrected]

■ 8. On page 22754, in the first column, in paragraph (a), “among” replaces “between.”

§ 120.41 [Corrected]

■ 9. On page 22754, in the second column, in paragraph (a) introductory text, the quotations are removed from “specially designed.” Paragraph (b) introductory text is removed and replaced with, “For purposes of this subchapter, a part, component, accessory, attachment, or software is not specially designed if it:” “Note 1 to paragraph (a)” is removed. “Note 2 to paragraph (a)” is re-titled, “Note to

paragraphs (a) and (b).” In the third column, in “Note to paragraph (b),” the following is added as a first sentence: “The term “enumerated” refers to any article on the U.S. Munitions List or the Commerce Control List and not in a “catch-all” paragraph.” The last sentence in the note is replaced with the following: “For the purposes of the U.S. Munitions List, a “catch-all” paragraph includes the phrases “and specially designed parts and components therefor,” or “(parts, components, accessories, attachments, and associated equipment) specially designed for/to/with.” The text for “Note 4 to paragraph (b)(3)” is removed and replaced with the following text: “The *form* of a commodity is defined by its configuration (including the geometrically measured configuration), material, and material properties that uniquely characterize it. The *fit* of a commodity is defined by its ability to physically interface or connect with or become an integral part of another commodity. The *function* of a commodity is the action or actions it is designed to perform. *Performance capability* is the measure of a commodity’s effectiveness to perform a designated function in a given environment (e.g., measured in terms of speed, durability, reliability, pressure, accuracy, efficiency). For software, the *form* means the design, logic flow, and algorithms. The *fit* is defined by its ability to interface or connect with a defense article. The *function* means the action or actions the software performs directly related to a defense article or as a standalone application. *Performance capability* means the measure of the software’s effectiveness to perform a designated function.” After “Note 4 to paragraph (b)(3),” the following new note is added: “*Note 5 to paragraph (b)(3)*: With respect to a commodity, “equivalent” means its form has been modified solely for fit purposes.”

PART 121 [CORRECTED]

§ 121.1 [Corrected]

■ 10. On page 22755, in the second column, in paragraph (b)(3), the following is removed: “The asterisk is placed as a convenience to help identify such defense articles.”

In the third column, in Category VIII,” in paragraphs (a)(5), (6), (10), and (13), the quotation marks are removed from “range.” “Note 1 to paragraph (a)” is re-titled, “Note to paragraph (a).” In the note, the quotation marks are removed from the second, third, and fourth occurrences of “range.” On page 22756, in the first column, in paragraph (d), the quotation marks are removed from

“range.” The following is added as a second sentence in “Note to paragraph d”: “For the definition of “range,” see note to paragraph (a) of this category.” The text of paragraph (f) is removed and replaced with the following text: “Developmental aircraft funded by the Department of Defense via contract or other funding authorization, and specially designed parts, components, accessories, and attachments therefor.” “Note 1 to paragraph VIII(f)” is re-titled, “Note 1 to paragraph (f).” In the note text, “VIII” and “developmental” are removed from the introductory sentence, “in production; (b)” is placed between “(a)” and “determined,” a comma is placed after “(see § 120.4 of this subchapter),” “(b)” is replaced by “(c),” and “or other funding authorization” is placed between “contract” and “as.” “Note 2 to paragraph VIII(f)” is re-titled, “Note 2 to paragraph (f).” A new note is added after “Note 2 to paragraph (f),” as follows: “*Note 3 to paragraph (f)*: This provision is applicable to those contracts or other funding authorizations that are dated April 16, 2014, or later.” A new note is added after paragraph (h)(1), as follows: “*Note to paragraph (h)(1)*: Specially designed (see § 120.4(b)(3)(ii) of this subchapter) does not control parts, components, accessories, and attachments that are common to aircraft enumerated in paragraph (a) of this category but not identified in paragraph (h)(1), and those identified in paragraph (h)(1). For example, a part common to only the F-14 and F-35 is not specially designed for purposes of the ITAR. A part common to only the F-22 and F-35—two aircraft models identified in paragraph (h)(1)—is specially designed.” In the second column, in paragraph (h)(2), a comma is placed after “lubrication.” In paragraph (h)(3), a comma is placed after “systems.” In paragraph (h)(5), a comma is placed after “gear.” In paragraph (h)(11), a comma is placed after the second occurrence of “systems.” In the third column, in paragraph (h)(20)(ii), “directly related to defense articles in this subchapter or 600 series items subject to the EAR” is placed after “software.” In paragraph (h)(20)(iii), “(see § 120.10(a)(2) of this subchapter)” is placed after “information.”

On page 22757, in the second column, in Category XIX, paragraph (e), the quotation marks are removed from “range.” In “Note to paragraph (e), the following is added as a second sentence: “For the definition of “range,” see note to paragraph (a) of USML Category VIII.” In the third column, in paragraph

(f)(6)(ii), “directly related to defense articles in this subchapter or 600 series items subject to the EAR” is added after “software.” In paragraph (f)(6)(iii), “(see § 120.10(a)(2) of this subchapter)” is added after “information.”

§ 121.2 [Corrected]

■ 11. On page 22758, in the first column, a period is placed after the section header.

§ 121.3 [Corrected]

■ 12. On page 22758, in the first column, in paragraph (a) introductory text, “USML” is added in between “In” and “Category.” In paragraph (a)(6), the quotation marks are removed from the first occurrence of “mission system” and from “system.”

PART 123 [CORRECTED]

■ 13. On page 22758, in the second column, “The authority citation for part 123 is revised to read as follows” is corrected to read “The authority citation for part 123 continues to read as follows.” “Sec. 520, Pub. L. 112–55” is placed between “Sec. 1205(a), Pub. L. 107–228;” and “Section 1261, Pub. L. 112–239.”

§ 123.9 [Corrected]

■ 14. On page 22759, in the third column, in paragraph (b)(2), “(see §§ 120.42 and 123.1(b))” is corrected to read “(see §§ 120.42 and 123.1(b) of this subchapter),” and “submitted with the Department of State license or other approval request” is added between “support documentation” and “the appropriate EAR classification.”

PART 126 [CORRECTED]

■ 15. On page 22759, at the end of column three, before the signature, add the following amendments:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 20. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

■ 21. Supplement No. 1 to part 126 is revised to read as follows:

SUPPLEMENT NO. 1*

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
I–XXI	Classified defense articles and services. <i>See</i> 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.	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 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. <i>See</i> Note 2.		X	X
I–XXI	Defense articles and services specific to sensor fusion beyond that required for display or identification correlation. <i>See</i> 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 therefore, specifically designed for military use. <i>See</i> also § 123.20 of this subchapter.			X
I–XXI	Libraries (parametric technical databases) specially designed for military use with equipment controlled on the USML. <i>See</i> 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. <i>See</i> Note 12.	X		

SUPPLEMENT NO. 1*—Continued

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(i). 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. See Note 16	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)(32) or V(a)(33); 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. Trinitrophenylmethylmethylamine (tetryl) (CAS 479–45–8).			X
V(c)(7)	Pyrotechnics and pyrophorics specifically formulated for military purposes to enhance or control radiated energy in any part of the IR spectrum.			X
V(d)(3)	Bis-2, 2-dinitropropylnitrate (BDNPN)			X
VI	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
VI	Defense Articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar 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
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(c)	Defense articles and services specific to submarine combat control systems		X	X
VI(d)	Harbor entrance detection devices			X
VI(e)	Defense articles and services specific to naval nuclear propulsion equipment. See Note 7.	X	X	X
VI(g)	Software source code related to USML Category VI(a) or VI(c). See Note 4		X	X
VII	Defense articles specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (–170 °C).			X

SUPPLEMENT NO. 1*—Continued

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
VII	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
VII	Armored all wheel drive vehicles fitted with, or designed or modified to be fitted with, a plough or flail for the purpose of land mine clearance, other than vehicles specifically designed or modified for military use.			X
VII(e)	Amphibious vehicles			X
VII(f)	Technical data and defense services for gas turbine engine hot sections. See Note 8.	X	X	X
VIII	Defense articles specific to cryogenic equipment, and specially designed components and accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (-170 °C).			X
VIII	Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or 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
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(j)	Software source code related to USML Category VIII(a) or VIII(e). See Note 4.		X	X
IX	Training or simulation equipment for Man Portable Air Defense Systems (MANPADS). See Note 6.		X	X
IX(e)	Software source code related to USML Category IX(a) or IX(b). See Note 4		X	X
IX(e)	Software that is both specifically designed or modified for military use and specifically designed or modified for modeling or simulating military operational scenarios.			X
X(e)	Manufacturing know-how related to USML Category X(a)(1) or X(a)(2), and specially designed components therefor. See Note 5.	X	X	X
XI(a)	Defense articles and services specific to countermeasures and counter-countermeasures See Note 9.		X	X
XI(a)	High Frequency and Phased Array Microwave Radar systems, with capabilities such as search, acquisition, tracking, moving target indication, and imaging radar systems. See Note 17.		X	
XI	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. See Note 10.		X	X
XI(b), XI(c), XI(d)	Defense articles and services specific to USML Category XI (b) (e.g., communications security (COMSEC) and TEMPEST).		X	X
XI(d)	Software source code related to USML Category XI(a). See Note 4		X	X
XI(d)	Manufacturing know-how related to USML Category XI(a)(3) or XI(a)(4), and specially designed components therefor. See Note 5.	X	X	X
XII	Defense articles and services specific to countermeasures and counter-countermeasures. See Note 9.		X	X
XII	Defense articles and services specific to USML Category XII(c) articles, except any 1st- and 2nd-generation image intensification tubes and 1st- and 2nd-generation image intensification night sighting equipment. End-items in USML Category XII(c) and related technical data limited to basic operations, maintenance, and training information as authorized under the exemption in § 125.4(b)(5) of this subchapter may be exported directly to a Canadian Government entity (i.e., federal, provincial, territorial, or municipal) consistent with § 126.5, other exclusions, and the provisions of this subchapter.	X		

SUPPLEMENT NO. 1*—Continued

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
XII	Technical data or defense services for night vision equipment beyond basic operations, maintenance, and training data. However, the AS and UK Treaty exemptions apply when such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.	X	X	X
XII(f)	Manufacturing know-how related to USML Category XII(d) and specially designed components therefor. See Note 5.	X	X	X
XII(f)	Software source code related to USML Category XII(a), XII(b), XII(c), or XII(d). See Note 4.	.....	X	X
XIII(b)	Defense articles and services specific to USML Category XIII(b) (Military Information Security Assurance Systems).	.....	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. See Note 11.	.....	.....	X
XIII(f)	Structural materials specifically designed, developed, modified, configured or adapted for defense articles.	.....	.....	X
XIII(g)	Defense articles and services related to concealment and deception equipment and materials.	.....	.....	X
XIII(h)	Energy conversion devices other than fuel cells	.....	.....	X
XIII(i)	Metal embrittling agents	.....	.....	X
XIII(j)	Defense articles and services related to hardware associated with the measurement or modification of system signatures for detection of defense articles as described in Note 2.	.....	X	X
XIII(k)	Defense articles and services related to tooling and equipment specifically designed or modified for the production of defense articles identified in USML Category XIII(b).	.....	X	X
XIII(l)	Software source code related to USML Category XIII(a). See Note 4	.....	X	X
XIV	Defense articles and services related to toxicological agents, including chemical agents, biological agents, and associated equipment.	.....	X	X
XIV(a), XIV(b), XIV(d), XIV(e), XIV(f).	Chemical agents listed in USML Category XIV(a), (d) and (e), biological agents and biologically derived substances in USML Category XIV(b), and equipment listed in USML Category XIV(f) for dissemination of the chemical agents and biological agents listed in USML Category XIV(a), (b), (d), and (e).	X	.....	.....
XV(a)	Defense articles and services specific to spacecraft/satellites. However, the Canadian exemption may be used for commercial communications satellites that have no other type of payload.	X	X	X
XV(b)	Defense articles and services specific to ground control stations for spacecraft telemetry, tracking, and control. Defense articles and services are not excluded under this entry if they do not control the spacecraft. Receivers for receiving satellite transmissions are also not excluded under this entry.	.....	X	X
XV(c)	Defense articles and services specific to GPS/PPS security modules	.....	X	X
XV(c)	Defense articles controlled in USML Category XV(c) except end-items for end-use by the Federal Government of Canada exported directly or indirectly through a Canadian-registered person.	X	.....	.....
XV(d)	Defense articles and services specific to radiation-hardened microelectronic circuits.	X	X	X
XV(e)	Anti-jam systems with the ability to respond to incoming interference by adaptively reducing antenna gain (nulling) in the direction of the interference.	X	.....	.....
XV(e)	Antennas having any of the 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)	Optical intersatellite data links (cross links) and optical ground satellite terminals.	X	.....	.....
XV(e)	Spaceborne regenerative baseband processing (direct up and down conversion to and from baseband) equipment.	X	.....	.....

SUPPLEMENT NO. 1*—Continued

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
XV(e)	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)	Attitude control and determination systems designed to provide spacecraft pointing determination and control or payload pointing system control better than 0.02 degrees per axis.	X	.....	.....
XV(e)	All specifically designed or modified systems, components, parts, accessories, attachments, and associated equipment for all USML Category XV(a) items, except when specifically designed or modified for use in commercial communications satellites.	X	.....	.....
XV(e)	Defense articles and services specific to spacecraft and ground control station systems (only for telemetry, tracking and control as controlled in USML Category XV(b)), subsystems, components, parts, accessories, attachments, and associated equipment.	.....	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
XVI(c)	Nuclear radiation measuring devices manufactured to military specifications	X	.....	.....
XVI(e)	Software source code related to USML Category XVI(c). See Note 4 .....	.....	X	X
XVII	Classified articles, and technical data and defense services relating thereto, not elsewhere enumerated. See Note 1.	X	X	X
XVIII	Defense articles and services specific to directed energy weapon systems	.....	X	X
XIX(e), XIX(f)(1), XIX(f)(2), XIX(g).	Defense articles and services specific to gas turbine engine hot section components and to Full Authority Digital Engine Control Systems (FADEC) or Digital Electronic Engine Controls (DEEC). See Note 8.	.....	X	X
XIX(g)	Technical data and defense services for gas turbine engine hot sections. (This does not include hardware). See Note 8.	X	X	X
XX	Defense articles and services related to submersible vessels, oceanographic, and associated equipment.	X	X	X
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 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 specific to Man Portable Air Defense Systems (MANPADS) includes missiles which can be used without modification in other applications. It also includes production and test equipment and components specifically designed or modified for MANPAD systems, as well as training equipment specifically designed or modified for MANPAD systems.

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

NOTE 8: 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 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 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 which define the status, group (greater than 2) behaviors, and responses to detection stimuli by autonomous, underwater vehicles; and low frequency, broad-band "acoustic color," active acoustic "fingerprint" sensing for the purpose of long range, single pass identification of ocean bottom objects, buried or otherwise (controlled under Category 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, reference should be made 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 of all their on-going activities authorized under § 126.5 of this subchapter. The report shall include the article(s) being produced; the end-user(s); the end-item into which the product is to be incorporated; the intended end-use of the product; the name and address 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 cluster munitions that are subject to this exclusion are set forth below:

The Convention on Cluster Munitions, signed December 3, 2008, and entered into force on August 1, 2010, defines a "cluster munition" as:

A conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions. Under the Convention, a "cluster munition" does not include the following munitions:

(a) A munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defense role;

(b) A munition or submunition designed to produce electrical or electronic effects;

(c) A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics:

(1) Each munition contains fewer than ten explosive submunitions;

(2) Each explosive submunition weighs more than four kilograms;

(3) Each explosive submunition is designed to detect and engage a single target object;

(4) Each explosive submunition is equipped with an electronic self-destruction mechanism; and

(5) Each explosive submunition is equipped with an electronic self-deactivating feature.

Pursuant to U.S. law (Pub. L. 111-117, section 7055(b)), no military assistance shall be furnished for cluster munitions, no defense export license for cluster munitions may be issued, and no cluster munitions or cluster munitions technology shall be sold or transferred, unless:

(a) The submunitions of the cluster munitions, after arming, do not result in more than 1 percent unexploded ordnance across the range of intended operational environments; and

(b) The agreement applicable to the assistance, transfer or sale of such cluster munitions or cluster munitions technology specifies that the cluster munitions will only be used against clearly defined military targets and will not be used where civilians are known to be present or in areas normally inhabited by civilians.

NOTE 17: 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.

* 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.

Rose E. Gottemoeller,

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

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