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Jeffrey Shuren,

Assistant Commissioner for Policy.

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DEPARTMENT OF STATE

22 CFR Parts 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, and 130

[Public Notice: 5345]

Amendments to the International Traffic in Arms Regulations: Office Names, Corrected Cross-Referencing, Reference to Wassenaar Arrangement, and Other Corrections/Administrative Changes

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to reflect current office names, correct cross-references, update the reference to the Wassenaar Arrangement, and make other corrections and administrative changes.

DATES: *Effective Date:* This rule is effective April 21, 2006.

ADDRESSES: Interested parties may submit comments at any time by any of the following methods:

- E-mail:

DDTCResponseTeam@state.gov with an appropriate subject line.

- Mail: Department of State,

Directorate of Defense Trade Controls, Office of Defense Trade Controls Management, ATTN: Regulatory Change, 12th Floor, SA-1, Washington, DC 20522-0112.

- Fax: 202-261-8199.

- Hand Delivery or Courier (regular work hours only): Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Management, ATTENTION: Regulatory Change, SA-1, 12th Floor, 2401 E Street, NW., Washington, DC 20037.

Persons with access to the Internet may also view this notice by going to the regulations.gov Web site at: <http://www.regulations.gov/index.cfm>.

FOR FURTHER INFORMATION CONTACT:

Mary Sweeney, Office of Defense Trade Controls Management, Department of State, 12th Floor, SA-1, Washington, DC 20522-0112; Telephone 202-663-2865 or FAX 202-261-8199; e-mail: *DDTCResponseTeam@state.gov*. ATTN: Regulatory Change.

SUPPLEMENTARY INFORMATION: References to the "Office of Defense Trade

Controls" have been amended to the "Directorate of Defense Trade Controls" (§§ 120.1(c), 120.4(a), 120.4(b), 120.12, 120.20, 120.28(a), 121.1 Category XXI(a), 121.16, 122.1(a), 122.4(a), 122.4(b), 122.4(c), 122.4(c)(4), 122.4(d), 123.1(a), 123.1(c), 123.3(a), 123.8(a), 123.8(b), 123.9(a), 123.9(d), 123.9(e), 123.9(e)(3), 123.9(e)(4), 123.10(b), 123.10(c), 123.11(a), 123.14(b), 123.25(a), 123.27(a), 123.27(a)(2), 123.27(a)(5), 123.27(a)(6), 123.27(b), 123.27(c), 124.1(a), 124.1(b), 124.1(c), 124.1(d), 124.4(a), 124.4(b), 124.5, 124.6, 124.10(a), 124.10(b)(1), 124.10 Note, 124.12(1), 124.12(a)(1), 124.13(d), 124.13(e), 124.14(a), 124.14(b), 124.14(b)(4), 124.14(c)(5), 124.14(e), 124.14(e)(1), 125.1(b), 125.2(a), 125.2(b), 125.3(a), 125.3(b), 125.3(c), 125.4(a), 125.4(b)(10)(iii), 125.4(b)(11), 125.5(a), 125.5(b), 125.7(a), 125.7(b), 125.9, 126.1(e), 126.2, 126.7(b), 126.7(c), 126.8(a), 126.8(a)(1), 126.8(a)(2), 126.8(a)(3), 126.8(c)(1)(i), 126.8(c)(2), 126.9(a), 126.9(b), 126.10(a), 126.14(a), 126.14(a)(1), 126.14(a)(2), 126.14(a)(3)(i), 126.14(b), 127.1(a)(1), 127.1(a)(2), 127.1(a)(3), 127.1(c), 127.7(b)(2), 127.8(a), 127.9, 127.10, 127.11, 127.12(a), 127.12(b)(1), 127.12(b)(2), 127.12(b)(3), 127.12(c), 127.12(d)(iii), 128.3(a), 128.5(c), 128.6(a), 128.6(b), 128.6(d), 128.10, 128.11(a), 128.13(d), 128.15(a), 128.15(b)(3), 129.3(a), 129.4(b), 129.5(b), 129.5(c), 129.5(e), 129.6(a), 129.7(a), 129.7(b)(2), 129.7(c), 129.8(a), 129.8(b), 129.9(a), 130.2, 130.8(a)(1), 130.9(a)(1), 130.9(a)(1)(ii), 130.9(a)(2), 130.9(b), 130.9(b)(2), 130.9(d), 130.10(a), 130.11(a)(3), 130.11(b), 130.11(b)(2), 130.12(c), 130.12(d)(1), and 130.12(d)(2)).

"COCOM" has been amended to the "Wassenaar Arrangement" (§§ 120.4(d)(3)(ii), 120.4(d)(3)(iii), and 126.10(d)(2)). "Center for Defense Trade" has been amended to the "Directorate of Defense Trade Controls" (§§ 120.4(g) and 121.1(a)). "Center for Defense Trade" has been amended to "Office of Defense Trade Controls Policy" (§ 120.4(e)). Also, references to the "Bureau of Politico-Military Affairs" have been amended to the "Bureau of Political-Military Affairs" (§§ 120.4(g), 120.12, 120.28(a), 127.7(a), 127.9 and 127.11(b)). Grammatical changes have been made to the definition of "U.S. person" at § 120.15, to § 124.1(a) by deleting "either," and to "Voluntary Disclosures" at § 127.12(b)(4). The "Defense Security Assistance Agency" has been amended to the "Defense Security Cooperation Agency" (§ 120.28(b)(3)).

Certain references to the Treasury Department have been amended to the

Attorney General, and other references to Treasury have been amended to the Department of Justice, as appropriate, because the Bureau of Alcohol, Tobacco and Firearms (ATF) was transferred to the Department of Justice and ATF's name was changed to Bureau of Alcohol, Tobacco, Firearms and Explosives (§§ 120.5, 120.18, 123.2 and 126.11). Also, the reference to 31 CFR part 505 has been changed to 27 CFR part 447 and 15 CFR parts 768-799 have been changed to 15 CFR parts 730-799 at § 120.5. References to 27 CFR parts 47, 178 and 179 have been changed to 27 CFR parts 447, 478, 479, and 555 at §§ 120.18 and 123.2. Reference to 27 CFR 178.115(d) has been changed to 27 CFR 478.115(d) at § 123.17(d).

Numerous typographical errors are being corrected in the United States Munitions List, § 121.1, Categories V and XV.

References to "technical data" and "defense service" have been corrected in § 121.1, Categories IV, V, XI, XII, XIV, XVII, XX, and XXI. Cross references have been corrected (§§ 120.1(c), 120.10(a)(1), 120.16, 121.1(b), 121.1 Category V(g)(2), 121.1 Category V(g)(5), 121.1 Category V(g)(6), 121.1 Category V(g)(7), 121.1 Category V(g)(8), 124.2(c)(5)(ix), 126.7(a), 127.8(a), 127.9 and 127.11(c)). Typographical mistakes have been corrected in § 121.1, Category V(a)(1); § 121.1, Category V(a)(5); § 121.1, Category V(a)(9); § 121.1, Category V(a)(15)(i); § 121.1, Category V(a)(20)(i); § 121.1, Category V(a)(24)(ii); § 121.1, Category V(a)(29); § 121.1, Category V(a)(31)(i); § 121.1, Category V(a)(31)(ii); § 121.1, Category V(a)(31)(iv); § 121.1, Category V(c)(8); § 121.1, Category V(c)(9); § 121.1, Category V(e)(2); § 121.1, Category V(e)(9); § 121.1, Category V(e)(13); § 121.1, Category V(e)(14); § 121.1, Category V(f)(3)(iv); § 121.1, Category V(f)(14); § 121.1, Category V(f)(15); § 121.1, Category V(f)(17); § 121.1, Category XV(d)(1); § 121.1, Category XV(d)(2); § 121.1, Category XV(d)(3); § 121.1, Category XV(d)(5); § 121.16, Item 1—Category 1; § 121.16, Item 4—Category II; § 121.16, Item 9—Category II; § 121.16, Item 12—Category II; § 121.16, Note to Item 18(a); and in §§ 123.16(b)(2)(v), 126.5(c)(4)(v), 126.14(a)(3)(iv), 127.3(b), 128.7(a)(1)(ii), and 130.5(b)(1). CAS numbers were added in § 121.1, Category V(a)(2); § 121.1, Category V(a)(31)(vii); § 121.1, Category V(a)(34); § 121.1, Category V(e)(11); § 121.1, Category V(e)(13); and § 121.1, Category V(e)(15). The "Director of the Office of Defense Trade Controls" has been changed to the "Director, Office of Defense Trade Controls Policy"

at Category XXI—Miscellaneous Articles in § 121.1.

“Registration Statement” has been amended to “Statement of Registration” (§§ 122.2(b), 122.4(a)(2), 124.1(b), 125.3(a), 126.13(c), and 129.4(a) and (b)).

“Defense Investigative Service” has been amended to “Defense Security Service” (§§ 123.6, 125.3(a), 125.9 and 127.5). The “Industrial Security Manual” has been changed to the “National Industrial Security Program Operating Manual” (§§ 124.3(b)(2), 125.3(b), 125.4(b)(9)(iii), 125.5(a), 125.5(b), 125.7(b), 125.9 and 127.5). Clarification has been made relating to the authority of the Secretary of State to impose different conditions on exports apart from those imposed by the Department of Defense. The “Directorate for Freedom of Information and Security Review” has been amended to “Office of Freedom of Information and Security Review” (§ 125.4(b)(13)).

Reference to 49 U.S.C. 1508 has been updated to 49 U.S.C. 40103 regarding overflight approval at § 126.6(b). Reference to 15 CFR part 388 has been updated to 15 CFR part 720 at § 126.7(a)(6).

Additional language has been added to clarify § 127.1(a): reexporting or retransferring or attempting to reexport or retransfer from one foreign destination to another foreign destination by a U.S. Person of any defense article or technical data or by anyone of any U.S. origin defense article or technical data, or to furnish a defense service for which a license or written approval is required by the ITAR; engaging in the business of either manufacturing or exporting defense articles or furnishing defense services without complying with the registration requirements of the ITAR; and, engaging in the business of brokering activities without complying with the registration requirements of the ITAR or obtaining a license or written approval as required by the ITAR.

In addition, we have clarified that the “business of manufacturing or exporting defense articles or furnishing defense services” includes participating in one action and does not require more than one action (§§ 122.1(a) and 127.1(a)). The potential harm to the security or foreign policy of the United States by even one unregulated action to facilitate the manufacture, export, or import of a defense article or defense service warrants the need to subject such actions to regulation under this subchapter.

Also, § 127.1(d) has been clarified by adding “knowingly.”

“Under Secretary for International Security Affairs” has been amended to the “Under Secretary for Arms Control and International Security” (§§ 127.7(d) and 127.8(b)). “Arms Control and International Security Affairs” has been amended to “Arms Control and International Security” (§§ 128.13(a), 128.13(c), 128.13(e)(2), and 128.13(f)).

In § 128.2, reference to the Department of Commerce appointing the Administrative Law Judge has been deleted. § 128.5(c) has been changed from sending the “answer” to the Office of Administrative Law Judge, United States Department of Commerce, to the designated Administrative Law Judge.

In § 129.2, the definition of brokering activities has been clarified to reflect that the “business of brokering activities” includes participating in one or more actions as described in the definition. The potential harm to the security or foreign policy of the United States by even one unregulated brokering action warrants the need to subject such action or actions to regulation under this subchapter.

In § 129.4, language has been added to make it clear that the registration requirements for brokers are not meant to exclude foreign persons from registering as brokers. Where foreign persons cannot provide the same information that a U.S. person would provide, they still are required to submit information that is substantially similar in content to that which would be provided by a U.S. person.

References to § 36(a)(8) of the Arms Export Control Act and 22 U.S.C. 2776(a)(8) have been updated to § 36(a)(7) and 22 U.S.C. 2776(a)(7) pertaining to submitting Part 130 reports to Congress as contained in § 130.17(a).

In § 120.27, the listed criminal statutes have been updated to reflect corresponding changes to § 38(g)(1)(A) of the Arms Export Control Act.

In addition, other minor changes have been made in various sections to clarify the authority of particular offices and officials or to clarify the underlying purpose of the specific section.

Regulatory Analysis and Notices

Administrative Procedure Act

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554.

Regulatory Flexibility Act

This rule does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

This rule does not require analysis under the Unfunded Mandates Reform Act.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Orders 12372 and 13132

It is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13132.

Executive Order 12866

This amendment is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Parts 120 and 125

Arms and munitions, Classified information, Exports.

22 CFR Part 121

Arms and munitions, Exports, U.S. Munitions List.

22 CFR Part 122

Arms and munitions, Exports, Reporting and recordkeeping requirements.

22 CFR Parts 123 and 126

Arms and munitions, Exports.

22 CFR Parts 124 and 129

Arms and munitions, Exports, Technical assistance.

22 CFR Part 127

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

22 CFR Part 128

Administrative practice and procedures, Arms and munitions, Exports.

22 CFR Part 130

Arms and munitions, Campaign funds, Confidential business information, Exports, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 121, 122, 123, 124, 125, 126, 127, 128, 129 and 130 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

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

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

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

§ 120.1 General authorities and eligibility.

* * * * *

(b) * * *

(1) * * *

(2) In the Bureau of Political-Military Affairs, there is a Deputy Assistant Secretary for Defense Trade Controls (DAS—Defense Trade Controls) and a Managing Director of Defense Trade Controls (MD—Defense Trade Controls). The DAS—Defense Trade Controls and the MD—Defense Trade Controls are responsible for exercising the authorities conferred under this subchapter. The DAS—Defense Trade Controls is responsible for oversight of the defense trade controls function. The MD—Defense Trade Controls is responsible for the Directorate of Defense Trade Controls, which oversees the subordinate offices described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section.

(i) The Office of Defense Trade Controls Management and the Director, Office of Defense Trade Controls Management, which have responsibilities related to management of defense trade controls operations, to include the exercise of general authorities in this part 120, and the design, development, and refinement of processes, activities, and functional tools for the export licensing regime and to effect export compliance/enforcement activities;

(ii) The Office of Defense Trade Controls Licensing and the Director, Office of Defense Trade Controls Licensing, which have responsibilities related to licensing or other authorization of defense trade,

including references under parts 120, 123, 124, 125, 126, 129 and 130 of this subchapter;

(iii) The Office of Defense Trade Controls Compliance and the Director, Office of Defense Trade Controls Compliance, which have responsibilities related to violations of law or regulation and compliance therewith, including references contained in parts 122, 126, 127, 128 and 130 of this subchapter, and that portion under part 129 of this subchapter pertaining to registration;

(iv) The Office of Defense Trade Controls Policy and the Director, Office of Defense Trade Controls Policy, which have responsibilities related to the general policies of defense trade, including references under this part 120 and part 126 of this subchapter, and the commodity jurisdiction procedure under this subchapter, including under this part 120.

(c) *Eligibility.* Only U.S. persons (as defined in § 120.15) and foreign governmental entities in the United States may be granted licenses or other approvals (other than retransfer approvals sought pursuant to this subchapter). Foreign persons (as defined in § 120.16) other than governments are not eligible. U.S. persons who have been convicted of violating the criminal statutes enumerated in § 120.27, who have been debarred pursuant to part 127 or 128 of this subchapter, who are the subject of an indictment involving the criminal statutes enumerated in § 120.27, who are ineligible to contract with, or to receive a license or other form of authorization to import defense articles or defense services from any agency of the U.S. Government, who are ineligible to receive export licenses (or other forms of authorization to export) from any agency of the U.S. Government, who are subject to Department of State Suspension/Revocation under § 126.7(a)(1) through (a)(7) of this subchapter, or who are ineligible under § 127.7(c) of this subchapter are generally ineligible. Applications for licenses or other approvals will be considered only if the applicant has registered with the Directorate of Defense Trade Controls pursuant to part 122 of this subchapter. All applications and requests for approval must be signed by a U.S. person who has been empowered by the registrant to sign such documents.

* * * * *

■ 3. Section 120.4 is amended by revising paragraphs (a), (b), (d)(3)(ii), (d)(3)(iii), (e), and (g), to read as follows:

§ 120.4 Commodity jurisdiction.

(a) The commodity jurisdiction procedure is used with the U.S. Government if doubt exists as to whether an article or service is covered by the U.S. Munitions List. It may also be used for consideration of a redesignation of an article or service currently covered by the U.S. Munitions List. The Department must provide notice to Congress at least 30 days before any item is removed from the U.S. Munitions List. Upon written request, the Directorate of Defense Trade Controls shall provide a determination of whether a particular article or service is covered by the U.S. Munitions List. The determination, consistent with §§ 120.2, 120.3, and 120.4, entails consultation among the Departments of State, Defense, Commerce and other U.S. Government agencies and industry in appropriate cases.

(b) Registration with the Directorate of Defense Trade Controls as defined in part 122 of this subchapter is not required prior to submission of a commodity jurisdiction request. If it is determined that the commodity is a defense article or defense service covered by the U.S. Munitions List, registration is required for exporters, manufacturers, and furnishers of such defense articles and defense services (see part 122 of this subchapter), as well as for brokers who are engaged in brokering activities related to such articles or services.

* * * * *

(d) * * *

(3) * * *

(ii) The nature of controls imposed by other nations on such items (including Wassenaar Arrangement and other multilateral controls), and

(iii) That items described on the Wassenaar Arrangement List of Dual-Use Goods and Technologies shall not be designated defense articles or defense services unless the failure to control such items on the U.S. Munitions List would jeopardize significant national security or foreign policy interests.

(e) The Directorate of Defense Trade Controls will provide a preliminary response within 10 working days of receipt of a complete request for commodity jurisdiction. If after 45 days the Directorate of Defense Trade Controls has not provided a final commodity jurisdiction determination, the applicant may request in writing to the Director, Office of Defense Trade Controls Policy that this determination be given expedited processing.

* * * * *

(g) A person may appeal a commodity jurisdiction determination by

submitting a written request for reconsideration to the Managing Director of the Directorate of Defense Trade Controls. The Directorate of Defense Trade Controls will provide a written response of the Managing Director's determination within 30 days of receipt of the appeal. If desired, an appeal of the Managing Director's decision can then be made directly through the Deputy Assistant Secretary for Defense Trade Controls to the Assistant Secretary for Political-Military Affairs.

■ 4. Section 120.5 is revised to read as follows:

§ 120.5 Relation to regulations of other agencies.

If an article or service is covered by the U.S. Munitions List, its export is regulated by the Department of State, except as indicated otherwise in this subchapter. For the relationship of this subchapter to regulations of the Department of Energy and the Nuclear Regulatory Commission, see § 123.20 of this subchapter. The Attorney General controls permanent imports of articles and services covered by the U.S. Munitions Import List from foreign countries by persons subject to U.S. jurisdiction (27 CFR part 447). In carrying out such functions, the Attorney General shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States. The Department of Commerce regulates the export of items on the Commerce Control List (CCL) under the Export Administration Regulations (15 CFR parts 730 through 799).

■ 5. Section 120.10 is amended by revising paragraph (a)(1) to read as follows:

§ 120.10 Technical data.

(a) * * *

(1) Information, other than software as defined in § 120.10(a)(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation.

* * * * *

■ 6. Section 120.12 is revised to read as follows:

§ 120.12 Directorate of Defense Trade Controls.

Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, Washington, DC 20522-0112.

■ 7. Section 120.15 is revised to read as follows:

§ 120.15 U.S. person.

U.S. person means a person (as defined in § 120.14 of this part) who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity. It does not include any foreign person as defined in § 120.16 of this part.

■ 8. Section 120.16 is revised to read as follows:

§ 120.16 Foreign person.

Foreign person means any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).

■ 9. Section 120.18 is revised to read as follows:

§ 120.18 Temporary import.

Temporary import means bringing into the United States from a foreign country any defense article that is to be returned to the country from which it was shipped or taken, or any defense article that is in transit to another foreign destination. Temporary import includes withdrawal of a defense article from a customs bonded warehouse or foreign trade zone for the purpose of returning it to the country of origin or country from which it was shipped or for shipment to another foreign destination. Permanent imports are regulated by the Attorney General under the direction of the Department of Justice's Bureau of Alcohol, Tobacco, Firearms, and Explosives (see 27 CFR parts 447, 478, 479, and 555).

■ 10. Section 120.20 is revised to read as follows:

§ 120.20 License.

License means a document bearing the word "license" issued by the Directorate of Defense Trade Controls or its authorized designee which permits the export or temporary import of a

specific defense article or defense service controlled by this subchapter.

■ 11. Section 120.27 is amended by revising paragraph (a)(3) and adding a new paragraph (a)(13) to read as follows:

§ 120.27 U.S. criminal statutes.

(a) * * *

(3) Sections 793, 794, or 798 of title 18, United States Code (relating to espionage involving defense or classified information) or § 2339A of such title (relating to providing material support to terrorists);

* * * * *

(13) Sections 3, 4, 5, and 6 of the Prevention of Terrorist Access to Destructive Weapons Act of 2004, relating to missile systems designed to destroy aircraft (18 U.S.C. 2332g), prohibitions governing atomic weapons (42 U.S.C. 2122), radiological dispersal services (18 U.S.C. 2332h), and variola virus (18 U.S.C. 175b);

* * * * *

■ 12. Section 120.28 is amended by revising paragraphs (a) introductory text and (b)(3) to read as follows:

§ 120.28 Listing of forms referred to in this subchapter.

* * * * *

(a) Department of State, Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, Washington, DC 20522-0112.

* * * * *

(b) * * *

(3) Department of Defense, Defense Security Cooperation Agency: Letter of Offer and Acceptance (DD Form 1513).

PART 121—THE UNITED STATES MUNITIONS LIST

■ 13. The authority citation for part 121 is revised to read as follows:

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

■ 14. Section 121.1 is revised to read as follows:

■ A. Revise paragraphs (a) and (b)

■ B. In paragraph (c) in Category IV revise paragraph (i)

■ C. In paragraph (c) in Category V revise paragraphs (a)(1), (a)(2), (a)(5), (a)(9), (a)(15)(i), (a)(20)(i), (a)(24)(ii), (a)(29), (a)(31)(i), (a)(31)(ii), (a)(31)(iv), (a)(31)(vii), (a)(34), (c)(8), (c)(9), (e)(2), (e)(9), (e)(11), (e)(13), (e)(14), (e)(15), (f)(3)(iv), (f)(14), (f)(15), (f)(17), (g)(2), (g)(5), (g)(6), (g)(7), (g)(8), and (h)

■ D. In paragraph (c) in Category XI revise paragraph (d)

■ E. In paragraph (c) in Category XII revise paragraph (f)

- F. In paragraph (c) in Category XIV revise paragraph (m)
- G. In paragraph (c) in Category XV revise paragraphs (d)(1), (d)(2), (d)(3), and (d)(5)
- H. In paragraph (c) in Category XVII revise paragraph (a)
- I. In paragraph (c) in Category XX revise paragraph (d)
- J. In paragraph (c) in Category XXI revise paragraphs (a) and (b)

§ 121.1 General. The United States Munitions List.

(a) The following articles, services and related technical data are designated as defense articles and defense services pursuant to §§ 38 and 47(7) of the Arms Export Control Act (22 U.S.C. 2778 and 2794(7)). Changes in designations will be published in the **Federal Register**. Information and clarifications on whether specific items are defense articles and services under this subchapter may appear periodically through the Internet Web site of the Directorate of Defense Trade Controls.

(b) Significant Military Equipment: An asterisk precedes certain defense articles in the following list. The asterisk means that the article is deemed to be "Significant Military Equipment" to the extent specified in § 120.7 of this subchapter. The asterisk is placed as a convenience to help identify such articles. Note that technical data directly related to the manufacture or production of any defense articles enumerated in any category that are designated as Significant Military Equipment (SME) shall itself be designed SME.

(c) * * *
* * * * *

Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines

* * * * *

(i) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (h) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

Category V—Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents

(a) * * *
(1) ADNBF (aminodinitrobenzofuroxan or 7-Amino 4,6-dinitrobenzofurazane-1-oxide) (CAS 97096-78-1);

(2) BNCP (cis-bis (5-nitrotetrazolato) tetra amine-cobalt (III) perchlorate) (CAS 117412-28-9);

* * * * *

(5) CP (2-(5-cyanotetrazolato) penta aminocobalt (III) perchlorate); (CAS 70247-32-4);

* * * * *

(9) DIPAM (3,3'-Diamino-2,2',4,4',6,6'-hexanitrobiphenyl or dipicramide) (CAS 17215-44-0);

* * * * *

(15) * * *
(i) BNNII (Octahydro-2,5-bis(nitroimino) imidazo [4,5-d]imidazole);

* * * * *

(20) * * *

(i) RDX (cyclotrimethylenetrinitramine), cyclonite, T4, hexahydro-1,3,5-trinitro-1,3,5-triazine, 1,3,5-trinitro-1,3,5-triazacyclohexane, hexogen, or hexogene) (CAS 121-82-4);

* * * * *

(24) * * *

* * * * *

(ii) NTNT (1-N-(2-nitrotriazolo)-4-nitrotetrazole);

* * * * *

(29) TNP (1,4,5,8-tetranitro-pyridazino [4,5-d] pyridazine) (CAS 229176-04-9);

* * * * *

(31) * * *

(i) 5-azido-2-nitrotriazole;
(ii) ADHTDN (4-amino-3,5-dihydrazino-1,2,4-triazole dinitramide)(CAS 1614-08-0);

* * * * *

(iv) BDNTA ([Bis-dinitrotriazole]amine);

* * * * *

(vii) NTDNA (2-nitrotriazole 5-dinitramide) (CAS 75393-84-9);

* * * * *

(34) Diaminotrinitrobenzene (DATB) (CAS 1630-08-6);

* * * * *

(c) * * *

(8) Titanium subhydride (TiHn) of stoichiometry equivalent to n = 0.65-1.68;

(9) Military materials containing thickeners for hydrocarbon fuels specially formulated for use in flame throwers or incendiary munitions; metal stearates or palmates (also known as octol); and M1, M2 and M3 thickeners;

* * * * *

(e) * * *

(2) BAMO (bisazidomethyloxetane and its polymers) (CAS 17607-20-4) (see paragraph (g)(1) of this category);

* * * * *

(9) Poly-NIMMO (poly nitratomethylmethoxyetane, poly-NMMO, (poly[3-nitratomethyl-3-methyl oxetane]) (CAS 84051-81-0);

* * * * *

(11) TVOPA 1,2,3-Tris [1,2-bis(difluoroamino) ethoxy]propane; tris vinoxyl propane adduct; (CAS 53159-39-0);

* * * * *

(13) PPF-1 (poly-2,2,3,3,4,4-hexafluoro pentane-1,5-diolformal) (CAS 376-90-9);

(14) PPF-3 (poly-2,4,4,5,5,6,6-heptafluoro-2-trifluoromethyl-3-oxaheptane-1,7-diolformal);

(15) PGN (Polyglycidylnitrate or poly(nitratomethyl oxirane); poly-GLYN); (CAS 27814-48-8);

* * * * *

(f) * * *

(3) * * *

(iv) n-butyl-ferrocene (CAS 31904-29-7);

* * * * *

(14) Polyfunctional aziridine amides with isophthalic, trimesic (BITA or butylene imine trimesamide), isocyanuric, or trimethyladipic backbone structures and 2-methyl or 2-ethyl substitutions on the aziridine ring and its polymers;

(15) Superfine iron oxide (Fe₂O₃ hematite) with a specific surface area more than 250 m²/g and an average particle size of 0.003 [micro]m or less (CAS 1309-37-1);

* * * * *

(17) TEPANOL (Tetraethylenepentaamineacrylonitrileglycidol) (CAS 110445-33-5); cyanoethylated polyamines adducted with glycidol and their salts;

* * * * *

(g) * * *

(2) Dinitroazetidone-t-butyl salt (CAS 125735-38-8) (see paragraph (a)(27) of this category);

* * * * *

(5) TAT (1, 3, 5, 7-tetraacetyl-1, 3, 5, 7-tetraaza-cyclooctane) (CAS 41378-98-7) (see paragraph (a)(12) of this category);

(6) Tetraazadecalin (CAS 5409-42-7) (see paragraph (a)(26) of this category);

(7) 1,3,5-trichlorobenzene (CAS 108-70-3) (see paragraph (a)(22) of this category);

(8) 1,2,4-trihydroxybutane (1,2,4-butanetriol) (CAS 3068-00-6) (see paragraph (e)(3) of this category);

(h) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (g) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

* * * * *

Category XI—Military Electronics

* * * * *

(d) Technical data (as defined in § 120.10) and defense services (as defined in § 120.9) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category. (See § 125.4 for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Category XII—Fire Control, Range Finder, Optical and Guidance and Control Equipment

* * * * *

(f) Technical data (as defined in § 120.10) and defense services (as defined in § 120.9) directly related to the defense articles enumerated in paragraphs (a) through (e) of this category. (See § 125.4 for exemptions.) Technical data directly related to manufacture and production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

* * * * *

Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

* * * * *

(m) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) related to the defense articles enumerated in paragraphs (a) through (l) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this Category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

* * * * *

Category XV—Spacecraft Systems and Associated Equipment

* * * * *

(d) * * *

(1) A total dose of 5×10^5 Rads (SI);

(2) A dose rate upset of 5×10^8 Rads (SI)/sec;

(3) A neutron dose of 1×10^{14} N/cm²;

* * * * *

(5) Single event latch-up free and having a dose rate latch-up of 5×10^8 Rads (SI)/sec or greater.

* * * * *

Category XVII—Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated

(a) All articles, technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) relating thereto which are classified in the interests of national security and which are not otherwise enumerated in the U.S. Munitions List.

* * * * *

Category XX—Submersible Vessels, Oceanographic and Associated Equipment

* * * * *

(d) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this Category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Category XXI—Miscellaneous Articles

(a) Any article not specifically enumerated in the other categories of the U.S. Munitions

List which has substantial military applicability and which has been specifically designed, developed, configured, adapted, or modified for military purposes. The decision on whether any article may be included in this category shall be made by the Director, Office of Defense Trade Controls Policy.

(b) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraph (a) of this category.

■ 15. Section 121.16 is amended as follows:

■ A. Revise Item 1—Category I.

■ B. Revise Item 4—Category II.

■ C. In Item 9—Category II revise paragraph (b).

■ D. In Item 12—Category II revise paragraph (d)(2) introductory text.

■ E. In Item 18—Category II revise Note to Item 18(a).

§ 121.16 Missile Technology Control Regime Annex.

* * * * *

Item 1—Category I

Complete rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets (see § 121.1, Cat. IV(a) and (b))) and unmanned air vehicle systems (including cruise missile systems, see § 121.1, Cat. VIII (a), target drones and reconnaissance drones (see § 121.1, Cat. VIII (a))) capable of delivering at least a 500 kg payload to a range of at least 300 km.

* * * * *

Item 4—Category II

Propellants and constituent chemicals for propellants as follows:

(a) Propulsive substances:

(1) Hydrazine with a concentration of more than 70 percent and its derivatives including monomethylhydrazine (MMH);

(2) Unsymmetric dimethylhydrazine (UDHM);

(3) Ammonium perchlorate;

(4) Spherical aluminum powder with particle of uniform diameter of less than 500×10^{-6} M (500 microns) and an aluminum content of 97 percent or greater;

(5) Metal fuels in particle sizes less than 500×10^{-6} M (500 microns), whether spherical, atomized, spheroidal, flaked or ground, consisting of 97 percent or more of any of the following: zirconium, beryllium, boron, magnesium, zinc, and alloys of these;

(6) Nitroamines (cyclotetramethylenetetranitramene (HMX), cyclotrimethylenetrinitramine (RDX));

(7) Perchlorates, chlorates or chromates mixed with powdered metals or other high energy fuel components;

(8) Carboranes, decaboranes, pentaboranes and derivatives thereof;

(9) Liquid oxidizers, as follows:

(i) Nitrogen dioxide/dinitrogen tetroxide;

(ii) Inhibited Red Fuming Nitric Acid (IRFNA);

(iii) Compounds composed of fluorine and one or more of other halogens, oxygen or nitrogen.

(b) Polymeric substances:

(1) Hydroxyterminated polybutadiene (HTPB);

(2) Glycidylazide polymer (GAP).

(c) Other high energy density propellants such as Boron Slurry having an energy density of 40×10 joules/kg or greater.

(d) Other propellants additives and agents:

(1) Bonding agents as follows:

(i) Tris (1(2methyl)aziridinyl phosphine oxide (MAPO);

(ii) Trimesol 1(2)ethyl)aziridine (HX868, BITA);

(iii) "Tepanol" (HX878), reaction product of tetraethylenepentamine, acrylonitrile and glycidol;

(iv) "Tepan" (HX879), reaction product of tetraethylenepentamine and acrylonitrile;

(v) Polyfunctional aziridine amides with isophthalic, trimelic, isocyanuric, or trimethyladipic backbone also having a 2methyl or 2ethyl aziridine group (HX752, HX872 and HX877).

(2) Curing agents and catalysts as follows:

(i) Triphenyl bismuth (TPB);

(ii) Burning rate modifiers as follows:

(iii) Catocene;

(iv) Nbutylferrocene;

(v) Other ferrocene derivatives.

(3) Nitrate esters and nitrate plasticizers as follows:

(i) 1,2,4butanetriol trinitrate (BTTN).

(4) Stabilizers as follows:

(i) Nmethylpntroaniline.

* * * * *

Item 9—Category II

* * * * *

(b) Gyro-astro compasses and other devices which derive position or orientation by means of automatically tracking celestial bodies or satellites (see § 121.1, Category XV(d));

* * * * *

Item 12—Category II

* * * * *

(d) * * *

(2) Range instrumentation radars including associated optical/infrared trackers and the specially designed software therefor with all of the following capabilities (see § 121.1, Category XI(a)(3)):

* * * * *

Item 18—Category II

* * * * *

Note to Item 18(a)

A detector is defined as a mechanical, electrical, optical or chemical device that automatically identifies and records, or registers a stimulus such as an environmental change in pressure or temperature, an electrical or electromagnetic signal or radiation from a radioactive material. The following pages were removed from the final ITAR for replacement by DDTC's updated version § 6(l) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(l)), as amended. In accordance with this provision, the list of MTCR Annex items shall constitute all items on the U.S. Munitions List in § 121.16.

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

■ 16. The authority citation for part 122 continues to read as follows:

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

■ 17. Section 122.1 is amended by revising paragraph (a) to read as follows:

§ 122.1 Registration requirements.

(a) Any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the Directorate of Defense Trade Controls. For the purpose of this subchapter, engaging in the business of manufacturing or exporting defense articles or furnishing defense services requires only one occasion of manufacturing or exporting a defense article or furnishing a defense service. Manufacturers who do not engage in exporting must nevertheless register.

* * * * *

■ 18. Section 122.2 is amended by revising paragraph (b) introductory text to read as follows:

§ 122.2 Submission of registration statement.

(a) * * *

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

* * * * *

■ 19. Section 122.4 is amended by revising paragraphs (a) introductory text, (a)(2), (b), (c) introductory text, (c)(4) and (d) to read as follows:

§ 122.4 Notification of changes in information furnished by registrants.

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

* * * * *

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

(b) A registrant must notify the Directorate of Defense Trade Controls by registered mail at least 60 days in advance of any intended sale or transfer to a foreign person of ownership or

control of the registrant or any entity thereof. Such notice does not relieve the registrant from obtaining the approval required under this subchapter for the export of defense articles or defense services to a foreign person, including the approval required prior to disclosing technical data. Such notice provides the Directorate of Defense Trade Controls with the information necessary to determine whether the authority of § 38(g)(6) of the Arms Export Control Act regarding licenses or other approvals for certain sales or transfers of defense articles or data on the U.S. Munitions List should be invoked (see §§ 120.10 and 126.1(e) of this subchapter).

(c) The new entity formed when a registrant merges with another company or acquires, or is acquired by, another company or a subsidiary or division of another company shall advise the Directorate of Defense Trade Controls of the following:

* * * * *

(4) Amendments to agreements approved by the Directorate of Defense Trade Controls to change the name of a party to those agreements. The registrant must, within 60 days of this notification, provide to the Directorate of Defense Trade Controls a signed copy of an amendment to each agreement signed by the new U.S. entity, the former U.S. licensor and the foreign licensee. Any agreements not so amended will be considered invalid.

(d) Prior approval by the Directorate of Defense Trade Controls is required for any amendment making a substantive change.

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

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

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

■ 21. Section 123.1 is amended by revising paragraphs (a) introductory text and (c) introductory text to read as follows:

§ 123.1 Requirement for export or temporary import licenses.

(a) Any person who intends to export or to import temporarily a defense article must obtain the approval of the Directorate of Defense Trade Controls prior to the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of this subchapter.

Applications for export or temporary import must be made as follows:

* * * * *

(c) As a condition to the issuance of a license or other approval, the Directorate of Defense Trade Controls may require all pertinent documentary information regarding the proposed transaction and proper completion of the application form as follows:

* * * * *

■ 22. Section 123.2 is revised to read as follows:

§ 123.2 Import jurisdiction.

The Department of State regulates the temporary import of defense articles. Permanent imports of defense articles into the United States are regulated by the Department of the Justice’s Bureau of Alcohol, Tobacco, Firearms and Explosives under the direction of the Attorney General (see 27 CFR parts 447, 478, 479, and 555).

■ 23. Section 123.3 is amended by revising paragraph (a) introductory text to read as follows:

§ 123.3 Temporary import licenses.

(a) A license (DSP–61) issued by the Directorate of Defense Trade Controls is required for the temporary import and subsequent export of unclassified defense articles, unless exempted from this requirement pursuant to § 123.4. This requirement applies to:

* * * * *

■ 24. Section 123.6 is revised to read as follows:

§ 123.6 Foreign trade zones and U.S. Customs and Border Protection bonded warehouses.

Foreign trade zones in the United States and U.S. Customs and Border Protection bonded warehouses are considered integral parts of the United States for the purpose of this subchapter. An export license is therefore not required for shipment between the United States and a foreign trade zone or a U.S. Customs and Border Protection bonded warehouse. In the case of classified defense articles, the provisions of the Department of Defense National Industrial Security Program Operating Manual will apply. An export license is required for all shipments of articles on the U.S. Munitions List from foreign trade zones and U.S. Customs and Border Protection bonded warehouses to foreign countries, regardless of how the articles reached the zone or warehouse.

■ 25. Section 123.8 is revised to read as follows:

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

(a) Transferring registration or control to a foreign person of any aircraft, vessel, or satellite on the U.S. Munitions List is an export for purposes of this subchapter and requires a license or written approval from the Directorate of Defense Trade Controls. This requirement applies whether the aircraft, vessel, or satellite is physically located in the United States or abroad.

(b) The registration in a foreign country of any aircraft, vessel or satellite covered by the U.S. Munitions List which is not registered in the United States but which is located in the United States constitutes an export. A license or written approval from the Directorate of Defense Trade Controls is therefore required. Such transactions may also require the prior approval of the U.S. Department of Transportation's Maritime Administration, the Federal Aviation Administration or other agencies of the U.S. Government.

■ 26. Section 123.9 is amended by revising paragraphs (a), (d), (e) introductory text, (e)(3) and (e)(4) to read as follows:

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

(a) The country designated as the country of ultimate destination on an application for an export license, or on a Shipper's Export Declaration where an exemption is claimed under this subchapter, must be the country of ultimate end-use. The written approval of the Directorate of Defense Trade Controls must be obtained before reselling, transferring, transshipping, or disposing of a defense article to any end user, end use or destination other than as stated on the export license, or on the Shipper's Export Declaration in cases where an exemption is claimed under this subchapter. Exporters must ascertain the specific end-user and end-use prior to submitting an application to the Directorate of Defense Trade Controls or claiming an exemption under this subchapter.

(d) The written approval of the Directorate of Defense Trade Controls must be obtained before reselling, transferring, transshipping on a non-continuous voyage, or disposing of a defense article in any country other than the country of ultimate destination, or anyone other than the authorized end-user, as stated on the Shipper's Export Declaration in cases where an exemption is claimed under this subchapter.

(e) Reexports or retransfers of U.S.-origin components incorporated into a foreign defense article to a government of a NATO country, or the governments of Australia or Japan, are authorized without the prior written approval of the Directorate of Defense Trade Controls, provided:

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

(4) In certain cases, the Managing Director, Directorate of Defense Trade Controls or the Director, Office of Defense Trade Controls Licensing, may place retransfer restrictions on a license prohibiting use of this exemption.

■ 27. Section 123.10 is revised to read as follows:

§ 123.10 Non-transfer and use assurances.

(a) A nontransfer and use certificate (Form DSP-83) is required for the export of significant military equipment and classified articles, including classified technical data. A license will not be issued until a completed Form DSP-83 has been received by the Directorate of Defense Trade Controls. This form is to be executed by the foreign consignee, foreign end-user, and the applicant. The certificate stipulates that, except as specifically authorized by prior written approval of the Department of State, the foreign consignee and foreign end-user will not reexport, resell or otherwise dispose of the significant military equipment enumerated in the application outside the country named as the location of the foreign end-use or to any other person.

(b) The Directorate of Defense Trade Controls may also require a DSP-83 for the export of any other defense articles, including technical data, or defense services.

(c) When a DSP-83 is required for an export of any defense article or defense service to a non-governmental foreign end-user, the Directorate of Defense Trade Controls may require as a condition of issuing the license that the appropriate authority of the government of the country of ultimate destination also execute the certificate.

■ 28. Section 123.11 is amended by revising paragraph (a) to read as follows:

§ 123.11 Movements of vessels and aircraft covered by the U.S. Munitions List outside the United States.

(a) A license issued by the Directorate of Defense Trade Controls is required

whenever a privately-owned aircraft or vessel on the U.S. Munitions List makes a voyage outside the United States.

■ 29. Section 123.14 is amended by revising paragraph (b) to read as follows:

§ 123.14 Import certificate/delivery verification procedure.

(b) *Exports.* The Directorate of Defense Trade Controls may require the IC/DV procedure on proposed exports of defense articles to non-government entities in those countries participating in IC/DV procedures. In such cases, U.S. exporters must submit both an export license application (the completed Form DSP-5) and the original Import Certificate, which must be provided and authenticated by the government of the importing country. This document verifies that the foreign importer complied with the import regulations of the government of the importing country and that the importer declared the intention not to divert, transship or reexport the material described therein without the prior approval of that government. After delivery of the commodities to the foreign consignee, the Directorate of Defense Trade Controls may also require U.S. exporters to furnish Delivery Verification documentation from the government of the importing country. This documentation verifies that the delivery was in accordance with the terms of the approved export license. Both the Import Certificate and the Delivery Verification must be furnished to the U.S. exporter by the foreign importer.

■ 30. Section 123.16 is amended by revising paragraph (b)(2)(v) to read as follows:

§ 123.16 Exemptions of general applicability.

(v) The exporter may not make more than 24 shipments per calendar year to the previously authorized end user;

■ 31. Section 123.17 is amended by revising paragraph (d) to read as follows:

§ 123.17 Exports of firearms and ammunition.

(d) Port Directors of U.S. Customs and Border Protection shall permit a foreign person to export without a license such firearms in Category I(a) of § 121.1 of this subchapter and ammunition

therefor as the foreign person brought into the United States under the provisions of 27 CFR 478.115(d). (The latter provision specifically excludes from the definition of importation the bringing into the United States of firearms and ammunition by certain foreign persons for specified purposes.)

* * * * *

■ 32. Section 123.25 is amended by revising paragraph (a) to read as follows:

§ 123.25 Amendments to licenses.

(a) The Directorate of Defense Trade Controls may approve an amendment to a license for permanent export, temporary export and temporary import of unclassified defense articles. A suggested format is available from the Directorate of Defense Trade Controls.

* * * * *

■ 33. Section 123.27 is amended by revising paragraphs (a) introductory text, (a)(2), (a)(5), (a)(6), (b), and (c) to read as follows:

§ 123.27 Special licensing regime for export to U.S. allies of commercial communications satellite components, systems, parts, accessories, attachments and associated technical data.

(a) U.S. persons engaged in the business of exporting specifically designed or modified components, systems, parts, accessories, attachments, associated equipment and certain associated technical data for commercial communications satellites, and who are so registered with the Directorate of Defense Trade Controls pursuant to part 122 of this subchapter, may submit license applications for multiple permanent and temporary exports and temporary imports of such articles for expeditious consideration without meeting the documentary requirements of § 123.1(c)(4) and (5) concerning purchase orders, letters of intent, contracts and non-transfer and end use certificates, or the documentary requirements of § 123.9, concerning approval of re-exports or re-transfers, when all of the following requirements are met:

* * * * *

(2) The proposed exports concern exclusively one or more foreign persons (e.g., companies or governments) located within the territories of the countries identified in paragraph (a)(1) of this section, and one or more commercial communications satellite programs included within a list of such persons and programs approved by the U.S. Government for purposes of this section, as signified in a list of such persons and programs that will be publicly available through the Internet

Web site of the Directorate of Defense Trade Controls and by other means.

* * * * *

(5) The U.S. exporter provides complete shipment information to the Directorate of Defense Trade Controls within 15 days of shipment by submitting a report containing a description of the item and the quantity, value, port of exit, and end-user and country of destination of the item, and at that time meets the documentary requirements of § 123.1(c)(4) and (5), the documentary requirements of § 123.9 in the case of re-exports or re-transfers, and, other documentary requirements that may be imposed as a condition of a license (e.g., parts control plans for MTCR-controlled items). The shipment information reported must include a description of the item and quantity, value, port of exit and end user and country of destination of the item.

(6) At any time in which an item exported pursuant to this section is proposed for re-transfer outside of the approved territory, programs or persons (e.g., such as in the case of an item included in a satellite for launch beyond the approved territory), the detailed requirements of § 123.9 apply with regard to obtaining the prior written consent of the Directorate of Defense Trade Controls.

(b) The re-export or re-transfer of the articles authorized for export (including to specified re-export destinations) in accordance with this section do not require the separate prior written approval of the Directorate of Defense Trade Controls provided all of the requirements in paragraph (a) of this section are met.

(c) The Directorate of Defense Trade Controls will consider, on a case-by-case basis, requests to include additional foreign companies and satellite programs within the geographic coverage of a license application submitted pursuant to this section from countries not otherwise covered, who are members of the European Space Agency or the European Union. In no case, however, can the provisions of this section apply or be relied upon by U.S. exporters in the case of countries who are subject to the mandatory requirements of Section 1514 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261), concerning national security controls on satellite export licensing.

* * * * *

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

■ 34. The authority citation for part 124 continues to read as follows:

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

■ 35. Section 124.1 is revised to read as follows:

§ 124.1 Manufacturing license agreements and technical assistance agreements.

(a) *Approval.* The approval of the Directorate of Defense Trade Controls must be obtained before the defense services described in § 120.9(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement to the Directorate of Defense Trade Controls. Such agreements are generally characterized as manufacturing license agreements, technical assistance agreements, distribution agreements, or off-shore procurement agreements, and may not enter into force without the prior written approval of the Directorate of Defense Trade Controls. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with §§ 124.3 and 125.4(b)(2) of this subchapter. The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services described in § 120.9(a) of this subchapter (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from the licensing requirements of this subchapter pursuant to § 125.4 of this subchapter). This requirement also applies to the training of any foreign military forces, regular and irregular, in the use of defense articles. Technical assistance agreements must be submitted in such cases. In exceptional cases, the Directorate of Defense Trade Controls, upon written request, will consider approving the provision of defense services described in § 120.9(a) of this subchapter by granting a license under part 125 of this subchapter. Also, see § 126.8 of this subchapter for the requirements for prior approval of proposals relating to significant military equipment.

(b) *Classified articles.* Copies of approved agreements involving the release of classified defense articles will be forwarded by the Directorate of Defense Trade Controls to the Defense

Security Service of the Department of Defense.

(c) *Amendments.* Changes to the scope of approved agreements, including modifications, upgrades, or extensions must be submitted for approval. The amendments may not enter into force until approved by the Directorate of Defense Trade Controls.

(d) *Minor amendments.* Amendments which only alter delivery or performance schedules, or other minor administrative amendments which do not affect in any manner the duration of the agreement or the clauses or information which must be included in such agreements because of the requirements of this part, do not have to be submitted for approval. One copy of all such minor amendments must be submitted to the Directorate of Defense Trade Controls within thirty days after they are concluded.

■ 36. Section 124.2 is amended by revising paragraph (c)(5)(ix) to read as follows:

§ 124.2 Exemptions for training and military service.

* * * * *

(c) * * *

(5) * * *

(ix) Nuclear radiation measuring devices manufactured to military specifications listed in Category XVI(c);

* * * * *

■ 37. Section 124.3 is amended by revising paragraph (b)(2) to read as follows:

§ 124.3 Exports of technical data in furtherance of an agreement.

* * * * *

(b) * * *

(2) The U.S. party complies with the requirements of the Department of Defense National Industrial Security Program Operating Manual concerning the transmission of classified information (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed) and any other requirements of cognizant U.S. departments or agencies.

■ 38. Section 124.4 is amended by revising the heading, paragraphs (a) and (b) introductory text to read as follows:

§ 124.4 Deposit of signed agreements with the Directorate of Defense Trade Controls.

(a) The United States party to a manufacturing license or a technical assistance agreement must file one copy of the concluded agreement with the Directorate of Defense Trade Controls not later than 30 days after it enters into force. If the agreement is not concluded

within one year of the date of approval, the Directorate of Defense Trade Controls must be notified in writing and be kept informed of the status of the agreement until the requirements of this paragraph or the requirements of § 124.5 are satisfied.

(b) In the case of concluded agreements involving coproduction or licensed production outside of the United States of defense articles of United States origin, a written statement must accompany filing of the concluded agreement with the Directorate of Defense Trade Controls, which shall include:

* * * * *

■ 39. Section 124.5 is revised to read as follows:

§ 124.5 Proposed agreements that are not concluded.

The United States party to any proposed manufacturing license agreement or technical assistance agreement must inform the Directorate of Defense Trade Controls if a decision is made not to conclude the agreement. The information must be provided within 60 days of the date of the decision. These requirements apply only if the approval of the Directorate of Defense Trade Controls was obtained for the agreement to be concluded (with or without any provisos).

■ 40. Section 124.6 is revised to read as follows:

§ 124.6 Termination of manufacturing license agreements and technical assistance agreements.

The U.S. party to a manufacturing license or a technical assistance agreement must inform the Directorate of Defense Trade Controls in writing of the impending termination of the agreement not less than 30 days prior to the expiration date of such agreement.

■ 41. Section 124.10 is amended by revising paragraphs (a), (b)(1) and Note to read as follows:

§ 124.10 Nontransfer and use assurances.

(a) Types of agreements requiring assurances. With respect to any manufacturing license agreement or technical assistance agreement which relates to significant military equipment or classified defense articles, including classified technical data, a Nontransfer and Use Certificate (Form DSP-83) (see § 123.10 of this subchapter) signed by the applicant and the foreign party must be submitted to the Directorate of Defense Trade Controls. With respect to all agreements involving classified articles, including classified technical data, an authorized representative of the foreign government must sign the DSP-

83 (or provide the same assurances in the form of a diplomatic note), unless the Directorate of Defense Trade Controls has granted an exception to this requirement. The Directorate of Defense Trade Controls may require that a DSP-83 be provided in conjunction with an agreement that does not relate to significant military equipment or classified defense articles. The Directorate of Defense Trade Controls may also require with respect to any agreement that an appropriate authority of the foreign party's government also sign the DSP-83 (or provide the same assurances in the form of a diplomatic note).

(b) * * *

(1) Agreements which have been signed by all parties before being submitted to the Directorate of Defense Trade Controls may only be submitted along with any required DSP-83 and/or diplomatic note.

(2) * * *

Note to paragraph (b): In no case may a transfer occur before a required DSP-83 and/or diplomatic note has been submitted to the Directorate of Defense Trade Controls.

■ 42. Section 124.12 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 124.12 Required information in letters of transmittal.

(a) An application for the approval of a manufacturing license or technical assistance agreement with a foreign person must be accompanied by an explanatory letter. The original letter and seven copies of the letter and eight copies of the proposed agreement shall be submitted to the Directorate of Defense Trade Controls. The explanatory letter shall contain:

(1) A statement giving the applicant's Directorate of Defense Trade Controls registration number.

* * * * *

■ 43. Section 124.13 is amended by revising introductory text and paragraphs (d) introductory text and (e) to read as follows:

§ 124.13 Procurement by United States persons in foreign countries (off-shore procurement).

Notwithstanding the other provisions in part 124 of this subchapter, the Directorate of Defense Trade Controls may authorize by means of a license (DSP-5) the export of unclassified technical data to foreign persons for offshore procurement of defense articles, provided that:

* * * * *

(d) The person in the United States provides the Directorate of Defense

Trade Controls with a copy of each contract, purchase order or subcontract for offshore procurement at the time it is accepted. Each such contract, purchase order or subcontract must clearly identify the article to be produced and must identify the license number or exemption under which the technical data was exported; and

(e) Licenses issued pursuant to this section must be renewed prior to their expiration if offshore procurement is to be extended beyond the period of validity of the original approved license. In all instances a license for offshore procurement must state as the purpose "Offshore procurement in accordance with the conditions established in the ITAR, including § 124.13. No other use will be made of the technical data." If the technical data involved in an offshore procurement arrangement is otherwise exempt from the licensing requirements of this subchapter (e.g., § 126.4), the DSP-5 referred to in the first sentence of this section is not required. However, the exporter must comply with the other requirements of this section and provide a written certification to the Directorate of Defense Trade Controls annually of the offshore procurement activity and cite the exemption under which the technical data was exported. The exemptions under § 125.4 of this subchapter may not be used to establish offshore procurement arrangements.

■ 44. Section 124.14 is amended by revising paragraphs (a), (b) introductory text, (b)(4), (c)(5), (e) introductory text and (e)(1) to read as follows:

§ 124.14 Exports to warehouses or distribution points outside the United States.

(a) *Agreements.* Agreements (e.g., contracts) between U.S. persons and foreign persons for the warehousing and distribution of defense articles must be approved by the Directorate of Defense Trade Controls before they enter into force. Such agreements will be limited to unclassified defense articles and must contain conditions for special distribution, end-use and reporting. Licenses for exports pursuant to such agreements must be obtained prior to exports of the defense articles unless an exemption under § 123.16(b)(1) of this subchapter is applicable.

(b) *Required information.* Proposed warehousing and distribution agreements (and amendments thereto) shall be submitted to the Directorate of Defense Trade Controls for approval. The following information must be included in all such agreements:

* * * * *

(4) Specific identification of the country or countries that comprise the distribution territory. Distribution must be specifically limited to the governments of such countries or to private entities seeking to procure defense articles pursuant to a contract with a government within the distribution territory or to other eligible entities as specified by the Directorate of Defense Trade Controls. Consequently, any deviation from this condition must be fully explained and justified. A nontransfer and use certificate (DSP-83) will be required to the same extent required in licensing agreements under § 124.9(b).

* * * * *

(c) * * *

(5) "No export, sale, transfer, or other disposition of the defense articles covered by this agreement is authorized to any country outside the distribution territory without the prior written approval of the Directorate of Defense Trade Controls of the U.S. Department of State."

* * * * *

(e) *Transmittal letters.* Requests for approval of warehousing and distribution agreements with foreign persons must be made by letter. The original letter and seven copies of the letter and seven copies of the proposed agreement shall be submitted to the Directorate of Defense Trade Controls. The letter shall contain:

(1) A statement giving the applicant's Directorate of Defense Trade Controls registration number.

* * * * *

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

■ 45. The authority citation for part 125 is revised to read as follows:

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

■ 46. Section 125.1 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 125.1 Exports subject to this part.

* * * * *

(b) A license for the export of technical data and the exemptions in § 125.4 may not be used for foreign production purposes or for technical assistance unless the approval of the Directorate of Defense Trade Controls has been obtained. Such approval is generally provided only pursuant to the procedures specified in part 124 of this subchapter.

(c) Technical data authorized for export may not be reexported, transferred or diverted from the country of ultimate end-use or from the authorized foreign end-user (as designated in the license or approval for export) or disclosed to a national of another country without the prior written approval of the Directorate of Defense Trade Controls.

(d) The controls of this part apply to the exports referred to in paragraph (a) of this section regardless of whether the person who intends to export the technical data produces or manufactures defense articles if the technical data is determined by the Directorate of Defense Trade Controls to be subject to the controls of this subchapter.

* * * * *

■ 47. Section 125.2 is amended by revising paragraphs (a) and (b) to read as follows:

§ 125.2 Exports of unclassified technical data.

(a) *License.* A license (DSP-5) is required for the export of unclassified technical data unless the export is exempt from the licensing requirements of this subchapter. In the case of a plant visit, details of the proposed discussions must be transmitted to the Directorate of Defense Trade Controls for an appraisal of the technical data. Seven copies of the technical data or the details of the discussion must be provided.

(b) *Patents.* A license issued by the Directorate of Defense Trade Controls is required for the export of technical data whenever the data exceeds that which is used to support a domestic filing of a patent application or to support a foreign filing of a patent application whenever no domestic application has been filed. Requests for the filing of patent applications in a foreign country, and requests for the filing of amendments, modifications or supplements to such patents, should follow the regulations of the U.S. Patent and Trademark Office in accordance with 37 CFR part 5. The export of technical data to support the filing and processing of patent applications in foreign countries is subject to regulations issued by the U.S. Patent and Trademark Office pursuant to 35 U.S.C. 184.

* * * * *

■ 48. Section 125.3 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 125.3 Exports of classified technical data and classified defense articles.

(a) A request for authority to export defense articles, including technical

data, classified by a foreign government or pursuant to Executive Order 12356, successor orders, or other legal authority must be submitted to the Directorate of Defense Trade Controls for approval. The application must contain full details of the proposed transaction. It should also list the facility security clearance code of all U.S. parties on the license and include the Defense Security Service cognizant security office of the party responsible for packaging the commodity for shipment. A nontransfer and use certificate (Form DSP-83) executed by the applicant, foreign consignee, end-user and an authorized representative of the foreign government involved will be required.

(b) Classified technical data which is approved by the Directorate of Defense Trade Controls either for export or reexport after a temporary import will be transferred or disclosed only in accordance with the requirements in the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed). Any other requirements imposed by cognizant U.S. departments and agencies must also be satisfied.

(c) The approval of the Directorate of Defense Trade Controls must be obtained for the export of technical data by a U.S. person to a foreign person in the U.S. or in a foreign country unless the proposed export is exempt under the provisions of this subchapter.

* * * * *

■ 49. Section 125.4 is amended by revising paragraphs (a), (b)(9)(iii), (b)(10)(iii), (b)(11), and (b)(13) to read as follows:

§ 125.4 Exemptions of general applicability.

(a) The following exemptions apply to exports of technical data for which approval is not needed from the Directorate of Defense Trade Controls. These exemptions, except for paragraph (b)(13) of this section, do not apply to exports to proscribed destinations under § 126.1 of this subchapter or for persons considered generally ineligible under § 120.1(c) of this subchapter. The exemptions are also not applicable for purposes of establishing offshore procurement arrangements or producing defense articles offshore (see § 124.13), except as authorized under § 125.4 (c). If § 126.8 of this subchapter requirements are applicable, they must be met before an exemption under this section may be used. Transmission of classified information must comply

with the requirements of the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed) and the exporter must certify to the transmittal authority that the technical data does not exceed the technical limitation of the authorized export.

(b) * * *

(9) * * *

(iii) The classified information is sent overseas in accordance with the requirements of the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed).

(10) * * *

(iii) The institution informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of the Directorate of Defense Trade Controls;

(11) Technical data, including classified information, for which the exporter, pursuant to an arrangement with the Department of Defense, Department of Energy or NASA which requires such exports, has been granted an exemption in writing from the licensing provisions of this part by the Directorate of Defense Trade Controls. Such an exemption will normally be granted only if the arrangement directly implements an international agreement to which the United States is a party and if multiple exports are contemplated. The Directorate of Defense Trade Controls, in consultation with the relevant U.S. Government agencies, will determine whether the interests of the United States Government are best served by expediting exports under an arrangement through an exemption (see also paragraph (b)(3) of this section for a related exemption);

* * * * *

(13) Technical data approved for public release (i.e., unlimited distribution) by the cognizant U.S. Government department or agency or Office of Freedom of Information and Security Review. This exemption is applicable to information approved by the cognizant U.S. Government department or agency for public release in any form. It does not require that the information be published in order to qualify for the exemption.

* * * * *

■ 50. Section 125.5 is revised to read as follows:

§ 125.5 Exemptions for plant visits.

(a) A license is not required for the oral and visual disclosure of unclassified technical data during the course of a classified plant visit by a foreign person, provided: The classified visit has itself been authorized pursuant to a license issued by the Directorate of Defense Trade Controls; or the classified visit was approved in connection with an actual or potential government-to-government program or project by a U.S. Government agency having classification jurisdiction over the classified defense article or classified technical data involved under Executive Order 12356 or other applicable Executive Order; and the unclassified information to be released is directly related to the classified defense article or technical data for which approval was obtained and does not disclose the details of the design, development, production or manufacture of any other defense articles. In the case of visits involving classified information, the requirements of the Department of Defense National Industrial Security Program Operating Manual must be met (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed).

(b) The approval of the Directorate of Defense Trade Controls is not required for the disclosure of oral and visual classified information to a foreign person during the course of a plant visit approved by the appropriate U.S. Government agency if: The requirements of the Department of Defense National Industrial Security Program Operating Manual have been met (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed); the classified information is directly related to that which was approved by the U.S. Government agency; it does not exceed that for which approval was obtained; and it does not disclose the details of the design, development, production or manufacture of any defense articles.

(c) A license is not required for the disclosure to a foreign person of unclassified technical data during the course of a plant visit (either classified or unclassified) approved by the Directorate of Defense Trade Controls or a cognizant U.S. Government agency provided the technical data does not contain information in excess of that approved for disclosure. This exemption

does not apply to technical data which could be used for design, development, production or manufacture of a defense article.

■ 51. Section 125.7 is revised to read as follows:

§ 125.7 Procedures for the export of classified technical data and other classified defense articles.

(a) All applications for the export or temporary import of classified technical data or other classified defense articles must be submitted to the Directorate of Defense Trade Controls on Form DSP-85.

(b) An application for the export of classified technical data or other classified defense articles must be accompanied by seven copies of the data and a completed Form DSP-83 (see § 123.10 of this subchapter). Only one copy of the data or descriptive literature must be provided if a renewal of the license is requested. All classified materials accompanying an application must be transmitted to the Directorate of Defense Trade Controls in accordance with the procedures contained in the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed).

■ 52. Section 125.9 is revised to read as follows:

§ 125.9 Filing of licenses and other authorizations for exports of classified technical data and classified defense articles.

Licenses and other authorizations for the export of classified technical data or classified defense articles will be forwarded by the Directorate of Defense Trade Controls to the Defense Security Service of the Department of Defense in accordance with the provisions of the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed). The Directorate of Defense Trade Controls will forward a copy of the license to the applicant for the applicant's information. The Defense Security Service will return the endorsed license to the Directorate of Defense Trade Controls upon completion of the authorized export or expiration of the license, whichever occurs first.

PART 126—GENERAL POLICIES AND PROVISIONS

■ 53. 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); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; Sec.1225, Pub. L. 108-375.

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

§ 126.1 Prohibited exports and sales to certain countries.

* * * * *

(e) *Proposed sales.* No sale or transfer and no proposal to sell or transfer any defense articles, defense services or technical data 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. Any person who knows or has reason to know of such a proposed or actual sale, or transfer, of such articles, services or data must immediately inform the Directorate of Defense Trade Controls.

* * * * *

■ 55. Section 126.2 is revised to read as follows:

§ 126.2 Temporary suspension or modification of this subchapter.

The Deputy Assistant Secretary for Defense Trade Controls or the Managing Director, Directorate of 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.

■ 56. Section 126.5 is amended by revising paragraph (c)(4)(v) to read as follows:

§ 126.5 Canadian exemptions.

* * * * *

(c) * * *

(4) * * *

(v) Include a clause requiring that all documentation created from U.S. technical data contain the statement, "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"; and

* * * * *

■ 57. Section 126.6 is amended by revising paragraph (b) to read as follows:

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

* * * * *

(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.

* * * * *

■ 58. Section 126.7 is amended by revising paragraphs (a) introductory text, (a)(6), (b), and (c) to read as follows:

§ 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:

* * * * *

(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

* * * * *

(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.

* * * * *

■ 59. Section 126.8 is amended by revising paragraphs (a), (a)(1) introductory text, (a)(2), (a)(3) introductory text, (c)(1)(i), (c)(2) and (d) to read as follows:

§ 126.8 Proposals to foreign persons relating to significant military equipment.

(a) *Proposals.* Certain proposals to foreign persons for the sale or manufacture abroad of significant military equipment require either the prior approval of, or prior notification to, the Directorate of Defense Trade Controls.

(1) Sale of significant military equipment: The prior approval of the Directorate of Defense Trade Controls is required before a U.S. person may make a proposal or presentation designed to constitute a basis for a decision on the part of any foreign person to purchase significant military equipment on the U.S. Munitions List whenever all the following conditions are met:

* * * * *

(2) Sale of significant military equipment: The Directorate of Defense Trade Controls must be notified in writing at least thirty days in advance of any proposal or presentation concerning the sale of significant military equipment whenever the conditions specified in paragraphs (a)(1)(i) through (iii) of this section are met and the identical equipment has been previously licensed for permanent export or approved for sale under the FMS Program to any foreign country.

(3) Manufacture abroad of significant military equipment: The prior approval of the Directorate of Defense Trade Controls is required before a U.S. person may make a proposal or presentation designed to constitute a basis for a decision on the part of any foreign person to enter into any manufacturing license agreement or technical assistance agreement for the production or assembly of significant military equipment, regardless of dollar value, in any foreign country, whenever:

* * * * *

(c) * * *
(1) * * *

(i) A written statement from the Directorate of Defense Trade Controls approving the proposed sale or agreement or approving the making of a proposal or presentation.

* * * * *

(2) The requirement of this section for prior notification is met by informing the Directorate of Defense Trade Controls by letter at least 30 days before making the proposal or presentation. The letter must comply with the procedures set forth in paragraph (d) of this section and must identify the relevant license, approval, or FMS case by which the identical equipment had previously been authorized for permanent export or sale. The Directorate of Defense Trade Controls will provide written acknowledgement of such prior notification to confirm compliance with this requirement and the commencement of the 30-day notification period.

(d) *Procedures.* Unless a license has been obtained pursuant to § 126.8(c)(1)(ii) or (iii), a request for prior approval to make a proposal or presentation with respect to significant military equipment, or a 30-day prior notification regarding the sale of such equipment, must be made by letter to the Directorate of Defense Trade Controls. The letter must outline in detail the intended transaction, including usage of the equipment involved and the country (or countries) involved. Seven copies of the letter should be provided as well as seven copies of suitable descriptive information concerning the equipment.

* * * * *

■ 60. Section 126.9 is revised to read as follows:

§ 126.9 Advisory opinions and related authorizations.

(a) *Advisory opinion.* Any person desiring information as to whether the Directorate of Defense Trade Controls would be likely to grant a license or other approval for the export or approval of a particular defense article or defense service to a particular country may request an advisory opinion from the Directorate of Defense Trade Controls. Advisory opinions are issued on a case-by-case basis and apply 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. An original and seven copies of the letter must be provided along with seven copies of suitable descriptive information concerning the defense article or defense service.

(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.

■ 61. Section 126.10 is amended by revising paragraphs (a) and (d)(2) to read as follows:

§ 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.

* * * * *

(d) * * *
(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).

■ 62. Section 126.11 is revised to read as follows:

§ 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.

■ 63. Section 126.13 is amended by revising paragraph (c) to read as follows:

§ 126.13 Required information.

* * * * *

(c) In cases when foreign nationals are employed at or assigned to security-cleared facilities, provision by the applicant of a Technology Control Plan (available from the Defense Security Service) will facilitate processing.

■ 64. Section 126.14 is amended by revising paragraphs (a), (a)(1), (a)(2), (a)(3)(i), (a)(3)(iv), (a)(4), and (b) to read as follows:

§ 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.

* * * * *

(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 Managing Director of the Directorate of 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).

* * * * *

PART 127—VIOLATIONS AND PENALTIES

■ 65. The authority citation for part 127 continues to read as follows:

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

■ 66. Section 127.1 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (c) introductory text, and (d) and by adding paragraphs (a)(5) and (a)(6) to read as follows:

§ 127.1 Violations.

(a) * * *

(1) To export or attempt to export from the United States, or to reexport or retransfer or attempt to reexport or retransfer from one foreign destination to another foreign destination by a U.S. person of any defense article or technical data or by anyone of any U.S. origin defense article or technical data or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written

approval from the Directorate of Defense Trade Controls;

(2) To import or attempt to import any defense article whenever a license is required by this subchapter without first obtaining the required license or written approval from the Directorate of Defense Trade Controls;

(3) To conspire to export, import, reexport or cause to be exported, imported or reexported, any defense article or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from the Directorate of Defense Trade Controls;

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

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

(c) A person with knowledge that another person is then ineligible pursuant to §§ 120.1(c) or 126.7 of this subchapter or subject to an order of debarment or interim suspension, may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to, and written authorization from, the Directorate of Defense Trade Controls;

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

■ 67. Section 127.3 is amended by revising paragraph (b) to read as follows:

§ 127.3 Penalties for violations.

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

■ 68. Section 127.5 is revised to read as follows:

§ 127.5 Authority of the Defense Security Service.

In the case of exports involving classified technical data or defense articles, the Defense Security Service may take appropriate action to ensure compliance with the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed). Upon a request to the Defense Security Service regarding the export of any classified defense article or technical data, the Defense Security Service official or a designated government transmittal authority may require the production of other relevant documents and information relating to the proposed export.

■ 69. Section 127.7 is amended by revising paragraphs (a), (b)(2), and (d) to read as follows:

§ 127.7 Debarment.

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

(b) * * *

(2) The basis for administrative debarment, described in part 128 of this subchapter, is any violation of 22 U.S.C. 2778 or any rule or regulation issued thereunder when such a violation is of such a character as to provide a reasonable basis for the Directorate of Defense Trade Controls to believe that the violator cannot be relied upon to comply with the statute or these rules or regulations in the future, and when such violation is established in accordance with part 128 of this subchapter.

(d) *Appeals.* Any person who is ineligible pursuant to paragraph (c) of this section may appeal to the Under Secretary of State for Arms Control and International Security for reconsideration of the ineligibility determination. The procedures specified in § 128.13 of this subchapter will be used in submitting a reconsideration appeal.

■ 70. Section 127.8 is revised to read as follows:

§ 127.8 Interim suspension.

(a) The Managing Director of the Directorate of Defense Trade Controls or the Director of the Office of Defense Trade Controls Compliance is authorized to order the interim suspension of any person when the Managing Director or Director of Compliance believes that grounds for debarment (as defined in § 127.7 of this part) exist and where and to the extent the Managing Director or Director of Compliance, as applicable, finds that interim suspension is reasonably necessary to protect world peace or the security or foreign policy of the United States. The interim suspension orders prohibit that person from participating directly or indirectly in the export of any defense article or defense service for which a license or approval is required by this subchapter. The suspended person shall be notified in writing as provided in § 127.7(c) of this part (statutory debarment) or § 128.3 of this subchapter (administrative debarment), whichever is appropriate. In both cases, a copy of the interim suspension order will be served upon that person in the same manner as provided in § 128.3 of this subchapter. The interim suspension order may be made immediately effective, without prior notice. The order will state the relevant facts, the grounds for issuance of the order, and describe the nature and duration of the interim suspension. No person may be suspended for a period exceeding 60 days, absent extraordinary circumstances, (e.g., unless proceedings

under § 127.7(c) of this part or under part 128 of this subchapter, or criminal proceedings, are initiated).

(b) A motion or petition to vacate or modify an interim suspension order may be filed at any time with the Under Secretary of State for Arms Control and International Security. After a final decision is reached, the Managing Director of the Directorate of Defense Trade Controls will issue an appropriate order disposing of the motion or petition and will promptly inform the respondent accordingly.

■ 71. Section 127.9 is revised to read as follows:

§ 127.9 Applicability of orders.

For the purpose of preventing evasion, orders of the Assistant Secretary of State for Political-Military Affairs debaring a person under § 127.7, and orders of the Managing Director, Directorate of Defense Trade Controls or Director of the Office of Defense Trade Controls Compliance suspending a person under § 127.8, may be made applicable to any other person who may then or thereafter (during the term of the order) be related to the debarred person by affiliation, ownership, control, position of responsibility, or other commercial connection. Appropriate notice and opportunity to respond to the basis for the suspension will be given.

■ 72. Section 127.10 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 127.10 Civil penalty.

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

(b) The Directorate of Defense Trade Controls may make:

* * * * *

■ 73. Section 127.11 is revised to read as follows:

§ 127.11 Past violations.

(a) *Presumption of denial.* Pursuant to section 38 of the Arms Export Control Act, licenses or other approvals may not be granted to persons who have been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter or who are ineligible to receive any export licenses from any agency of the U.S. Government, subject

to a narrowly defined statutory exception. This provision establishes a presumption of denial for licenses or other approvals involving such persons. This presumption is applied by the Directorate of Defense Trade Controls to all persons convicted or deemed ineligible in this manner since the effective date of the Arms Export Control Act (Public Law 94-329; 90 Stat. 729) (June 30, 1976).

(b) *Policy.* An exception to the policy of the Department of State to deny applications for licenses or other approvals that involve persons described in paragraph (a) of this section shall not be considered unless there are extraordinary circumstances surrounding the conviction or ineligibility to export, and only if the applicant demonstrates, to the satisfaction of the Assistant Secretary of State for Political-Military Affairs, that the applicant has taken appropriate steps to mitigate any law enforcement and other legitimate concerns, and to deal with the causes that resulted in the conviction, ineligibility, or debarment. Any person described in paragraph (a) of this section who wishes to request consideration of any application must explain, in a letter to the Managing Director, Directorate of Defense Trade Controls, the reasons why the application should be considered. If the Assistant Secretary of State for Political-Military Affairs concludes that the application and written explanation have sufficient merit, the Assistant Secretary shall consult with the Office of the Legal Adviser and the Department of the Treasury regarding law enforcement concerns, and may also request the views of other departments, including the Department of Justice. If the Directorate of Defense Trade Controls does grant the license or other approval, subsequent applications from the same person need not repeat the information previously provided but should instead refer to the favorable decision.

(c) *Debarred persons.* Persons debarred pursuant to § 127.7(c) (statutory debarment) may not utilize the procedures provided by this section while the debarment is in force. Such persons may utilize only the procedures provided by § 127.7(d) of this part.

■ 74. Section 127.12 is amended by revising paragraphs (a), (b)(1), (b)(2), (b)(3) introductory text, (b)(4), (c)(1), and (d)(1)(iii) to read as follows:

§ 127.12 Voluntary disclosures.

(a) *General policy.* The Department strongly encourages the disclosure of information to the Directorate of Defense Trade Controls by persons,

firms or any organization that believe they may have violated any export control provision of the Arms Export Control Act, or any regulation, order, license, or other authorization issued under the authority of the Arms Export Control Act. Voluntary self-disclosure may be considered a mitigating factor in determining the administrative penalties, if any, that should be imposed by the Department. Failure to report such violation(s) may result in circumstances detrimental to U.S. national security and foreign policy interests and will be an adverse factor in determining the appropriate disposition of such violations.

(b) *Limitations.* (1) The provisions of this section apply only when information is provided to the Directorate of Defense Trade Controls for its review in determining whether to take administrative action under part 128 of this subchapter concerning violation(s) of the export control provisions of the Arms Export Control Act and these regulations.

(2) The provisions of this section apply only when information is received by the Directorate of Defense Trade Controls for review prior to such time that either the Department of State or any other agency, bureau or department of the United States Government obtains knowledge of either the same or substantially similar information from another source and commenced an investigation or inquiry that involves that information, and that is intended to determine whether the Arms Export Control Act or these regulations, or any other license, order or other authorization issued under the Arms Export Control Act has been violated.

(3) It is possible that the activity in question—despite voluntary disclosure—might merit penalties, administrative actions, sanctions, or referrals to the Department of Justice for consideration as to whether criminal prosecution is warranted. In the latter case, the Directorate of Defense Trade Controls will notify the Department of Justice of the voluntary nature of the disclosure, although the Department of Justice is not required to give that fact any weight. The Directorate of Defense Trade Controls has the sole discretion to consider whether “voluntary disclosure,” in context with other relevant information in a particular case, should be a mitigating factor in determining what, if any, administrative action will be imposed. Some of the mitigating factors the Directorate of

Defense Trade Controls may consider are:

* * * * *

(4) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

(c) *Notification.* (1) Any person or firm wanting to disclose information that constitutes a voluntary self-disclosure should, in the manner outlined below, initially notify the Directorate of Defense Trade Controls immediately after violation(s) are discovered and then conduct a thorough review of all export-related transactions where violation(s) are suspected.

* * * * *

(d) * * *

(1) * * *

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

* * * * *

PART 128—ADMINISTRATIVE PROCEDURES

■ 75. The authority citation for part 128 is revised to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Arms Export Control Act. 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 22 U.S.C. 2651a; E.O. 12291, 46 FR 1981.

■ 76. Section 128.2 is revised to read as follows:

§ 128.2 Administrative Law Judge.

The Administrative Law Judge referred to in this part is an Administrative Law Judge appointed by the Department of State. The Administrative Law Judge is authorized to exercise the powers and perform the duties provided for in §§ 127.7, 127.8, and 128.3 through 128.16 of this subchapter.

■ 77. Section 128.3 is amended by revising paragraph (a) to read as follows:

§ 128.3 Institution of Administrative Proceedings.

(a) *Charging letters.* The Managing Director, Directorate of Defense Trade Controls, with the concurrence of the Office of the Legal Adviser, Department of State, may initiate proceedings to impose debarment or civil penalties in accordance with § 127.7 or § 127.10 of this subchapter, respectively.

Administrative proceedings shall be initiated by means of a charging letter. The charging letter will state the essential facts constituting the alleged violation and refer to the regulatory or other provisions involved. It will give notice to the respondent to answer the charges within 30 days, as provided in § 128.5(a), and indicate that a failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he or she is entitled to an oral hearing if a written demand for one is filed with the answer or within seven (7) days after service of the answer. The respondent will also be informed that he or she may, if so desired, be represented by counsel of his or her choosing. Charging letters may be amended from time to time, upon reasonable notice.

* * * * *

■ 78. Section 128.5 is amended by revising paragraph (c) to read as follows:

§ 128.5 Answer and demand for oral hearing.

* * * * *

(c) *Submission of answer.* The answer, written demand for oral hearing (if any) and supporting evidence required by § 128.5(b) shall be in duplicate and mailed or delivered to the designated Administrative Law Judge. A copy shall be simultaneously mailed to the Managing Director, Directorate of Defense Trade Controls, SA-1, Room 1200, Department of State, Washington, DC 20522-0112, or delivered to 2401 Street, NW., Washington, DC addressed to Managing Director, Directorate of Defense Trade Controls, SA-1, Room 1200, Department of State, Washington, DC 20037.

■ 79. Section 128.6 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 128.6 Discovery.

(a) *Discovery by the respondent.* The respondent, through the Administrative Law Judge, may request from the Directorate of Defense Trade Controls any relevant information, not privileged or otherwise not authorized for release, that may be necessary or helpful in preparing a defense. The Directorate of Defense Trade Controls may provide any relevant information, not privileged or otherwise not authorized for release, that may be necessary or helpful in preparing a defense. The Directorate of Defense Trade Controls may supply summaries in place of original documents and may withhold information from discovery if the interests of national security or foreign policy so require, or if necessary to comply with any statute, executive

order or regulation requiring that the information not be disclosed. The respondent may request the Administrative Law Judge to request any relevant information, books, records, or other evidence, from any other person or government agency so long as the request is reasonable in scope and not unduly burdensome.

(b) *Discovery by the Directorate of Defense Trade Controls.* The Directorate of Defense Trade Controls or the Administrative Law Judge may make reasonable requests from the respondent of admissions of facts, answers to interrogatories, the production of books, records, or other relevant evidence, so long as the request is relevant and material.

* * * * *

(d) *Enforcement of discovery rights.* If the Directorate of Defense Trade Controls fails to provide the respondent with information in its possession which is not otherwise available and which is necessary to the respondent's defense, the Administrative Law Judge may dismiss the charges on her or his own motion or on a motion of the respondent. If the respondent fails to respond with reasonable diligence to the requests for discovery by the Directorate of Defense Trade Controls or the Administrative Law Judge, on her or his own motion or motion of the Directorate of Defense Trade Controls, and upon such notice to the respondent as the Administrative Law Judge may direct, may strike respondent's answer and declare the respondent in default, or make any other ruling which the Administrative Law Judge deems necessary and just under the circumstances. If a third party fails to respond to the request for information, the Administrative Law Judge shall consider whether the evidence sought is necessary to a fair hearing, and if it is so necessary that a fair hearing may not be held without it, the Administrative Law Judge shall determine whether substitute information is adequate to protect the rights of the respondent. If the Administrative Law Judge decides that a fair hearing may be held with the substitute information, then the proceedings may continue. If not, then the Administrative Law Judge may dismiss the charges.

■ 80. Section 128.7 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 128.7 Prehearing conference.

(a) * * *

(1) * * *

(ii) The necessity or desirability of amendments to pleadings;

* * * * *

■ 81. Section 128.10 is revised to read as follows:

§ 128.10 Disposition of proceedings.

Where the evidence is not sufficient to support the charges, the Managing Director, Directorate of Defense Trade Controls or the Administrative Law Judge will dismiss the charges. Where the Administrative Law Judge finds that a violation has been committed, the Administrative Law Judge's recommendation shall be advisory only. The Assistant Secretary of State for Political-Military Affairs will review the record, consider the report of the Administrative Law Judge, and make an appropriate disposition of the case. The Managing Director may issue an order debaring the respondent from participating in the export of defense articles or technical data or the furnishing of defense services as provided in § 127.7 of this subchapter, impose a civil penalty as provided in § 127.10 of this subchapter, or take such action as the Administrative Law Judge may recommend. Any debarment order will be effective for the period of time specified therein and may contain such additional terms and conditions as are deemed appropriate. A copy of the order together with a copy of the Administrative Law Judge's report will be served upon the respondent.

■ 82. Section 128.11 is amended by revising paragraph (a) to read as follows:

§ 128.11 Consent agreements.

(a) The Directorate of Defense Trade Controls and the respondent may, by agreement, submit to the Administrative Law Judge a proposal for the issuance of a consent order. The Administrative Law Judge will review the facts of the case and the proposal and may conduct conferences with the parties and may require the presentation of evidence in the case. If the Administrative Law Judge does not approve the proposal, the Administrative Law Judge will notify the parties and the case will proceed as though no consent proposal had been made. If the proposal is approved, the Administrative Law Judge will report the facts of the case along with recommendations to the Assistant Secretary of State for Political-Military Affairs. If the Assistant Secretary of State for Political-Military Affairs does not approve the proposal, the case will proceed as though no consent proposal had been made. If the Assistant Secretary of State for Political-Military

Affairs approves the proposal, an appropriate order may be issued.

* * * * *

■ 83. Section 128.13 is amended by revising paragraphs (a), (c), (e)(1), (e)(2), and (f) to read as follows:

§ 128.13 Appeals.

(a) Filing of appeals. An appeal must be in writing, and be addressed to and filed with the Under Secretary of State for Arms Control and International Security, Department of State, Washington, DC 20520. An appeal from a final order denying export privileges or imposing civil penalties must be filed within 30 days after receipt of a copy of the order. If the Under Secretary cannot for any reason act on the appeal, he or she may designate another Department of State official to receive and act on the appeal.

* * * * *

(c) Matters considered on appeal. An appeal will be considered upon the basis of the assembled record. This record consists of (but is not limited to) the charging letter, the respondent's answer, the transcript or magnetic recording of the hearing before the Administrative Law Judge, the report of the Administrative Law Judge, the order of the Assistant Secretary of State for Political-Military Affairs, and any other relevant documents involved in the proceedings before the Administrative Law Judge. The Under Secretary of State for Arms Control and International Security may direct a rehearing and reopening of the proceedings before the Administrative Law Judge if he or she finds that the record is insufficient or that new evidence is relevant and material to the issues and was not known and was not reasonably available to the respondent at the time of the original hearings.

* * * * *

(e) Preparation of appeals—(1) General requirements. An appeal shall be in letter form. The appeal and accompanying material should be filed in duplicate, unless otherwise indicated, and a copy simultaneously mailed to the Managing Director, Directorate of Defense Trade Controls, SA-1, Room 1200, Department of State, Washington, DC 20522-0112 or delivered to 2401 E Street, NW., Washington, DC addressed to Managing Director, Directorate of Defense Trade Controls, SA-1, Room 1200, Department of State, Washington, DC 20037.

(2) Oral presentation. The Under Secretary of State for Arms Control and International Security may grant the appellant an opportunity for oral argument and will set the time and

place for oral argument and will notify the parties, ordinarily at least 10 days before the date set.

(f) Decisions. All appeals will be considered and decided within a reasonable time after they are filed. An appeal may be granted or denied in whole or in part, or dismissed at the request of the appellant. The decision of the Under Secretary of State for Arms Control and International Security will be final.

■ 84. Section 128.15 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 128.15 Orders containing probationary periods.

(a) Revocation of probationary periods. A debarment or interim suspension order may set a probationary period during which the order may be held in abeyance for all or part of the debarment or suspension period, subject to the conditions stated therein. The Managing Director, Directorate of Defense Trade Controls, may apply, without notice to any person to be affected thereby, to the Administrative Law Judge for a recommendation on the appropriateness of revoking probation when it appears that the conditions of the probation have been breached. The facts in support of the application will be presented to the Administrative Law Judge, who will report thereon and make a recommendation to the Assistant Secretary of State for Political-Military Affairs. The latter will make a determination whether to revoke probation and will issue an appropriate order. The party affected by this action may request the Assistant Secretary of State for Political-Military Affairs to reconsider the decision by submitting a request within 10 days of the date of the order.

* * * * *

(b) * * *

(3) Requirements for filing objections. Objections filed with the Administrative Law Judge must be submitted in writing and in duplicate. A copy must be simultaneously submitted to the Directorate of Defense Trade Controls. Denials and admissions, as well as any mitigating circumstances, which the person affected intends to present must be set forth in or accompany the letter of objection and must be supported by evidence. A request for an oral hearing may be made at the time of filing objections.

* * * * *

PART 129—REGISTRATION AND LICENSING OF BROKERS

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

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

■ 86. Section 129.2 is amended by revising paragraph (b) to read as follows:

§ 129.2 Definitions.

* * * * *

(b) *Brokering activities* means acting as a broker as defined in § 129.2(a), and includes the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service, irrespective of its origin. For example, this includes, but is not limited to, activities by U.S. persons who are located inside or outside of the United States or foreign persons subject to U.S. jurisdiction involving defense articles or defense services of U.S. or foreign origin which are located inside or outside of the United States. But, this does not include activities by U.S. persons that are limited exclusively to U.S. domestic sales or transfers (e.g., not for export or re-transfer in the United States or to a foreign person). For the purposes of this subchapter, engaging in the business of brokering activities requires only one action as described above.

* * * * *

■ 87. Section 129.3 is amended by revising paragraph (a) to read as follows:

§ 129.3 Requirement to Register.

(a) Any U.S. person, wherever located, and any foreign person located in the United States or otherwise subject to the jurisdiction of the United States (notwithstanding § 120.1(c)), who engages in the business of brokering activities (as defined in this part) with respect to the manufacture, export, import, or transfer of any defense article or defense service subject to the controls of this subchapter (see part 121) or any “foreign defense article or defense service” (as defined in § 129.2) is required to register with the Directorate of Defense Trade Controls.

* * * * *

■ 88. Section 129.4 is amended by revising paragraphs (a) and (b) to read as follows:

§ 129.4 Registration statement and fees.

(a) *General.* The Department of State Form DS–2032 (Statement of Registration) and a transmittal letter meeting the requirements of § 122.2(b) of this subchapter must be submitted by an intended registrant with a payment

by check or money order payable to the Department of State of one of the fees prescribed in § 122.3(a) of this subchapter. The Statement of Registration and transmittal letter must be signed by a senior officer who has been empowered by the intended registrant to sign such documents. The intended registrant shall also submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The requirement to submit a Department of State Form DS–2032 and to submit documentation demonstrating incorporation or authorization to do business in the United States is not meant to exclude foreign persons from the requirement to register. Foreign persons who are required to register shall provide information that is substantially similar in content as that which a U.S. person would provide under this provision (e.g., foreign business license or similar authorization to do business).

(b) A person required to register under this part who is already registered as a manufacturer or exporter in accordance with part 122 of this subchapter must also provide notification of this additional activity by submitting to the Directorate of Defense Trade Controls by registered mail a transmittal letter meeting the requirements of § 122.2(b) and citing the existing registration, and must pay an additional fee according to the schedule prescribed in § 122.3(a). Any person who registers coincidentally as a broker as defined in § 129.2 of this subchapter and as a manufacturer or exporter must submit a Statement of Registration that reflects the brokering activities, the § 122.2(b) transmittal letter, as well as the additional fee for registration as a broker.

* * * * *

■ 89. Section 129.5 is amended by revising paragraphs (b), (c), and (e) to read as follows:

§ 129.5 Policy on embargoes and other proscriptions.

* * * * *

(b) No brokering activities or brokering proposals involving any country referred to in § 126.1 of this subchapter may be carried out by any person without first obtaining the written approval of the Directorate of Defense Trade Controls.

(c) No brokering activities or proposal to engage in brokering activities may be carried out or pursued by any person without the prior written approval of the Directorate of Defense Trade Controls in the case of other countries or persons identified from time to time by the Department of State through

notice in the **Federal Register**, with respect to which certain limitations on defense articles or defense services are imposed for reasons of U.S. national security or foreign policy or law enforcement interests (e.g., an individual subject to debarment pursuant to § 127.7 of this subchapter).

* * * * *

(e) In cases involving countries or persons subject to paragraph (b), (c), or (d), above, it is the policy of the Department of State to deny requests for approval, and exceptions may be granted only rarely, if ever. Any person who knows or has reason to know of brokering activities involving such countries or persons must immediately inform the Directorate of Defense Trade Controls.

■ 90. Section 129.6 is amended by revising paragraph (a) to read as follows:

§ 129.6 Requirement for License/Approval.

(a) No person may engage in the business of brokering activities without the prior written approval (license) of, or prior notification to, the Directorate of Defense Trade Controls, except as follows:

* * * * *

■ 91. Section 129.7 is amended by revising paragraphs (a) introductory text, (b)(2), and (c) to read as follows:

§ 129.7 Prior Approval (License).

(a) The following brokering activities require the prior written approval of the Directorate of Defense Trade Controls:

* * * * *

(b) * * *

(2) A written statement from the Directorate of Defense Trade Controls approving the proposed activity or the making of a proposal or presentation.

(c) Requests for approval of brokering activities shall be submitted in writing to the Directorate of Defense Trade Controls by an empowered official of the registered broker; the letter shall also meet the requirements of § 126.13 of this subchapter.

* * * * *

■ 92. Section 129.8 is amended by revising paragraphs (a) and (b) to read as follows:

§ 129.8 Prior Notification.

(a) Prior notification to the Directorate of Defense Trade Controls is required for brokering activities with respect to significant military equipment valued at less than \$1,000,000, except for sharing of basic marketing information (e.g., information that does not include performance characteristics, price and probable availability for delivery) by

U.S. persons registered as exporters under Part 122.

(b) The requirement of this section for prior notification is met by informing the Directorate of Defense Trade Controls by letter at least 30 days before making a brokering proposal or presentation. The Directorate of Defense Trade Controls will provide written acknowledgment of such prior notification to confirm compliance with this requirement and the commencement of the 30-day notification period.

* * * * *

■ 93. Section 129.9 is revised to read as follows:

§ 129.9 Reports.

Any person required to register under this part shall provide annually a report to the Directorate of Defense Trade Controls enumerating and describing its brokering activities by quantity, type, U.S. dollar value, and purchaser(s) and recipient(s), license(s) numbers for approved activities and any exemptions utilized for other covered activities.

■ 94. Section 129.10 is revised to read as follows:

§ 129.10 Guidance.

Any person desiring guidance on issues related to this part, such as whether an activity is a brokering activity within the scope of this Part, or whether a prior approval or notification requirement applies, may seek guidance in writing from the Directorate of Defense Trade Controls. The procedures and conditions stated in § 126.9 apply equally to requests under this section.

PART 130—POLITICAL CONTRIBUTIONS, FEES AND COMMISSIONS

■ 95. The authority citation for part 130 is revised to read as follows:

Authority: Sec. 39, Arms Export Control Act, 90 Stat. 767 (22 U.S.C. 2779); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a.

■ 96. Section 130.2 is revised to read as follows:

§ 130.2 Applicant.

Applicant means any person who applies to the Directorate of Defense Trade Controls for any license or approval required under this subchapter for the export of defense articles or defense services valued in an amount of \$500,000 or more which are being sold commercially to or for the use of the armed forces of a foreign country or international organization. This term also includes a person to whom the

required license or approval has been given.

■ 97. Section 130.5 is amended by revising paragraph (b)(1) to read as follows:

§ 130.5 Fee or commission.

* * * * *

(b) * * *

(1) A political contribution or a payment excluded by § 130.6 from the definition of political contribution;

* * * * *

■ 98. Section 130.8 is amended by revising paragraph (a)(1) to read as follows:

§ 130.8 Vendor.

(a) * * *

(1) A sale requiring a license or approval from the Directorate of Defense Trade Controls under this subchapter; or

* * * * *

■ 99. Section 130.9 is amended by revising the title, paragraphs (a)(1) introductory text, (a)(1)(ii), (b) introductory text, (b)(2), and (d) to read as follows:

§ 130.9 Obligation to furnish information to the Directorate of Defense Trade Controls.

(a)(1) Each applicant must inform the Directorate of Defense Trade Controls as to whether the applicant or its vendors have paid, or offered or agreed to pay, in respect of any sale for which a license or approval is requested:

* * * * *

(ii) Fees or commissions in an aggregate amount of \$100,000 or more. If so, applicant must furnish to the Directorate of Defense Trade Controls the information specified in § 130.10. The furnishing of such information or an explanation satisfactory to the Managing Director of the Directorate of Defense Trade Controls as to why all the information cannot be furnished at that time is a condition precedent to the granting of the relevant license or approval.

* * * * *

(b) Each supplier must inform the Directorate of Defense Trade Controls as to whether the supplier or its vendors have paid, or offered or agreed to pay, in respect of any sale:

* * * * *

(2) Fees or commissions in an aggregate amount of \$100,000 or more. If so, the supplier must furnish to the Directorate of Defense Trade Controls the information specified in § 130.10. The information required to be furnished pursuant to this paragraph must be so furnished no later than 30 days after the contract award to such

supplier, or such earlier date as may be specified by the Department of Defense. For purposes of this paragraph, a contract award includes a purchase order, exercise of an option, or other procurement action requiring a supplier to furnish defense articles or defense services to the Department of Defense for the purposes of § 22 of the Arms Export Control Act (22 U.S.C. 2762).

* * * * *

(d) Any applicant or supplier which has informed the Directorate of Defense Trade Controls under this section that neither it nor its vendors have paid, or offered or agreed to pay, political contributions or fees or commissions in an aggregate amount requiring the information specified in § 130.10 to be furnished, must subsequently furnish such information within 30 days after learning that it or its vendors had paid, or offered or agreed to pay, political contributions or fees or commissions in respect of a sale in an aggregate amount which, if known to applicant or supplier at the time of its previous communication with the Directorate of Defense Trade Controls, would have required the furnishing of information under § 130.10 at that time. Any report furnished under this paragraph must, in addition to the information specified in § 130.10, include a detailed statement of the reasons why applicant or supplier did not furnish the information at the time specified in paragraph (a) or paragraph (b) of this section, as applicable.

■ 100. Section 130.10 is amended by revising the heading and paragraphs (a) introductory text and (d) to read as follows:

§ 130.10 Information to be furnished by applicant or supplier to the Directorate of Defense Trade Controls.

(a) Every person required under § 130.9 to furnish information specified in this section in respect to any sale must furnish to the Directorate of Defense Trade Controls:

* * * * *

(d) Every person required to furnish the information specified in paragraphs (a) and (b) of this section must respond fully to each subdivision of those paragraphs and, where the correct response is "none" or "not applicable," must so state.

■ 101. Section 130.11 is amended by revising paragraphs (a)(3), (b) introductory text, and (b)(2) to read as follows:

§ 130.11 Supplementary reports.

(a) * * *

(3) Additional details are requested by the Directorate of Defense Trade

Controls with respect to any miscellaneous payments reported under § 130.10(c).

(b) Supplementary reports must be sent to the Directorate of Defense Trade Controls within 30 days after the payment, offer or agreement reported therein or, when requested by the Directorate of Defense Trade Controls, within 30 days after such request, and must include:

* * * * *

(2) The Directorate of Defense Trade Controls license number, if any, and the Department of Defense contract number, if any, related to the sale.

■ 102. Section 130.12 is amended by revising paragraphs (c), (d)(1) introductory text, and (d)(2) to read as follows:

§ 130.12 Information to be furnished by vendor to applicant or supplier.

* * * * *

(c) If the vendor believes that furnishing information to an applicant or supplier in a requested statement would unreasonably risk injury to the vendor's commercial interests, the vendor may furnish in lieu of the statement an abbreviated statement disclosing only the aggregate amount of all political contributions and the aggregate amount of all fees or commissions which have been paid, or offered or agreed to be paid, or offered or agreed to be paid, by the vendor with respect to the sale. Any abbreviated statement furnished to an applicant or supplier under this paragraph must be accompanied by a certification that the requested information has been reported by the vendor directly to the Directorate of Defense Trade Controls. The vendor must simultaneously report fully to the Directorate of Defense Trade Controls all information which the vendor would otherwise have been required to report to the applicant or supplier under this section. Each such report must clearly identify the sale with respect to which the reported information pertains.

(d)(1) If upon the 25th day after the date of its request to vendor, an applicant or supplier has not received from the vendor the initial statement required by paragraph (a) of this section, the applicant or supplier must submit to the Directorate of Defense Trade Controls a signed statement attesting to:

* * * * *

(2) The failure of a vendor to comply with this section does not relieve any applicant or supplier otherwise required by § 130.9 to submit a report to the Directorate of Defense Trade Controls from submitting such a report.

■ 103. Section 130.17 is amended by revising paragraph (a) to read as follows:

§ 130.17 Utilization of and access to reports and records.

(a) All information reported and records maintained under this part will be made available, upon request for utilization by standing committees of the Congress and subcommittees thereof, and by United States Government agencies, in accordance with § 39(d) of the Arms Export Control Act (22 U.S.C. 2779(d)), and reports based upon such information will be submitted to Congress in accordance with sections 36(a)(7) and 36(b)(1) of that Act (22 U.S.C. 2776(a)(7) and (b)(1)) or any other applicable law.

* * * * *

Dated: March 1, 2006.

Robert G. Joseph,

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

[FR Doc. 06-3500 Filed 4-20-06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. NHTSA-2005-23454]

RIN 2127-AJ73

Amendment To Grant Criteria for Alcohol-Impaired Driving Prevention Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the regulation that implements 23 U.S.C. 410, under which States can receive incentive grants for alcohol-impaired driving prevention programs. The final rule implements changes that were made to the Section 410 program by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA-LU).

SAFETEA-LU provides States with two alternative means to qualify for a Section 410 grant. Under the first alternative, States may qualify as a "low fatality rate State" if they have an alcohol-related fatality rate of 0.5 or less per 100 million vehicle miles traveled (VMT). Under the second alternative, States may qualify as a "programmatic State" if they demonstrate that they meet three of eight grant criteria for fiscal year 2006, four of eight grant

criteria for fiscal year 2007, and five of eight grant criteria for fiscal years 2008 and 2009. Qualifying under both alternatives does not entitle the State to receive additional grant funds.

SAFETEA-LU also provides for a separate grant to the ten States that are determined to have the highest rates of alcohol-related driving fatalities.

This final rule establishes the criteria States must meet and the procedures they must follow to qualify for Section 410 grants, beginning in FY 2006.

DATES: This final rule becomes effective on June 20, 2006.

FOR FURTHER INFORMATION CONTACT: For programmatic issues: Ms. Carmen Hayes, Highway Safety Specialist, Injury Control Operations & Resources (ICOR), NHTI-200, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2121. For legal issues: Mr. Roland (R.T.) Baumann III, Attorney-Advisor, Legislation and General Law Division, Office of the Chief Counsel, NCC-113, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-1834.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Section 410 Statutory Requirements
- III. Section 410 Administrative Requirements
- IV. Notice of Proposed Rulemaking
- V. Comments
 - A. In General
 - B. Comments Regarding Programmatic Criteria
 - 1. High Visibility Impaired Driving Enforcement Program
 - 2. Prosecution and Adjudication Outreach Program
 - 3. BAC Testing Program
 - 4. High Risk Drivers Program
 - 5. Alcohol Rehabilitation or DWI Court Program
 - 6. Underage Drinking Prevention Program
 - 7. Administrative License Suspension or Revocation System
 - 8. Self-Sustaining Impaired Driving Prevention Program
 - C. Comments Regarding Low and High Fatality Rate States
 - D. Comments Regarding Administrative Issues
- VI. Statutory Basis for This Action
- VII. Regulatory Analyses and Notices
 - A. Executive Order 12866 and DOT Regulatory Policies and Procedures
 - B. Regulatory Flexibility Act
 - C. Executive Order 13132 (Federalism)
 - D. Executive Order 12988 (Civil Justice Reform)
 - E. Paperwork Reduction Act
 - F. Unfunded Mandates Reform Act
 - G. National Environmental Policy Act
 - H. Executive Order 13175 (Consultation and Coordination With Indian Tribes)
 - I. Plain Language