

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

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

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

(iii) *Retransfer and reexport* have the meaning provided in §120.19 of this subchapter.

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

(2) Persons or entities exporting or transferring defense articles or defense services are exempt from the otherwise applicable licensing requirements if such persons or entities comply with the regulations set forth in this section. Except as provided in Supplement No. 1 to part 126 of this subchapter, Port Directors of U.S. Customs and Border Protection and postmasters shall permit the permanent and temporary export without a license from members of the U.S. Community to members of the United Kingdom Community (*see* paragraph (d) of this section regarding the identification of members of the United Kingdom Community) of defense articles and defense services not listed in Supplement No. 1 to part 126, for the end-uses specifically identified pursuant to paragraphs (e) and (f) of this section. The

purpose of this section is to specify the requirements to export, transfer, reexport, retransfer, or otherwise dispose of a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom. All persons must continue to comply with statutory and regulatory requirements outside of this subchapter concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 C.F.R. Parts 447, 478, and 479, which are unaffected by the Defense Trade Cooperation Treaty between the United States and the United Kingdom and continue to apply fully to defense articles and defense services subject to either of the aforementioned treaties and the exemptions contained in § 126.17 of this subchapter.

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

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

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

(iii) Intermediate consignees involved in the export must not be ineligible,

according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to handle or receive a defense article or defense service without restriction (*see* paragraph (k) of this section for specific requirements);

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

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

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

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

(4) *Transfers*. In order for a member of the Approved Community (i.e., the U.S. Community and United Kingdom Community) to transfer a defense article or defense service under the Defense Trade Cooperation Treaty within the Approved

Community, all of the following conditions must be met:

- (i) The defense article or defense service must have been previously exported in accordance with paragraph (a)(3) of this section or transitioned from a license or other approval in accordance with paragraph (i) of this section;
- (ii) The transferor and transferee of the defense article or defense service are members of the United Kingdom Community (*see* paragraph (d) of this section regarding the identification of members of the United Kingdom Community) or the United States Community (*see* paragraph (b) of this section for information on the United States Community/approved exporters);
- (iii) The transfer is required for an end-use specified in the Defense Trade Cooperation Treaty between the United States and the United Kingdom and mutually agreed to by the United States and the Government of United Kingdom pursuant to the terms of the Defense Trade Cooperation Treaty between the United States and the United Kingdom and the United Kingdom Implementing Arrangement (*see* paragraphs (e) and (f) of this section regarding authorized end uses);
- (iv) The defense article or defense service is not identified in paragraph (g) of this section and Supplement No. 1 to part 126 of this subchapter as ineligible for export under this exemption, and is marked or otherwise identified, at a minimum, as “Restricted USML” (*see* paragraph (j) of this section for specific requirements on marking exports);
- (v) All required documentation of such transfer is maintained by the transferor and transferee and is available upon the request of the U.S. Government (*see* paragraph (l) of this section for specific requirements); and
- (vi) The Department of State has provided advance notification to the Congress in accordance with this section (*see* paragraph (o) of this section for specific requirements).

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

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

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

(2) Non-governmental U.S. persons registered with the Directorate of Defense Trade Controls and eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency of the U.S. Government without restriction, including their employees acting in their official capacity with, as appropriate, a security clearance and a need-to-know.

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

authorization to export) from any agency of the U.S. Government.

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

(1) Her Majesty's Government entities and facilities identified as members of the Approved Community through the Directorate of Defense Trade Controls website at the time of a transaction under this section; and

(2) The non-governmental United Kingdom entities and facilities identified as members of the Approved Community through the Directorate of Defense Trade Controls website at the time of a transaction under this section; non-governmental United Kingdom entities and facilities that become ineligible for such membership will be removed from the United Kingdom Community.

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

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

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

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

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

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

(1) Operations, programs, and projects that can be publicly identified will be posted on the Directorate of Defense Trade Controls website;

(2) Operations, programs, and projects that cannot be publicly identified will be confirmed in written correspondence from the Directorate of Defense Trade

Controls; or

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

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

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

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

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

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

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

(5) Defense articles excluded by paragraph (g) of this section or Supplement No. 1

to part 126 of this subchapter (e.g., USML Category XI (a)(3) electronically scanned array radar excluded by Note 2) that are embedded in a larger system that is eligible to ship under this section (e.g., a ship or aircraft) must separately comply with any restrictions placed on that embedded defense article under this subchapter. The exporter must obtain a license or other authorization from the Directorate of Defense Trade Controls for the export of such embedded defense articles (for example, USML Category XI (a)(3) electronically scanned array radar systems that are exempt from this section that are incorporated in an aircraft that is eligible to ship under this section continue to require separate authorization from the Directorate of Defense Trade Controls for their export, transfer, reexport, or retransfer).

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

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

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

(h) *Transfers, Retransfers, and Reexports.* (1) Any transfer of a defense article or

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

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

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

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

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

(6) Defense articles excluded by paragraph (g) of this section or Supplement No. 1

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

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

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

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

provisions of this section;

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

(iv) The reexport is made by a member of the United Kingdom Community to an Approved Community member (either U.S. or UK) that is operating in direct support of United Kingdom Ministry of Defence elements deployed outside the Territory of the United Kingdom engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section; or

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

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

information in writing to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.

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

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

(i) The U.S. exporter must submit a written request to the Directorate of Defense Trade Controls, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were originally exported, and the Treaty-eligible enduse

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

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

(3) If a member of the United Kingdom Community desires to transition defense articles received under an existing license or other approval to the processes

established under the Treaty, the United Kingdom Community member must submit a written request to the Directorate of Defense Trade Controls, either directly or through the original U.S. exporter, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were received, and the Treaty eligible

end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) for which the defense articles or defense services will be used. The defense article or defense service shall remain subject to the conditions and limitations of the existing license or other approval until the United Kingdom Community member has received approval from the Directorate of Defense Trade Controls to transition to this section.

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

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

(j) *Marking of Exports.* (1) All defense articles and defense services exported or transitioned pursuant to the Defense Trade Cooperation Treaty between the United

States and the United Kingdom and this section shall be marked or identified as follows:

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

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

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

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

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

(ii) Technical data (including data packages, technical papers, manuals, presentations, specifications, guides and reports), regardless of media or means of transmission (physical, oral, or electronic), shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section; or,

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

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

(5) The exporter shall incorporate the following statement as an integral part of the bill of lading and the invoice whenever defense articles are to be exported:

“These U.S. Munitions List commodities are authorized by the U.S. Government under the U.S.-UK Defense Trade Cooperation Treaty for export only to United Kingdom for use in approved projects, programs or operations by members of the United Kingdom Community. They may not be retransferred or reexported or used outside of an approved project, program, or operation, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.”

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

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

(A) Exporters registered with the Directorate of Defense Trade Controls and eligible;

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

(C) Commercial air freight and surface shipment carriers, freight forwarders, or other parties not exempt from registration under §129.3(b)(3) of this subchapter, that are identified at the time of export as being on the U.S. Department of Defense

Civil Reserve Air Fleet (CRAF) list of approved air carriers, a link to which is available on the Directorate of Defense Trade Controls website.

(ii) United Kingdom intermediate consignees who are:

(A) Members of the United Kingdom Community; or

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

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

(1) *Records.* (1) All exporters authorized pursuant to paragraph (b)(2) of this section who export pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section shall maintain detailed records of their exports, imports, and transfers made by that exporter of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section. Exporters shall also maintain detailed records of any reexports and retransfers approved or otherwise authorized by the Directorate of Defense Trade Controls of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section. These records shall be maintained for a minimum of five years from the date of export, import, transfer, reexport, or retransfer and shall be made available upon request to the Directorate of Defense Trade Controls or a person designated by the Directorate of Defense Trade Controls (e.g. the Diplomatic Security Service) or U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection. Records in an

electronic format must be maintained using a process or system capable of reproducing all records on paper. Such records when displayed on a viewer, monitor, or reproduced on paper, must exhibit a high degree of legibility and readability. (For the purpose of this section, “legible” and “legibility” mean the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. “Readable” and “readability” means the quality of a group of letters or numerals being recognized as complete words or numbers.) These records shall consist of the following:

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

of lading, packing list, delivery verification, and invoice); and
(xvii) Statement of Registration (Form DS-2032).

(2) *Filing of export information.* All exporters of defense articles under the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section must electronically file Electronic Export Information (EEI) using the Automated Export System citing one of the four below referenced codes in the appropriate field in the EEI for each shipment:

(i) For exports in support of United States and United Kingdom combined military or counter-terrorism operations identify §126.17(e)(1) (the name or an appropriate description of the operation shall be placed in the appropriate field in the EEI, as well);

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

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

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

(m) *Fees and Commissions.* All exporters authorized pursuant to paragraph (b)(2) of this section shall, with respect to each export, transfer, reexport, or retransfer,

pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section, submit a statement to the Directorate of Defense Trade Controls containing the information identified in §130.10 of this subchapter relating to fees, commissions, and political contributions on contracts or other instruments valued in an amount of \$500,000 or more.

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

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

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

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

under this section or otherwise.

(o) *Procedures for Legislative Notification.* (1) Exports pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section by any person identified in paragraph (b)(2) of this section shall not take place until 30 days after the Directorate of Defense Trade Controls has acknowledged receipt of a Form DS-4048 (entitled, “Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act”) from the exporter notifying the Department of State if the export involves one or more of the following:

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

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

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

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

(2) The Form DS-4048 required in paragraph (o)(1) of this section shall be accompanied by the following additional information:

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

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

(iii) A copy of the signed contract; and

(iv) If the notification is for paragraph (o)(1)(ii) of this section, a statement of what will happen to the weapons in their inventory (for example, whether the current

inventory will be sold, reassigned to another service branch, destroyed, etc.).

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