ITEM 16—CATEGORY II

Specially designed software, or specially designed software with related specially designed hybrid (combined analog/digital) computers, for modeling, simulation, or design integration of the systems in Item 1 and Item 2 (see §121.1, Category IV(i) and Category XI(a)(6)).

NOTE TO ITEM 16

The modelling includes in particular the aerodynamic and thermodynamic analysis of the system.

ITEM 17—CATEGORY II

Materials, devices, and specially designed software for reduced observables such as radar reflectivity, ultraviolet/infrared signatures on acoustic signatures (*i.e.*, stealth technology), for applications usable for the systems in Item 1 or Item 2 (see §121.1, Category XIII (e) and (k)), for example:

(a) Structural material and coatings specially designed for reduced radar reflectivity;

(b) Coatings, including paints, specially designed for reduced or tailored reflectivity or emissivity in the microwave, infrared or ultraviolet spectra, except when specially used for thermal control of satellites.

(c) Specially designed software or databases for analysis of signature reduction.

(d) Specially designed radar cross section measurement systems (see §121.1, Category XI(a)(3)).

ITEM 18—CATEGORY II

Devices for use in protecting rocket systems and unmanned air vehicles against nuclear effects (e.g. Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for the systems in Item 1, as follows (see §121.1, Category IV (c) and (h)):

(a) "Radiation Hardened" "microcircuits" and detectors (see §121.1, Category XI(c)(3) Note: This commodity has been formally proposed for movement to category XV(e)(2) in the near future).

(b) Radomes designed to withstand a combined thermal shock greater than 1000 cal/sq cm accompanied by a peak over pressure of greater than 50 kPa (7 pounds per square inch) (see §121.1, Category IV(h)).

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.

[58 FR 39287, July 22, 1993, as amended at 71 FR 20539, Apr. 21, 2006]

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

Sec.
122.1 Registration requirements.
122.2 Submission of registration statement.
122.3 Registration fees.
122.4 Notification of changes in information furnished by registrants.
122.5 Maintenance of records by registrants.

AUTHORITY: Secs. 2 and 38, Public Law 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.

SOURCE: 58 FR 39298, July 22, 1993, unless otherwise noted.

§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.

(b) *Exemptions.* Registration is not required for:

(1) Officers and employees of the United States Government acting in an official capacity.

(2) Persons whose pertinent business activity is confined to the production of unclassified technical data only.

(3) Persons all of whose manufacturing and export activities are licensed under the Atomic Energy Act of 1954, as amended.

(4) Persons who engage only in the fabrication of articles for experimental or scientific purpose, including research and development.

(c) *Purpose.* Registration is primarily a means to provide the U.S. Government with necessary information on

who is involved in certain manufacturing and exporting activities. Registration does not confer any export rights or privileges. It is generally a precondition to the issuance of any license or other approval under this subchapter.

[58 FR 39298, July 22, 1993, as amended at 71 FR 20540, Apr. 21, 2006]

§ 122.2 Submission of registration statement.

(a) *General.* The Department of State Form DS-2032 (Statement of Registration) and the transmittal letter required by paragraph (b) of this section must be submitted by an intended registrant with a payment by check drawn against the registrant's account, payable to the Department of State of the fee prescribed in § 122.3(a) of this subchapter. Checks must be in U.S. currency, and must be payable through a U.S. financial institution. In addition, the Statement of Registration and transmittal letter must be signed by a senior officer (e.g., Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant also shall submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

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

(1) The letter shall state whether the intended registrant, chief executive officer, president, vice-presidents, other senior officers or officials (e.g. comptroller, treasurer, general counsel) or any member of the board of directors:

(i) Has ever been indicted for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(ii) Is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government.

(2) The letter shall also declare whether the intended registrant is owned or controlled by foreign persons (as defined in § 120.16 of this subchapter). If the intended registrant is owned or controlled by foreign persons, the letter shall also state whether the intended registrant is incorporated or otherwise authorized to engage in business in the United States.

(c) *Definition.* For purpose of this section, *ownership* means that more than 50 percent of the outstanding voting securities of the firm are owned by one or more foreign persons. *Control* means that one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Control is presumed to exist where foreign persons own 25 percent or more of the outstanding voting securities if no U.S. persons control an equal or larger percentage.

[58 FR 39298, July 22, 1993, as amended at 69 FR 70889, Dec. 8, 2004; 71 FR 20540, Apr. 21, 2006; 73 FR 55440, Sept. 25, 2008]

§ 122.3 Registration fees.

(a) A person who is required to register must do so on an annual basis upon submission of a completed Form DS-2032, transmittal letter, and payment of a fee as follows:

(1) *Tier 1*: A set fee of $2,250 per year is required for new registrants or registrants for whom the Directorate of Defense Trade Controls has not reviewed, adjudicated or issued a response to any applications during a 12-month period ending 90 days prior to expiration of the current registration.

(2) *Tier 2*: A set fee of $2,750 per year is required for registrants for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response to between one and ten applications during a 12-month period ending 90 days prior to expiration of the current registration.

(3) *Tier 3*: The third tier is for registrants for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response to more than ten applications during a 12-month period ending 90 days prior to expiration of the current registration. For this tier, registrants will pay a fee of $2,750 plus an additional fee based on the number of applications for which the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response. The additional fee will be determined by multiplying $250 times the number of applications over ten for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response during a 12-month period ending 90 days prior to expiration of the current registration.

(4) For registrants, including universities, exempt from income taxation pursuant to 26 U.S.C. 501(c)(3), their fee may be reduced to the Tier 1 registration fee provided a copy of their certification letter from the Internal Revenue Service is submitted with their registration package. To be eligible, the registrant and all of its subsidiaries/affiliates must be exempt from income taxation pursuant to 26 U.S.C. 501(c)(3).

(5) The fee for registrants whose total registration fee is greater than 3% of the total value of applications for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response during the 12-month period ending 90 days prior to expiration of the current registration will be reduced to 3% of such total application value or $2,750, which ever is greater.

(6) For those renewing a registration, notice of the fee due for the next year's registration will be sent to the registrant of record at least 60 days prior to its expiration date.

(7) For purposes of this subsection, *"applications"* refers to the actions enumerated within parts 123 through 126 of this subchapter that require the Directorate of Defense Trade Controls to review, adjudicate and issue responses. Only those applications that the Department has taken final action on and provided response to will be counted in determining the annual registration fee. Those applications that are "returned without action" or "denied" will not be counted.

(b) *Expiration of registration.* A registrant must submit its request for registration renewal at least 30 days but no earlier than 60 days prior to the expiration date.

(c) *Lapse in registration.* A registrant who fails to renew a registration and, after an intervening period, seeks to register again must pay registration fees for any part of such intervening period during which the registrant engaged in the business of manufacturing or exporting defense articles or defense services.

[58 FR 39298, July 22, 1993, as amended at 62 FR 27497, May 20, 1997; 69 FR 70889, Dec. 8, 2004; 70 FR 50959, Aug. 29, 2005; 73 FR 41259, July 18, 2008; 73 FR 55440, Sept. 25, 2008]

§ 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:

(1) Any of the persons referred to in § 122.2(b) are indicted for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter, or become ineligible to contract with, or to receive a license or other approval to export or temporarily import defense articles or defense services from any agency of the U.S. government; or

(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:

(1) The new firm name and all previous firm names being disclosed;

(2) The registration number that will survive and those that are to be discontinued (if any);

(3) The license numbers of all approvals on which unshipped balances will be shipped under the surviving registration number, since any license not the subject of notification will be considered invalid; and

(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.

[58 FR 39298, July 22, 1993, as amended at 71 FR 20540, Apr. 21, 2006]

§ 122.5 Maintenance of records by registrants.

(a) A person who is required to register must maintain records concerning the manufacture, acquisition and disposition (to include copies of all documentation on exports using exemptions and applications and licenses and their related documentation), of defense articles; of technical data; the provision of defense services; brokering activities; and information on political contributions, fees, or commissions furnished or obtained, as required by part 130 of this subchapter. 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.) This information must be stored in such a manner that none of it may be altered once it is initially recorded without recording all changes, who made them, and when they were made. For processes or systems based on the storage of digital images, the process or system must afford accessibility to all digital images in the records being maintained. All records subject to this section must be maintained for a period of five years from the expiration of the license or other approval, to include exports using an exemption (See § 123.26 of this subchapter); or, from the date of the transaction (e.g., expired licenses or other approvals relevant to the export transaction using an exemption). The Managing Director, Directorate of Defense Trade Controls, and the Director of the Office of Defense Trade Controls Licensing, may prescribe a longer or shorter period in individual cases.

(b) Records maintained under this section shall be available at all times for inspection and copying by 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. Upon such request, the person maintaining the records must furnish the records, the equipment, and if necessary, knowledgeable personnel for locating, reading, and reproducing any record that is required to be maintained in accordance with this section.

[70 FR 50959, Aug. 29, 2005]