(i) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A330–25–3213, Revision 02, dated August 12, 2014, or Airbus Service Bulletin A330–25–3534, Revision 02, dated May 18, 2015.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (l)(4) of this AD.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.


(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Required for Compliance (RC): If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.
paperwork and reporting burden currently experienced by importers and exporters. Beginning on December 31, 2016, traders will access the ITDS system via an integrated web portal hosted by CBP. Users may visit https://www.cbp.gov/trade/automated for more information on the single portal.

Through the CBP Partner Government Agency (PGA) program, DDTC promulgated a PGA Message Set that requires traders to enter data relevant to DDTC’s jurisdiction. Beginning December 31, 2016, when declaring permanent or temporary exports and/or temporary imports of defense articles controlled by the U.S. Munitions List (USML), traders will input data relevant to DDTC in CBP’s electronic system(s). CBP will transmit the relevant shipment details to DDTC via an electronic data exchange, eliminating the need for traders to notify DDTC separately.

This rule amends pertinent provisions throughout the ITAR to reflect this new submission mechanism and allow for successor systems to be put in place.

This rule will make the following changes to the ITAR (22 CFR parts 120–130):

Section 120.28—Listing of Forms Referred to in This Subchapter
Section 120.28 is revised to strike the reference to the Automated Export System and add, in its place, “U.S. Customs and Border Protection’s electronic system(s)”.

Section 120.30—The Automated Export System (AES)
Section 120.30 is removed and reserved.

Section 123.4—Temporary Import License Exemptions
Section 123.4(d)(2) is revised to strike the reference to the Automated Export System (AES) and add, in its place, instructions to electronically file information with CBP.

Section 123.5—Temporary Export Licenses
Section 123.5(b) is revised to update certain reporting procedures and to clarify that license information will be submitted to CBP electronically.

Section 123.16—Exemptions of General Applicability
Sections 123.16(b)(4) and (5) are revised to clarify that certifications will be sent to CBP electronically and not via hard copy.

Section 123.17—Exports of Firearms, Ammunition, and Personal Protective Gear
All references to AES in §123.17 are struck and, in their place, instructions to electronically file with CBP are inserted. Additionally, §123.17(g)(2) and (b) are revised to update certain documentation procedures.

Section 123.22—Filing, Retention, and Return of Export Licenses and Filing of Export Information
Section 123.22 of the ITAR is revised by making certain grammatical changes and to clarify procedures for the electronic reporting of exports and temporary imports of defense articles, services, and technical data pursuant to a license or other approval. All references to AES in §123.22 are struck and, in their place, instructions to electronically file with CBP are inserted.

Section 123.22(a) is revised to clarify electronic reporting procedures for exports. Paragraphs (a)(1) and (a)(2) are also revised for clarification of certain procedures.

Section 123.22(b)(2) is revised to clarify that emergency shipment data shall no longer be required to be sent directly to DDTC, but rather be electronically declared to CBP, which will make the data available to DDTC via an electronic data exchange.

Section 123.22(b)(3)(iii) is revised to update electronic reporting procedures for technical data and defense service exemptions.

Section 123.22(c) is revised to strike a provision relating to the return of licenses and to reorder the subparagraphs.

Section 123.24—Shipments by U.S. Postal Service
Section 123.24 is revised to strike references to AES and insert, in their place, instructions to electronically file with CBP. The underlying content of this section is not affected by this change.

Section 126.4—Shipments by or for United States Government Agencies
Section 126.4(d) is amended by revising the first sentence to account for electronic reporting, and by striking the second sentence.

Section 126.6—Foreign-Owned Military Aircraft and Naval Vessels, and the Foreign Military Sales Program
Section 126.6(c) is revised to clarify certain procedures relating to the declaration of information to CBP, and to remove references to form DSP–94. Section 126.6(c)(5)(iii) is revised to require that the exporter provide CBP with a copy of the transportation plan under the Department of Defense National Industrial Security Program Operating Manual for shipments of classified defense articles exported pursuant to a Foreign Military Sales Letter of Offer and Acceptance. Section 126.6(c)(6)(i)(i) is revised to correct a punctuation error made in a previous rulemaking.

Section 126.16—Exemption Pursuant to the Defense Trade Cooperation Treaty Between the United States and Australia
Section 126.16(l) is revised to strike references to the Automated Export System and insert, in their place, instructions to electronically file with CBP. The underlying content of this section will not be affected by this change.

Section 126.17—Exemption Pursuant to the Defense Trade Cooperation Treaty Between the United States and the United Kingdom
Section 126.17(l) is revised to strike references to the Automated Export System and insert, in their place, instructions to electronically file with CBP. The underlying content of this section will not be affected by this change.

Regulatory Analysis

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act. As this rule serves to implement the requirements of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109–347), the Department of State is publishing this final rule using the “good cause” exception to the Administrative Procedure Act, as this rule is being published to fulfill the requirements outlined in Executive Order 13659. The Department has determined that public comment on this rulemaking would be impractical, unnecessary, and contrary to the public interest.

Regulatory Flexibility Act

Because this rulemaking is exempt from Section 553 of the Administrative Procedures Act, a Regulatory Flexibility Analysis is not required and has not been prepared.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

The Department does not believe this rulemaking is a major rule within the definition of 5 U.S.C. 804.

Executive Orders 12372 and 13132

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

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has determined that the benefits of this rulemaking outweigh any cost to the public, which the Department believes will be minimal. OMB has designated this rule non-significant.

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

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

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 120

Approvals, Arms and munitions, Definitions, Forms.

22 CFR Part 123

Arms and munitions, Exemptions, Licenses, Reporting, Shipments.

22 CFR Part 126

Arms and munitions, General policies and provisions.

For the reasons set forth above, title 22, chapter I, subchapter M, parts 120, 123 and 126 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:


PART 123—LICENSES FOR THE EXPORT AND TEMPORARY IMPORT OF DEFENSE ARTICLES

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


5. Section 123.4 is amended by revising paragraph (d)(2) to read as follows:

§ 123.4 Temporary import license exemptions.

(d) (2) At the time of export, in accordance with the U.S. Customs and Border Protection (CBP) procedures, the Directorate of Defense Trade Controls (DDTC) registered and eligible exporter, or an agent acting on the filer’s behalf, must electronically file the export information with CBP, identify 22 CFR 123.4 as the authority for the export, and provide, as requested by CBP, the entry document number or a copy of the CBP document under which the article was imported.

6. Section 123.5 is amended by revising the last three sentences of paragraph (b) to read as follows:

§ 123.5 Temporary export licenses.

(b) The license for temporary export must be electronically submitted to U.S. Customs and Border Protection, unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions. In the event a physical license is required by U.S. Customs and Border Protection, the licensee is to retain the duly endorsed license for temporary export in accordance with § 123.22(b) of this subchapter. In the case of a military aircraft or vessel temporarily exported under its own power, evidence that the Department of State has duly authorized it to leave the United States must be readily available on board the aircraft or vessel.

7. Section 123.16 is amended by revising the penultimate sentence of paragraph (b)(4), and the last sentence of paragraph (b)(5), to read as follows:

§ 123.16 Exemptions of general applicability.

(b) U.S. persons who avail themselves of this exemption must electronically submit a certification to U.S. Customs and Border Protection that these conditions are met, unless directed by U.S. Customs and Border Protection to provide such a certification in another manner.

5. U.S. persons who avail themselves of this exemption must electronically submit a certification to U.S. Customs and Border Protection to provide such a certification in another manner.
§ 123.17 Exports of firearms, ammunition, and personal protective gear.

(a) * * *

(ii) The exporter makes an electronic declaration to U.S. Customs and Border Protection pursuant to § 123.22(a), and the exporter is eligible to export under this exemption pursuant to § 120.1(c) of this subchapter, unless the electronic submission of such declaration is unavailable, in which case U.S. Customs and Border Protection will issue instructions; or

(iii) The exporter makes an electronic declaration to U.S. Customs and Border Protection pursuant to § 123.22(a), and the exporter is eligible to export under this exemption pursuant to § 120.1(c) of this subchapter, unless the electronic submission of such declaration is unavailable, in which case U.S. Customs and Border Protection will issue instructions.

(c) * * *

(1) The person declares the articles to a CBP officer upon each departure from the United States, presents the Internal Transaction Number from submission of the export information through CBP’s electronic system(s) per § 123.22 (unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions), and the articles are presented to the CBP officer for inspection;

(f) * * *

(1) The person declares the articles to a CBP officer upon each departure from the United States, presents the Internal Transaction Number from submission of the export information through CBP’s electronic system(s) per § 123.22 (unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions), and the articles are presented to the CBP officer for inspection;

(g) * * *

* * * * *

(2) * * * The person shall electronically submit documentation to this effect, along with the Internal Transaction Number from U.S. Customs and Border Protection’s electronic system(s), unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions.

(h) * * * The person shall electronically submit documentation to this effect, along with the Internal Transaction Number using U.S. Customs and Border Protection’s electronic system(s), unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions. * * * * *

(1) Filing of export information with the U.S. Customs and Border Protection. Before exporting any hardware controlled by this subchapter using a license or exemption, the DDTC registered applicant/exporter, or an agent acting on the filer’s behalf, must electronically file the export information with U.S. Customs and Border Protection in accordance with the following timelines:

(ii) On a valid license, and the ultimate recipient and ultimate end-user identified on the license is a foreign government.

(3) * * *

(iii) Technical data and defense service exemptions. In any instance when technical data is exported using an exemption in this subchapter (e.g., §§ 125.4(b)(2), 125.4(b)(4), 126.5) from a U.S. port, the exporter must provide the export data electronically to DDTC. A copy of the electronic notification to DDTC must accompany the technical data shipment and be made available to
the U.S. Customs and Border Protection upon request.
 * * * * *

(c) Return of licenses. Licenses issued by the Directorate of Defense Trade Controls are subject to return requirements as follows:

(1) A license issued electronically by DDTC and decremented by U.S. Customs and Border Protection through its electronic system(s) is not required to be returned to DDTC. A copy of the license must be maintained by the applicant in accordance with § 122.5 of this subchapter.

(2) Licenses issued by DDTC but not decremented by U.S. Customs and Border Protection through its electronic system(s) (e.g., oral or visual technical data releases) must be returned by the applicant, or the government agency with which the license was filed, to DDTC upon expiration, to include when the total authorized value or quantity has been shipped. A copy of the license must be maintained by the applicant in accordance with § 122.5 of this subchapter.

(3) A license issued by DDTC but not used by the applicant does not need to be returned to DDTC, even when expired.

(4) A license revoked by DDTC is considered expired and must be handled in accordance with paragraphs (c)(1) and (c)(2) of this section.

10. Amend § 123.24 by revising paragraph (a) as follows:

§ 123.24 Shipments by U.S. Postal Service

(a) The export of any defense hardware using a license or exemption in this subchapter by the U.S. Postal Service must be filed with U.S. Customs and Border Protection using its electronic system(s) and the license must be filed with U.S. Customs and Border Protection before any hardware is actually sent abroad by mail. The exporter must certify the defense hardware being exported in accordance with this subchapter by clearly marking on the package:

“This export is subject to the controls of the ITAR, 22 CFR (identify section for an exemption) or (state license number) and the export has been electronically filed with U.S. Customs and Border Protection.”

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

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


12. Section 126.4 is amended by revising paragraph (d) as follows:

§ 126.4 Shipments by or for United States Government agencies.

* * * * *

(d) An Electronic Export Information (EEI) filing, and a statement by the exporter that these requirements have been met, must be submitted to U.S. Customs and Border Protection using its electronic system(s) at the time of export, unless electronic submission of such information is unavailable, in which case U.S. Customs and Border Protection or the Department of Defense transmittal authority will issue instructions.

13. Section 126.6 is amended by revising paragraphs (c)(5)(ii), (c)(5)(iii), and (c)(6)(iii) as follows:

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

* * * * *

(c) * * * * *

(5) * * *

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

(iii) Any classified hardware and related technical data involved in the transfer must have the requisite U.S. Government security clearance and transportation plan and be shipped in accordance with the Department of Defense National Industrial Security Program Operating Manual. The exporter shall provide an electronic copy of the transportation plan via the U.S. Customs and Border Protection’s electronic system(s), unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border Protection will issue instructions, or

(6) * * *

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

14. Section 126.16 is amended by revising paragraphs (l)(1)(xxv) and (l)(2) introductory text to read as follows:

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

* * * * *

(l) * * *

(1) * * *

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

* * * * *

15. Section 126.17 is amended by revising paragraphs (l)(1)(xxv) and (l)(2) introductory text to read as follows:

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

* * * * *

(l) * * *

(1) * * *

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

* * * * *

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

* * * * *

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Thomas Countryman,
Under Secretary (Acting), Arms Control and International Security, Department of State.

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