

DDTC SOP - IT RELATED
RESOURCE REQUESTS

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Date Requested: 5/29/09
Date Required: 6/2/09

Details:

Please scan attached document and email to Allie Frantz. Document should be in a format that can easily be posted to the website. - *open-net*.

/s/ Patricia Slygh

5/29/09

Office Director's Signature

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Defense Trade Advisory Group Plenary Minutes
Tuesday, April 7, 2009
Loy Henderson Auditorium

DTAG Chair William Schneider began the meeting at 9:30. He welcomed everyone to the meeting and announced that Acting Assistant Secretary Frank Ruggiero will address the morning session. Mr. Schneider noted that at the time of the meeting there were not many officials from the new Administration in the arms transfer process and that it was good to hear Mr. Ruggiero's perspectives on where the Obama Administration could be showing interest. Mr. Schneider also noted that later in the day's Plenary discussions the DTAG membership would discuss priorities the DTAG would offer as suggestions to the new Administration team. He noted that while the DTAG, under tasking from the Bush Administration and in concert with DDTC had already looked at details on improving the process such as the ITAR definition changes that would be discussed during the Plenary, that the DTAG now could be looking at major changes that believes will make a positive difference for US industry and US allies and customer's abroad. Mr. Schneider then introduced Acting Assistant Secretary Frank Ruggiero.

Mr. Ruggiero thanked the DTAG Chair for an introduction and stated that he would provide updates on personnel in the new administration, policies that he had seen them interested in, and then open the discussion for questions. He said that Deputy Secretary James Steinberg is in place, that the nominee for Under Secretary for Arms Control and Nonproliferation would be Representative Ellen Tauscher (D-CA), but that there had been no one nominated for Assistant Secretary for the Bureau of Political Military Affairs at that time.

Mr. Ruggiero said understood that the Obama Administration was committed to ratifying the Defense Trade Treaties with the United Kingdom and Australia. He said the Department was currently working with the Senate to resolve enforcement aspects of the Treaty, which appeared to be their principal concern. Despite that concern, the Department will try to get early ratification.

On another issue Mr. Ruggiero said the Department had put forward to the National Security Council (NSC) early in the Administration the issue of dual nationals to resolve the varying policies on how to treat them. He noted that the Commerce Department treats them one way, DDTC in a different way and the Foreign Military Sales process in a completely different way. Mr. Ruggiero said State has sent a discussion paper to the NSC begin the process for policy review on the issue. He said the matter is a problem of great concern for our allies; that many governments had advised the Department that under their countries' civil rights laws it is illegal to treat dual nationals as the US does. He said that the Government is trying to get out of the present ad hoc approach by beginning an interagency discussion of the matter.

Mr. Ruggiero commented that on the matter of jurisdiction over commercial satellites, the State Department is monitoring the current Congressional discussion, but the Administration has taken no position on the subject. The Administration will follow any legislation that is proposed regarding commercial satellite issues.

On the topic of night vision he said the Department wants to have a more wholesome policy. He said the Government did not get to the point it wanted to in last year's review and would continue to work on the topic this year. He said the interagency is trying to develop jurisdictional lines between agencies. He said the problem is determining the Government really cares about given the different perspectives of the agencies, particularly those of State and Defense.

With respect to NSPD-56, he said the Department had seen significant progress over the last year and a half. The average turn around time for licenses is 14-15 days and a workload of 3500-3800 license actions in the queue at any time was holding steady. Mr. Ruggiero said he was very proud of the achievements that the Directorate had made. He noted that the Commodity Jurisdiction process is still missing pieces, but that was also being worked. He said that PM was still working with the NSC to come up with new interagency guidelines to manage the function, noting this action was a carry over problem from the previous Administration. He said there is an early effort now to come up with new guidelines and that State's own times have improved somewhat over the last year as they continue to focus attention on it, but that they have not made as much progress as they had on the licensing front.

Acting Assistant Secretary Ruggiero then took questions from the DTAG Membership:

There was a question about with recent activity on the Hill on removing commercial satellites from the USML; does that include research satellites as well?

Mr. Ruggiero stated that it was just commercial satellites. He said Congress is looking at this, but the Department is not and thus has not taken a position; however, State is monitoring congressional activity. He said State would prefer a policy that is applicable across the agencies.

There was a question on whether the cooperation on the Treaties had changed with the new Administration and new leadership.

Mr. Ruggiero stated that there was the same level of cooperation with the new team.

The DTAG Chair William Schneider asked whether State could detect any aspirations for reform of the management of the ITAR in the new Administration. Any aspirations to review the ITAR's procedures or make changes. Basically, an idea of the new Administration's aspirations for changes in this area.

Mr. Ruggiero stated that we do not have a sense for that right now because we don't have the key people in place; that may come with the new people. In the coming months he will have a sense.

There was a question about what the difficulties to get guidelines for the CJ process from last Administration.

Mr. Ruggiero stated that it was not wholly on the NSC, the interagency process just ran out of time, but this is an issue that is expected to be taken up early by the new Administration.

DTAG Chair William Schneider raised the issue of the commingling of ITAR and Defense Security Service (DSS) responsibilities, whereby DSS is enhancing its review of cleared companies by including ITAR compliance requirements. DSS is intensifying its responsibility to monitor compliance among cleared companies and facilities. Role of ITAR compliance is becoming a significant issue in the way the DSS manages its functions. This is an unusual evolution, in that ITAR compliance is a DoS responsibility. Many cleared firms are part of cleared facilities process. The question is how can State bring its expertise to this process. DSS has not had this as part of their duties previously.

DFO Robert S. Kovac stated that the work DSS is doing is an offshoot of the regulations published before the end of the last Administration on controlled unclassified information, which is not exclusively under USML control. DoD became more motivated to control flow and security of information after various attempts by foreign entities to obtain unclassified but controlled information. DSS is not doing State's role, they are enforcing their own rules on information that happened to be controlled by our law. DDTC has had discussions with DSS and provided some tips, but this is an internal DoD issue.

DTAG Chair William Schneider advised that the people doing inspections are calling attention to ITAR compliance. He noted that a significant amount of unclassified but controlled information happens to be ITAR controlled, and observed that the total shape of this potential problem hadn't developed yet, but may cause an industry issues over time.

Chairman Schneider moved the program to the Definitions Working Group's presentations, but took note of the death of DTAG member Mr. Joe Mariani on the Sunday before the Plenary and asked DTAG Recorder Terry Otis to provide comments.

Mr. Otis announced the sad passing of DTAG member Mr. Joe Mariani from cancer on April 5th. Mr. Mariani had been a long-time member of the DTAG and represented Rockwell Collins at industry associations including ALESA, NDIA and AIA. Mr. Mariani would be very much missed by his colleagues and friends.

Ms. Joyce Remington (Working Group Chair) stated that she had the opportunity to chair the ITAR Definitions Working Group. The review process had followed the

methodology proposed at the October 21, 2008 DTAG Plenary to improve the definitions used in the ITAR and to seek better clarity regarding certain terms. Terms reviewed and revised included some existing Part 120 definitions; terms referenced elsewhere in the ITAR; as well as terms used in proviso and limitation language which are not currently defined in Part 120.

Ms. Remington provided a short summary of what how the presentations were going to be made to the DTAG Membership and then began the walk through the proposed terminology changes. She noted that the DTAG members had been provided the Working Group's draft recommendations for review and comment. She said that countless hours have been spent on definitions. She said she believed that this effort would lead to the DTAG's next tasking which would be to tackle U.S. Munitions List (USML) items. The definitions work would be the groundwork for a clear understanding of many of the terms which were under discussion for review/revision within Part 120 (which contains the ITAR definitions).

See attached presentation for introduction slides.

Acting Assistant Secretary Ruggiero thanked the group for their efforts to review and excused himself from the meeting to attend other duties.

Ms. Remington introduced the four DTAG Working Group Subcommittee Chairs Messrs. Tom White, Dennis Burnett, Dale Rill and Ms. Christine McGinn, plus DTAG Vice Chair Sam Sevier, who worked closely with the Subcommittees during the effort.

Military Purpose

Mr. Dennis Burnett led the discussion with the definition of military purpose. He explained that his team looked at USML use of military application versus military purpose. He noted that the terms are used interchangeably, in multiple areas and without being defined. The teams proposed to consolidate those two terms and define the resultant term as military purpose. He said their effort was a bit of a philosophical journey which caused them to look at legislative history and considered what is an implement of war, what is war, how do disciplines like intelligence gathering, etc, fit into the definition.

Chairman Schneider asked how that engages the language found in parts of the ITAR in trying to distinguish between an ITAR and Non-ITAR item. He said regular application of purpose suggests that an article is not an ITAR item.

Mr. Burnett said the examples illustrate what we're after. He used the famous AIA fuel line example, asserting that it would be considered a commercial item modified for a military use, because the modification did not change fundamental nature it. It doesn't have a uniquely military function because the modification doesn't amend the nature of the article to allow it to have use of force.

Chairman Schneider said COTS items are along the same line. COTS equipment is ruggedized mechanically. He noted that the modifications, if parallel to some military specification, that would be sufficient to capture it under ITAR. He said the underlying function would not be captured by this new definition.

Mr. Burnett stated that was correct. Significant modifications that would change the nature of the item would be put under ITAR control.

DDTC Director of Policy Charles Shotwell asked why intelligence directly linked to applying military force, is that so narrowly defined. What is the purpose of that?

Mr. Burnett said this point could perhaps be thought through better. He said they may not have thought through all the ramifications. The case of military intelligence could be reviewed.

Ms. Remington stated that any comment that should be considered later would be put in the notes column by recorder Victoria Harrington.

There was a comment on when you read the start of the definition – “defending against military force”; how does that not capture the concrete barriers to provide security for buildings. Which are military grade and are used for military force? How does this definition not capture those barriers when they are placed in that configuration?

Mr. Burnett stated that it is the essence of what is military and what is not military.

DFO Kovac pointed out that this ITAR definition is used in conjunction with other factors, such as an item that is specifically enumerated in an ITAR category, adding that some items that are specifically designed for military use are not captured under ITAR categories. He said reviewing ITAR definitions was a precondition for reviewing the United States Munitions List (USML).

Ms. Remington suggested in the interest of time to move on to the next definition. Any additional comments after your reading can be made while in the process of finalizing.

Normal Commercial Use

Mr. Burnett transitioned to “normal commercial use” you can see in the definition it is straight forward.

Ms. Remington mentioned that normal commercial use has been moved up on powerpoint, it is buried in the back of the paper package.

Policy on Designating Defense Articles

Ms. Christine McGinn began the discussion on Section 120.3, policy on designating articles. She noted that her subcommittee came up with two proposed definitions which

took into consideration the definition of military purpose. They also looked at the uses of the undefined terms “specifically” and “specially” and that despite they were used interchangeably in the ITARE, the subcommittee decided to use “specially” in Section 120. The subcommittee also suggested a new paragraph on standard parts and components which are not presently covered in the ITAR.

Ms. Remington clarified the two proposed definitions. One is for if the “military purpose” definition is adopted and the other if it is not.

DFO Robert S. Kovac made the comment that this goes beyond definition, this is policy. That probably would be the way it would be treated.

Vice-Chair Sevier stated that was part of the guidance we put out on the tasks. He noted that the DTAG is not in the policy business, that the DTAG’s tasking was to provide definitions from a perspective of how industry used the various terms.

Joyce Remington said this was a precondition to tackling USML Review

Commodity Jurisdictions

Ms. McGinn discussed section 120.4 on commodity jurisdictions and said there were only slight modifications. Her subcommittee suggested clarifications to some of the language in the section. They also suggested an exception be added for Category XV.

There was a question on whether CJ determinations would be made public?

Ms. Remington said that Mr. Kovac and Mr. Ruggiero have spoken on this issue and I will let Mr. Kovac comment.

DFO Kovac said this was being discussed in conjunction with guidelines. He asked Ms. McGinn to please explain exemption for Category XV. What does that mean? Why is it specifically called out?

Mr. Tom White stated that was because of the Wassenaar List controls say that they are dual-use. They are not in Wassenaar military list.

Chairman Schneider commented that one of the trends that is very active in the DoD is exploitation of COTS technology for military applications. There is an increasing the fraction of articles used by DoD in performance of mission which are acquiring their underlying capability from COTS technology. The use of COTS items allows for more advanced capability during rapid development cycles. How might this trend interact with the commodity jurisdiction process when you are getting defense related subsystems almost entirely made up of commercial content?

Mr. Burnett said it works pretty well. One of the purposes of the proposed language was to allow that happen. Industry has great trouble trying to determine when they are ITAR

and not ITAR. We believe the proposed language helps industry makes those decisions better and clearer on their own.

Chairman Schneider stated that in DoD research there is a decisive issue about whether these COTS technologies are creating a military capability which is defined by how they are interfaced. It is the interfaces that determine its military characteristics rather than underlying hardware itself. Interfaces such as those used in the Future Combat System program which is a system of systems design. The direction this is headed in is very constructive, that will help manage a trend that will be moving faster.

Vice-Chair Sevier explained that in putting this together we had a lot of different people working this. On the software we will deal with the word COTS, because a lot of software deals with COTS. However, that does not say whether all COTS items are or are not controlled under the ITAR. We are trying to get an understanding of what the people on program/production side think when they see those words. The real issue is just because it's COTS doesn't put it in one category or the other.

There was a comment to follow up on COTS: Nowhere in ITAR is COTS used, if we keep COTS out of ITAR we will be much better off. Second Comment: As Chairman Schneider indicated COTS items are increasingly used in military equipment, keeping an understanding of COTS content in military products out of the ITAR is not wise in today's industrial world.

Defense Article

Ms. McGinn began discussion on the next definition, defense article. She stated that it includes any item and technical data for items on USML.

There was a question on whether there was an implication that if it's fabricated solely for research and information not published, that it would be controlled under the ITAR.

Ms. McGinn said that this would not necessarily be the case. If something is fabricated solely for research purpose that will be published, it would not be controlled under the ITAR.

There was a comment presented from a University that might want to change definition to say that "might ordinarily be published."

There was a question on whether fundamental research is out of the ITAR.

There was an answer provided that used a spacecraft instrument as an example. If a spacecraft instrument design for general research and the design is published, the item is considered to be used for fundamental research. If information held back, but it is still considered to be for research it is still controlled under the ITAR. Consider the 125.4(b)(1) exemption.

There was a question on what the definition of "published" is? Available to everyone on the internet and library, or through a publication to which someone must subscribe and pay a fee? Is there a modified version of "public domain"?

Defense Service

Ms. McGinn stated that modified public domain definition will be addressed later. The discussion on defense service began.

Chairman Schneider asked if this was parallel to the way in which the DoD uses defense service in FMS cases?

Ms. Remington stated that the Working Group did not do a side by side comparison.

Technical Data

Mr. Tom White began the discussion on technical data. Industry has had trouble with this term, attempts to rewrite have led to some interesting discussions. First attempt was to get rid of the word "required" with respect to the use of technical data. That ended in failure. Second attempt was to define it that failed as well. Basically, the subcommittee came back to nearly the same definition linked to defense article like current definition. Other key factors, we felt that it helps to say what it is not included to help to define something. Under what does constitute technical data made a clarification on software. Added a term – "operational systems measurement". Following the philosophy of 17c info in public domain should not be controlled.

Vice-Chair Sevier said one of things the Working Group used as a guiding principle was, what is controlled under the AECA, it's the products that come off the production line, plus the information used design, maintain, operate, employ or modify those products. Technical data has to be able to do one or more of those functions to be of relevant under the ITAR. Has to be useful to make a product, operate, modify, etc., military products to have that relevance. Block diagrams are not important to building and producing items, they are illustrative marketing information.

Mr. White provided another example. When companies develop databases to design things, they will do a lot of testing which costs money, they protect that investment as proprietary. The information is not ITAR controlled, but is what is called design reliable, which they don't want published, when you've spent a lot of money doing the testing. Want to limit who you share it with.

Vice-Chair Sevier added such data may become a competitive advantage during the bid and proposal phase of a competition, but unless it is used in the actual design or production of a product it isn't "technical data" under the ITAR.

A DTAG member mentioned a comment that had been provided to her. It would be helpful to exclude standard data interface.

Mr. White acknowledged the comment as an interesting point, but stated the interface between items can be extremely critical.

There was a question about whether "operationally" was meant to include calibration or telemetry data.

Messrs. Burnett and White explained that it would depend on circumstances and the function of the system.

Ms. Remington clarified that operational data is currently included in technical data definition.

Mr. White provided an example of a company that wants to buy something generally knows what it wants it to do and what are its requirements. That is not directly related to final design. Hopefully it will be designed better than your basic requirements. Generally, consider it the wish list when you want to go buy standard parts and components.

Vice-Chair Sevier added an example using an aircraft program. There is always a tradeoff when looking at requirements. Basic requirements don't really affect the final technical specs because you are looking for suppliers that meet a general range of requirements. The company's Subcontracts section will have procure parts and components to meet the design parts and materials lists generated by the engineering section. Subcontracts will then go to a number of vendors with their requirements lists to fill the materials requirements for the manufacturing section's work. There will be many standard items and raw material ordered to fill this requirement, the design and production engineering (technical data) will then be used to build the product.

There was a question on whether any thought had been put into the adding the term destruction.

Mr. White said it had not been considered. Destruction is pretty straight forward with exception of Category XIV.

Public Domain

Ms. McGinn began the discussion on public domain. She said their recommendation was to add a separate category for fundamental research citing that all types of lawfully published information falls into the category. She said the proposed change would insure that proprietary information does not qualify as fundamental research. The subcommittee's intent was to clarify the difference between basic and fundamental research.

There was a question about if the information is published illegally, what is the liability and on whom?

Ms. McGinn said the group had debated where the burden of proof lies. The subcommittee came to the conclusion that the burden of proof would be on the person who placed it there, but the real answer would probably be determined in court. A DTAG member added that this definition allows DDTC to penalize people who put information out there unlawfully. If you are relying on something that is out there and published, you would not be punished unless you knew about the unlawful publication.

There was a comment from a member of the public that it appears that technical data is being held to the same standard as classified data. Not sure you want to keep technical data classified in effect, it is all over the media, it is being published, but we don't know how it was originally introduced. Classified data remains classified if published and it is unlawful (official position is neither confirm nor deny).

There was a comment by a DTAG member, that there could be something in the public domain because of copyright domain, not sure that lawful adds anything to this definition. In terms generally accessible to public, does that include something which you have to pay a fee for a publication?

Ms. McGinn said yes and the next addition is fundamental research.

Fundamental Research

The discussion of the proposed included a view that one way to consider the definitions for basic and applied research was by looking at the definitions used by DoD and NRC. A second comment suggested that paragraph B might be too restrictive and asked that the group consider removing *security* right before *review procedures*.

US Person

Ms. McGinn presented the suggested change to 120.15 U.S. person definition which was adding U.S. citizen.

Manufacturing License Agreement

Mr. Dale Rill explained the proposed manufacturing license agreement definition. It includes any related manufacturing know-how with some level of technical assistance being provided. The lack of a definition for *manufacturing know-how* was noted and Mr. Rill said that they would have to propose a definition for it. He also said they recommend removing the word *contemplates* from the present ITAR language for the sake of clarification. Additionally, he stated that the proposed language would allow the ability to obtain a TAA that permits the assembly of an item, without the transfer of manufacturing know-how.

Vice-Chair Sevier, using the term *engineering liaison*, said it is the same thing that a company does between engineering/design and production or modification in the aircraft

business. Very few companies have engineering packages that go directly out to the production floor or modification hanger where there is no assistance in interpreting the drawings. All have engineering liaison for the actual work on their production and modification lines. This is a standard business practice.

Build-to-Print

Mr. White began the discussion on Build-to-Print, there are currently three different definitions in the present ITAR. They are basically tailored to exemption they are in: the Canadian exemption, Offshore Procurement and general exemptions/definition in 125.4. The subcommittee's recommendation is to move one definition up to Section 120.xx and reference in the other sections. He noted that the recommended build-to-print definition would be applicable to all categories and not just applicable to exemptions. He said the problem with current definitions is that they use terminology such as "a hands off approach" and "must have instead of nice to have" which are nearly meaningless. The basic assumption with build-to-print is that the foreign entity knows how to build the item and doesn't need a defense service from the US prime to build it. Mr. White added the qualification that clarifications of requirements (to include "engineering liaison" functions) to the foreign entity are not a defense service.

Design Methodology

Mr. White started discussion on design methodology noting that the term is in the NATO and Canadian exemptions and that the subcommittee is suggesting moving it forward in the ITAR to Section 120.xx, with slight rewording which helps clearly relate it to the concept of a defense article.

There was a question about how important it is to emphasize a comprehensive set. There are engineering rules that are not a comprehensive set. Apply Shrunk & White's rule 13, might pare that down with the same meaning.

Mr. White said engineering analysis has a similar problem which needs to be solved by taking the term from the exemption and moving forward to Section 129.xx. He provided the clarification is that engineering analysis is more a service, doing something, analyzing something. It is ok to analyze something that you can provide the results of that in accordance with the ITAR. However, when there are provisos are attached saying "no engineering analysis" it means the exporting contractor can not provide the analysis itself, regardless if it benefits its final product.

DFO Kovac questioned how Mr. White's final sentence related to the proposed definition of engineering analysis, since the engineering analysis itself can be exported in accordance with the ITAR. He stated that he was not sure this is in right place or the right phrasing to be particularly useful in the long run.

Mr. White said the subcommittee would take another look at it.

Vice-Chair Sevier stated that one of the problems industry faces in dealing with many provisos is that they will seem to negate standard business/industry practices. A better understanding of normal business practices such as the process of "final test and acceptance" for vendor subsystems, "engineering analysis" of component and material failure rates, etc., by the individuals involved in the release review process may be a better way to address the problem. Standard business/industry practices should not be a proviso item.

DFO Robert S. Kovac suggested adding that this does not preclude the release of analysis. A better phrasing may be that the results of engineering analysis are not in and of themselves engineering analysis. Providing a report of their analysis is not the same as doing a report at the foreign entities request (a defense service).

Mr. White said this definition is a little awkward because of the way it is written in the Canadian exemption.

Maintenance

Mr. Rill moved on to the definition of maintenance. He said that based on feedback his subcommittee had received there were definitely questions on the various terms used to describe it in the ITAR and being used in license provisos. The subcommittee looked at various DoD and the Services used and selectively developed the proposed language for the ITAR in this report. As with other definitions, the purpose was to establish a definition for ITAR use in Section 120.xx and then reference it in the other sections of the Regulation.

Manufacturing know-how

Mr. Rill said that in this case the subcommittee was giving a proposed definition for a term that was used several times in the ITAR, but had no present definition. They did this by pull together how the term was used in the various parts of the Regulation.

Nationality, third country national, and dual national

Mr. Burnett raised the definitions of nationality, third country national, and dual national. He stated that most countries do not distinguish between nationality and citizenship, they treat them as synonymous. He said the given Acting Assistant Secretary Ruggiero's earlier comments on the subject that State has raised the issue with the NSC.

DFO Kovac explained that what was provided to the NSC was not a recommendation, it was a report. He said that the issue is covered by two statutes and that three Departments that handle exports under those two statutes differently. There may be good reasons for one department to look at this differently. The end result may be to certify three different systems, it may be only one system or two systems. What State provided the NSC was not a decision paper, it was a background paper that explains the law and the problems that industry incurs. To look at what is out there and the impact, do we need to relook at

this. It is going to have a bearing once that decision has been made, if they decide that we are going to revert to one definition, then not applicable. He suggested that DTAG not spend a great deal of time on it, the other process will address it. He observed that it may be helpful if different definitions are allowed.

Software

Vice-Chair Sevier began the discussion on the definition of software. Industry's process of developing software has changed significantly, but the bureaucratic understanding of industry's development methods and thus the "release" process has not. He used an example of partner software participation problems on the Joint Strike Fighter program as an example of the impact of the lack of understanding of the changes since of the late 1980s and early 1990s (the origin of the present language in the ITAR). He said that the basic for approach for modern large scale software development programs such as those used in the JSF, the Boeing P-8 (replacement aircraft for the US Navy of their aging Lockheed P-3 fleet) and commercial AEW programs (Wedgetail) developed for three of our allies are nearly the same now. They all use a significant amount of COTS software because of the increase in processing capability and cost. COTS software provides significant amount of capability, readily available via the internet, that is able to be put directly into a system's object code that covers many of the operating system instruction sets and other functional data.

There was a comment that then the only thing that falls under for ITAR, is paragraph b.

Vice-Chair Sevier explained that his concern about the subcommittee's recommendation is that it doesn't give any understanding about the present software processes used by industry. It falls back on the same use of terms that applied in the 1980s and 1990s and will be of no value in adjudicating software documentation release requests.

There was a response that if it isn't there that paragraphs a-h are for purposes of the ITAR. Commercial COTS compiler would be covered under the ITAR.

Vice-Chair Sevier stated that those items are involved in the process, but don't have to controlled as they are standard, open literature industrial "tools" that are used in different functions of developing the product. The COTS items don't need to be controlled, but as Chairman Schneider explained earlier, they are part of the process. We want the people that are doing the reviews to understand how this is being done and then determine what needs to be controlled.

There was a comment that this was trying to combine a definition and jurisdiction into one.

Vice-Chair Sevier said that he didn't not believe that it was a jurisdiction definition.

Items Not Related To The Subcommittee ITAR Definitions Tasking

Mr. Burnett began the discussion on foreign defense article or service, term moved from brokering to definitions.

DFO Kovac said a foreign defense article is any non-U.S. origin article or service that may become a component/subassembly of a US product and its technical data. He said he couldn't understand how that affects brokering.

Mr. Burnett replied that it doesn't affect brokering at all.

DFO Kovac questioned why it is necessary to differentiate between foreign defense articles and US defense articles.

Mr. Burnett said that the industry encounters this issue all the time. He asserted that companies make components, subassemblies and subsystems in Europe that are not subject to ITAR controls and that it would be useful to distinguish between the articles that are subject to ITAR and those that are not.

A DTAG member commented that articles are controlled as they have been.

Mr. Burnett said that it helps clarify the brokering.

A member of the public disagreed and said this definition increased the likelihood of confusion that previously did not exist. An article does not have to be made in the U.S. to be a military weapon or part of a weapon system. Whole issue is over jurisdiction. It currently is clear that a military weapon is covered by ITAR no matter where it is produced. It is only the jurisdictional aspect that is the confusing part.

DTAG members commented that the new definition gathered all of that application and usage in a single spot and that the term is also used in the AECA.

DFO Kovac commented that it may be introducing confusion into the process. What about defense service problem, no question that under U.S. law that a satellite is a defense article, is a Thales satellite that is advertised as ITAR-free, still an ITAR item?

Mr. Burnett explained that under the DTAG's proposed definition it would be considered a defense article.

Ms. Remington stated that the definition of defense service currently includes service on foreign articles, too.

Mr. Burnett stated that there was no intent to change the definition of what is a defense article the attempt was to try to define what a foreign defense article is.

Chairman Schneider called for a ten minute break and expressed appreciation for all of the DTAG's work.

The meeting reconvened at 12:10.

Chairman Schneider praised the work the group has done and noted that it shows the rich vein of work that remains to be done. He said the Department's improvements in the processing of licenses has attracted almost universal approval and polishing definitions will contribute to more effective compliance on the part of licensees and overall improvement of the regulatory process. He also observed that it may be the case that when the new Administration begins to focus on policy changes there may be more opportunities, but this is a valuable piece of work.

Ms. Remington explained that Mr. Kovac has suggested the DTAG discuss issues of priority to the industry. See attachments for charts on Future DTAG Actions.

The final piece of business, which was started to at the request of DFO Kovac, is a discussion on how the DTAG could define defense industry priorities, which were two parts of a single effort: 1) things that were useful changes to processes and 2) things that were game changers. The DTAG needed to identify some "game changers" like those that had occurred in the past with the Conventional Arms Transfer Policy and NSPD-19, for example. The DTAG should identify defense industry priorities on both detailed process changes and new Administration priority preferences. Environment in which arms transfer are being made are forcing some important changes which may need to be captured in how the industry is regulated. For now it may be useful for some of those who have offered ideas for new priorities to provide a brief description.

Ms. Remington requested DTAG members to provide explanations for their recommended priorities. See attachments for the presentation slides. Return of foreign parts exemptions. Personal protective gear that we understand is being considered by the USG.

DFO Kovac said the issue of personal protective equipment should have been resolved by an exemption State proposed but is held up, along with other ITAR changes, until the new team comes into State.

A DTAG member commented that Commerce has more or less resolved that problem.

Ms. Remington mentioned another topic regarding the escalation of costs of materials and components. She suggested that DDTC consider increasing the exemption for spare parts and components from \$500.00 to something more realistic.

Chair Schneider said that one of the problems the Department has had is that these figures have been put into law and they may not evolve with what is happening on the ground. He said that a more orderly process for revisiting these thresholds is needed. There may be other arbitrary levels that were imposed at the time when a figure was

reasonable but no longer reflect current practices. Other government agencies have standard economic adjustments. Perhaps there are some other analogs that could facilitate the management of these things.

Ms. Remington moved on to discuss the differences between law, regulations and practice with regard to ITAR section 123.16(b)(1). She noted that intelligence agency export authority that is not reflected in the ITAR

Mr. White added that this comes into effect for Afghanistan and other 126.1 countries.

Ms. Remington said the processing of licensing has become very greatly improved from this time last year. She also noted that the (Defense) Intelligence Agencies use of exemptions that are not explained in the DoD exemptions to the ITAR, nor is it explained who is the authorizing authority for those agencies. Many in industry feel that to use one of those exemptions is risky.

Mr. Gregory Bourn said that the exemption for parts and components is not specifically identified. He said that there needed to be an exemption to send back parts, if companies were just bringing in a part from the foreign affiliates for repair or other such reason.

Mr. Kovac asked for this recommendation to be differentiated from first point.

Mr. Bourn stated that first one is talking about something that is already licensed.

Mr. Otis said U.S. companies are handling re-import items on behalf of DoD, but Customs is treating these shipments differently and consequentially imposing import duties on the items being re-imported.

Mr. Peter Jordan used the example of a subsystem that is manufactured in Europe and imported back to U.S. breaks and has to go back to be repaired. Currently has to go back under a DSP-5.

Mr. Bourn said that his recommendation now sounds like they are the same point.

Chair Schneider noted that the last one does deal specifically with foreign affiliates.

DFO Kovac replied that it is still the same problem.

Ms. Remington moved on to the next recommendation, defining what "sent" means in 125.4(b)(9)? Industry may have taken sent too liberally.

Mr. Burnett explained that some prosecutors are being tough on people coming into the U.S. with laptops.

Ms. Remington said she would defer the next point to DTAG members, Jahna Hartwig and Debbie Shaffer. The feeling among universities is that the exemption for full time

employees to receive unclassified technical data is unhelpful and that it should be expanded to defense services.

Ms. Jahna Hartwig explained that FFRDCs are government owned facilities which are run by private entities. It would be helpful to have an FMS-like exemption.

Ms. Remington moved on to the last priority recommendation, removal of USML Cat 1 and Cat 3.

Mr. Lawrence Keane said this was self-explanatory, that these are sporting and hunting firearms, they are not used by military and police. He said he would like to see those items moved over to Commerce. He said such an move would free up DDTC resources, since high license volume in these Categories.

Chairman Schneider asked how many licenses are done annually for these items.

DFO Kovac answered that approximately 8000-9000 licenses are done for Category I and III annually. He noted that they cannot be uncontrolled because of international agreements. DDTC is not going to have the ability to move these items off the ITAR without Congress saying to give them to Commerce. Absent the Commerce Department standing up and saying that they will take it, there is really no other way unless they are uncontrolled.

Mr. Rill asked whether components could be removed.

DFO Kovac explained that State, cannot remove components for the same reason.

Mr. Keane stated that firearms are already being smuggled into Mexico.

DFO Kovac replied that would not be the best way to address this. There are three types of exports: 1) exports which have no national security or foreign policy concerns, 2) exports which have national security or foreign policy concerns but are primarily for tracking and enforcement purposes, and 3) exports which are significant and warrant the controls under AECA. Unfortunately that is not the way the laws are set up, military or civilian designation is too simple. The laws are set up so civil and military don't meet; however, it is incorrect to always make the assumption that military and civil don't meet. There are a lot of civil things that can cause problems. On this particular issue, I do not foresee, absent that kind of interest to take control the items that the Administration would recommend that.

Chair Schneider said the circumstances related around putting this list together need to be considered. These policy issues can be addressed with the new Administration, just need to find the most appropriate bureaucratic setting.

There was a question about the whether there is a breakdown for the term automatic.

Mr. Keane explained that there is a well defined distinction between automatic and semi-automatic weapons.

Ms. Remington presented the next recommendation, a proposed waiver to AECA 38(f) for Category XV.

Mr. Rill said this makes a reference to 38(f) which requires the President to review the USML to remove categories. He recommended a waiver process to determine certain items within a set of strict parameters.

DFO Kovac said that the Administration cannot go to Congress and request that satellites, which are controlled by law, be deregulated.

Mr. Rill explained that it would not be the entire category, specific components established by a specific set of technical parameters.

DFO Kovac stated that the Administration cannot ask to waive the oversight that Congress has said has to be there by law.

Mr. Sam Armstrong noted that in Category XV there are some scientific satellites NASA puts up that have no national security issues associated with them. There are things like this that could be given a waiver. Exclude end item because of its use. Maybe not the same thing Dale was talking about but still equally important.

DFO Kovac explained that his role was to understand what is being asked to explain there are some impediments to some of these recommendations. There are a lot of people who recommend things, I don't know if any of those are viable or acceptable, they are all going to be provided in the report from the DTAG. The DTAG should not take his initial skepticism as a no. This was an opportunity for the DTAG to get their list out there as well.

Ms. Remington said the next recommendation was a paperwork reduction request. What is the purpose of submitting a letter of initial notification of shipping? Next, is the identification of empowered officials in voluntary disclosures necessary? DTAG also recommends eliminating the 124.6 requirement, which requires written notification of any termination of a MLA or TAA. Is there a need to really provide this notification?

DFO Kovac emphasized the point that there is still a paper system, with agreements, that's what that refers to do. If it is no longer active, then DDTC can retire it. I have to maintain them if they are active and some of those agreement have a validity period of 20 years and unless DDTC knows it has been terminated, we have to keep it for that period of time.

Vice-Chair Sevier discussed the adverse impact of DoD AT&L anti-tamper and LO/CLO review on technology collaboration efforts with close U.S. allies. He recommended that the U.S. Government look at the impact of these reviews on the U.S. balance of trade. There is a need for a better balance in the control of U.S. technologies, to permit the U.S. to lead in the development of new technologies together with foreign partners.

DTAG Chair William Schneider stated that this aspect of the regulatory process is tightly managed in DoD and not many people can get involved. This is an area where DoD tries to protect its interest in technical security for important aspect of military capabilities. It is likely we will see movement on this if the US/UK and US/Australia treaties are ratified which will produce some tension. Some of these areas are subject to exemptions under the Treaties. New leadership of DoD may wish to start a review of this. It is timely to raise this, even if it is not a State issue. Are there any others that we did not already capture?

Ms. Hartwig suggested focusing on the principal of how we can inform these policies. She suggested a consistent theme of better balance and control, one way by being involved with foreign allies.

DFO Kovac observed that the balance has already been made. It was essential that the Department of Defense had the ability to look at the impact of exporting a specific defense technology or defense item and to conclude that "this cannot go anywhere." It will never be possible to get a system that balances all needs in a manner that everyone agrees with. DDTC is in the risk aversion business. Of 83,388 licenses, DDTC denied only .6%. At the same time, process improvement was needed to allow easier collaboration with key allies when DoD wants this to occur. DFO Kovac responded that the way to do this was to get DoD to make the necessary arrangements before the collaboration is initiated.

Ms. Hartwig said it would be helpful if there were process improvements that allowed more collaboration with entities when the DoD wants increased collaboration.

DFO Robert S. Kovac replied that DDTC's process is a good one, and timely, but can't control DoD on their release issues. The "releasability" needs to be negotiated up front and DDTC can't control that. When it arrives at DDTC, we get it out as quickly as we can to DoD, but if the details have not been worked out at that end, DDTC can't control that or the timing. Recommend that everything be nailed down with DoD before it is submitted to DDTC.

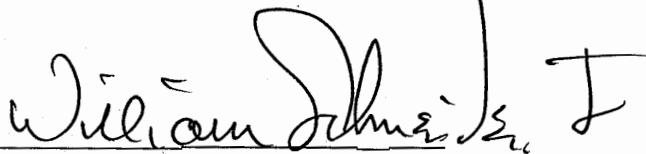
Mr. Lawrence Fink said there is already an exemption to provide technical data under a contract and wanted to know if DDTC would consider an analogous exemption for services.

DFO Kovac stated there already is an exemption for defense services. Current staffing limits the number of initiatives we can pursue to one at a time. Some improvements are adversely impacted by inability to put manpower on the projects.

Chair Schneider said that the DTAG would prioritize its list to identify the items that could have a constructive impact on how U.S. defense industry operates. He also expressed confidence that the new DoD AT&L leadership would engage with industry on these issues.

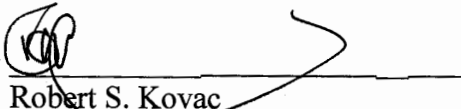
DTAG Recorder Terry Otis called for any public comments for the record or other input to be emailed to him at terry.otis@itt.com by Thursday, April 9, 2009, and cautioned that submissions could not have any proprietary information labels attached to the email messages.

The meeting was adjourned at 1:12



William Schneider, Jr.
Chairman, Defense Trade Advisory Group

18 May 09
Date



Robert S. Kovac
Designated Federal Officer, Defense Trade Advisory Group

27 May 09
Date

DTAG Open Plenary April 7, 2009 Attendance

1. Christine McGinn
2. Joyce Remington
3. Charles Graves
4. Dale Rill
5. Victoria Harrington
6. William Schneider
7. Terrell Otis
8. Maarten Sengers
9. Alexis Larkin
10. Gregory Bourn
11. Jahna Hartwig
12. Matt Schroeder
13. Kiley Thompson
14. Herb Riley
15. Lawrence Fink
16. Anna Magoulas
17. Victor Pan
18. Jennifer Maki
19. Spence Leslie
20. Janet Rishel
21. Bill Denk
22. Ken Montgomery
23. Bela Mariassy
24. Sharon Cornnor-Jackson
25. Bryon Angray
26. Larry Willoughby
27. Bill Wade
28. David Peyton
29. Peter Jordan
30. Rich Douglas
31. Mike Mitchell
32. Heather Schildge
33. Mike Coffee
34. Gerrit Hengstler
35. Catherine Robinson
36. Suzanne Rao
37. Bruce Graham
38. Cristina Kitner
39. Spence Armstrong

40. Sal Ceraolo
41. Thomas White
42. Dennis Burnett
43. Kay Morrell
44. Bjorn Uggl
45. Debbie Shaffer
46. Mike Cormaney
47. Greg Hill
48. Cathy Johnson
49. Jim Bartlett
50. Scott Feeney
51. PJ Hart
52. Johanna Reeves
53. Rebekah Stroman
54. Paula Geisz
55. Mary Fromyer
56. Taylor Halverston
57. Suzanne Palmer
58. George Sevier
59. Lisa Bencivenga
60. Norma Rein
61. Adelicia Cliffe
62. Lawrence Keane
63. Greg Suchan
64. Kandi Shejavali
65. Sam Gilston
66. Remy Nathan
67. Darren Riley
68. Luke Engan
69. Marc Binder
70. Bruce Cathell
71. Tomoko Da Luz
72. Nik Khanna
73. Alexandra Frantz
74. Mona Hazera
75. George Staples
76. Glennis Gross-Peyton
77. David McMillan
78. Monique Galloway
79. Barbara Eisenbeiss
80. William Newman
81. Alice Kottmyer

82. Michele Truitt
83. Kevin Maloney
84. Charles Shotwell
85. Robert Copley
86. Mary Sweeney
87. Malcolm Greene
88. Daniel Buzby
89. Glenn Smith
90. Frank Ruggiero
91. Robert Kovac
92. Patricia Slygh

Defense Trade Advisory Group (DTAG)
U.S. Department of State – April 7, 2009
Loy Henderson Conference Room, Harry S. Truman Building

- I. **0930:** Call to Order by DTAG Chairman
- II. **0945:** Opening Remarks from Department of State Official(s)
- III. **1015:** DTAG Working Group on ITAR Definitions presentation
- IV. **1145:** Break
- V. **1200:** Discussion of new priorities
- VI. **1245:** Closing Remarks

[Federal Register: March 24, 2009 (Volume 74, Number 55)]
[Notices]
[Page 12434-12435]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr24mr09-147]

DEPARTMENT OF STATE

[Public Notice 6557]

Notice of Meeting

Title: Defense Trade Advisory Group; Notice of Meeting April 7, 2009.

SUMMARY: The Defense Trade Advisory Group (DTAG) will meet on April 7, 2009 from 9:30 a.m. to 1 p.m. in the Loy Henderson Conference Room at the U.S. Department of State, Harry S. Truman Building, Washington, DC. The meeting will be open to the public. Entry and registration will begin at 8:45 a.m. Please use the building entrance located at 23rd Street, NW., Washington, DC between C & D Streets. The purpose of the meeting will be to discuss current defense trade issues and topics for further study.

As access to the Department of State facilities is controlled, persons wishing to attend the meeting must notify the DTAG contact person by COB Tuesday, March 31, 2009. If notified after this date, the DTAG Secretariat cannot guarantee that the Department's Bureau of Diplomatic Security can complete the necessary processing required to attend the April 7 plenary. Each non-member observer or DTAG member needing building access that wishes to attend this plenary session should provide: his/her name; company or organizational affiliation; phone number; date of birth; and identifying data such as driver's license number, U.S. Government ID, or U.S. Military ID, to the DTAG contact person, Allie Frantz, via e-mail at FrantzA@state.gov. DTAG members planning to attend the plenary session should notify the DTAG contact person, Allie Frantz, at the e-mail provided above. A RSVP list will be provided to Diplomatic Security and the Reception Desk at the 23rd Street Entrance. One of the following forms of valid photo identification will be required for admission to the Department of State building: U.S. driver's license, U.S. passport, U.S. Government ID or other valid photo ID.

DATES: The DTAG meeting will be held on April 7, 2009 from 9:30 a.m. to 1 p.m. and is open to the public.

ADDRESSES: The meeting will be held in the Loy Henderson Conference Room at the U.S. Department of State, Harry S. Truman Building, Washington DC DTAG members and non-member observers are required to pre-register due to security reasons.

FOR FURTHER INFORMATION CONTACT: Members of the public who need additional information regarding these meetings or the DTAG should contact the DTAG contact person, Allie Frantz,

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PM/DDTC, SA-1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522-0112; telephone (202) 736-9220; FAX (202) 261-8199; or e-mail FrantzA@state.gov.

SUPPLEMENTARY INFORMATION:

(a) Background

The membership of this advisory committee consists of private sector defense trade representatives who advise the Department on policies, regulations, and technical issues affecting defense trade. Individuals interested in defense trade issues are invited to attend and will be able to participate in the discussion in accordance with the Chair's instructions. Members of the public may, if they wish, submit a brief statement to the committee in writing.

April 7, 2009 9:30 a.m. to 1 p.m. Meeting--Topics for discussion and assigned time frames are as follows: 9:30-9:45 Call to order by DTAG Chairman. 9:45-10:15 Opening Remarks from Department of State Official(s). 10:15-11:45 DTAG Working Group on the ITAR Definitions presentation. 11:45-12 Break. 12-12:45 Discussion of new administration priorities. 12:45-1 Closing Remarks.

(b) Procedures for Providing Public Comments

The DTAG will accept written public comments as well as oral public comments. Comments should be relevant to the topics for discussion. Public participation at the open meeting will be based on recognition by the chair and may not exceed 5 minutes per speaker. Written comments should be sent to the DTAG Executive Secretariat contact person no later than March 31, 2009 so that the comments may be made available to the DTAG members for consideration.

Written comments should be supplied to the DTAG Executive Secretariat contact person at the mailing address or e-mail provided above, in Adobe Acrobat or Word format.

Note: The DTAG operates under the provisions of the Federal Advisory Committee Act, as amended, and all public comments will be made available for public inspection, and might be posted on DDTC's Web site.

(c) Meeting Accommodations

Individuals requiring special accommodation to access the open meeting referenced above should contact Ms. Frantz at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 17, 2009.

Robert S. Kovac,
Designated Federal Official, Defense Trade Advisory Group, Department of State.

[FR Doc. E9-6423 Filed 3-23-09; 8:45 am]

BILLING CODE 4710-25-P

DTAG ITAR Definitions Working Group Report

Submitted to the DDTC for Consideration on April 24, 2009

§120.XX Military Purpose

Current Definition	Proposed Change	Rationale/Comments
<p>Not currently defined, but found in following sections:</p> <p>“Military Purpose” - USML Category V(c)(7); Category VI(a); Category VII(a); Category IX(a); Category XI(b); XIII(a); XX(a) & (b); XXI(a); §121.3; §121.15; §126.4.</p> <p>“Military Application” - ITAR §120.3; §120.4(d); USML Category I; Category II(b); Category II(l); Category III(f); Category V(a)(35); Category V(b)(7); Category V(c)(10) & (12); Category V(e)(19); Category V(f)(21); Category V(i); Category VIII(h)(note); Category X(a); Category XI(a); Category XII(b) & (c); Category XIII(b), (g),(h), (j) & (m); Category XIV(n); Category XV(e); Category XVI(c); Category XII(a) & (g); ITAR §121.5.</p> <p>In some places the term “military application” is used and in others the term “military purpose” is used. Neither is defined and there</p>	<p>“<i>Military purpose</i>” means that the article, material or service is designed, developed, configured, adapted or modified to have a unique property that, in and of itself, distinguishes it for the purpose of projecting military force, defending against military force or gathering of intelligence directly related to projecting military force or defending against military force. The classification of a material, part or component designed, developed, configured, adapted or modified for use in a higher order component (which is a defense article) or an end-item (which is a defense article) depends on the property of the material, part or component and not on the properties of the higher-order component or end-item.</p> <p>For example: (a) a power cord for coffee maker that is modified for use in a submarine by changing the length of the power cord would not be designed for a military purpose because the modification does not, in and of itself, have a</p>	<p>In some places the term “military application” is used and in other the term “military purpose” is used. Neither is defined and there is no indication of whether the terms are meant to have different results or whether they are interchangeable.</p> <p>Suggestion only use the term “military purpose” (e.g., replace the term “military application” where it is embedded in existing terms e.g. §120.3, etc.) and define the term so that only items that are inherently military are covered.</p> <p>Definition used in various Bilateral Nuclear Agreements: “military purpose” means, for the purposes of this Agreement only, direct military applications of nuclear energy or nuclear material such as nuclear weapons or military nuclear reactors, but does not include indirect uses such as power for a military base drawn from a civil power network, or production of radioisotopes to be used for diagnosis in a military hospital;</p>

<p>is no indication of whether the terms are meant to have different results or whether they are interchangeable.</p>	<p>military property; or (b) a commercial gasoline fuel line that is modified to be shorter or longer to fit a higher order military component or end-item but lacks any modification to the functionality of the fuel line, and therefore is not modified for a military purpose.</p> <p>If the commercial parts or components of a higher order commercial component or commercial end-item are reconfigured for a military customer, the new configuration would not be for a military purpose unless the new configuration has a unique property that, in and of itself, distinguishes it for the purpose of projecting military force, etc.</p>	<p>Term: Function Definition: The action or actions which an item is designed to perform. Author: MIL-STD-480B, MIL-STD-973</p>
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§120.XX Normal Commercial Use

Current Definition	Proposed Change	Rationale/Comments
<p>1. The term “normal commercial use” is not defined in the ITAR or in any supplementary guidance provided by DDTC but it is used in three U.S. Munitions List (“USML”) categories and in one explanatory provision.</p> <ul style="list-style-type: none"> • Under the following USML Categories, “components, parts, accessories, attachments and associated equipment” that are in “normal commercial use” are <i>not</i> controlled under the USML: <ul style="list-style-type: none"> – USML Category XI(c) (“Military Electronics”) – USML Category XII(e) (“Fire Control, Range Finder, Optical and Guidance and Control Equipment”) – USML Category XVI(b) (“Nuclear Weapons, Design and testing Related Items”) • Under ITAR § 121.10, unfinished items (<i>e.g.</i>, forgings, castings, extrusions and machined bodies) that have reached a stage in manufacture where they are clearly identifiable as defense articles are not controlled 	<p>(1) For purposes of this subchapter, an item that is in “<i>normal commercial use</i>” is any item that is of a type customarily used for purposes other than military purposes and that has been sold or offered for sale in the commercial marketplace.</p> <p>(2) Items in “<i>normal commercial use</i>” that are modified or adapted in some way remain in “normal commercial use” so long as the modification or adaptation at issue (i) is of a type generally available to all potential customers and (ii) is not made for a military purpose.</p>	<p>A review of other U.S. statutes, regulations, court cases and agency decisions did not find any materials that provided additional guidance on the meaning of the term “normal commercial use.”</p> <p>The term “normal commercial use” as used in USML Category XII(e) was referenced in one federal district court case, but the case does not provide any clarification as to its meaning. <i>U.S. v. Gregg</i>, 829 F. 2d. 1430 (8th Cir., 1987).</p> <p>The term is used in EAR § 744.2, which imposes a licensing requirement for dual use items when the exporter has knowledge that the item will be used in certain prohibited nuclear activities. A note to the section restates the requirement of USML Category XVI(b), noting that items specially designed for devising, carrying out or evaluating a nuclear weapons test or nuclear explosions are controlled under the ITAR, “except such items as are in normal commercial use for other purposes.”</p> <p>The structure of the USML Categories referenced above dictates that “normal commercial use” cannot simply mean parts or components that are identical to items sold in the commercial marketplace.</p> <p>To be classified in one of the three USML categories identified above, a part or component must have been “specifically designed, modified and configured” for military application.” If it was not so designed, modified or configured, it would not be on the USML.</p> <p>Moreover, under the policy factors set forth in ITAR § 120.3, parts and components that are identical to items in the commercial marketplace would not qualify for designation on the USML under § 120.3(a)(ii).</p> <p>The “normal commercial use” language, therefore, is clearly intended to carve out from control under the USML parts and components that were specifically designed, modified or configured for a military application/purpose but that are of a type that are generally available in the commercial market for non-military applications.</p>

<p>under the USML if they are in “normal commercial use.”</p>		<p>Example of operation of proposed definition:</p> <p><u>Example #1:</u> Company X manufactures fuel hoses for all types of vehicles. Customers order fuel hoses from a large catalog of part numbers. In addition, customers often order customized items by specifying a product family, length, type of connector(s) and material from a menu of options. Prime Contractor is manufacturing a new armored combat vehicle for the U.S. Army and orders a fuel hose for the vehicle by identifying the product family and specifying the length, connectors and the materials from the menu of options offered by Company X. Under the proposed definition, the fuel hose would be in “normal commercial use” even if that particular configuration is unique to the Prime Contractor for use in the armored vehicle because the fuel hose is of a type that is sold in the commercial market for purposes other than military purposes.</p> <p><u>Example #2:</u> Same facts as Example #1 but the Prime Contractor also specifies that the fuel hose must be resistant to chemical and biological weapons and CBW decontaminants used by the U.S. Army. This is not an option that Company X offers to its customers, and it is required to investigate new materials and qualify a new product. Under the proposed definition, the fuel hose purchased by the Prime Contractor would <i>not</i> be in “normal commercial use” because it is not of a type sold (or offered for sale) in the commercial market and the modification was made for a military purpose (<i>i.e.</i>, defending against CBW attacks).</p>
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§120.3 Policy on designating and determining defense articles and services.

Current Definition	Proposed Change	Rationale/Comments
<p>An article or service may be designated or determined in the future to be a defense article (see §120.6) or defense service (see §120.9) if it:</p> <p>(a) Is specifically designed, developed, configured, adapted, or modified for a military application, and</p> <p>(i) Does not have predominant civil applications, and</p> <p>(ii) Does not have performance equivalent (defined by form, fit and function) to those of an article or service used for civil applications; or</p> <p>(b) Is specifically designed, developed, configured, adapted, or modified for a military application, and has significant military or intelligence applicability such that control under this subchapter is necessary.</p> <p>The intended use of the article or service after its export (i.e., for a military or civilian purpose) is not relevant in determining whether the article or service is subject to the</p>	<p>Proposed Definition 1 – using newly defined ITAR term “military purpose”</p> <p>An article or service may be designated or determined in the future to be a defense article (see § 120.6) or defense service (see § 120.9) if it:</p> <p>(a) Is specially designed or developed for a military purpose (See §120.X definition of military purpose), or</p> <p>(b) Has significant military or intelligence applicability such that control under this subchapter is necessary; or</p> <p>(c) Is specially configured, adapted or modified for a military purpose.</p> <p>The intended use of the article or service (i.e., for a military purpose or for normal commercial use) is not relevant in determining whether the article or service is subject to the controls of this subchapter. Any item covered by the U.S. Munitions List must be within the categories of the U.S. Munitions List. The scope of the U.S. Munitions List shall be changed only by amendments made pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778).</p> <p>Standard parts, components, accessories and attachments, even if specially designed or developed for a military purpose, shall not be designated defense</p>	<p><u>Rationale for § 120.3 Proposed Definition #1</u></p> <p>DTAG members proposed modification attempts to clarify those items with the addition of a definition for military purpose adding the reference, if approved, to the ITAR Part 120. The use of "specifically" and "specially" were used interchangeably throughout the ITAR, DTAG elected to use "specially" for Part 120 exclusively and eliminated the use of "specifically".</p> <p>A new paragraph was added to specifically state that items such as standard parts and components used for civil purposes and based on industry and government published standards/specifications are not subject to the controls of the ITAR.</p> <p><u>Rationale for § 120.3 Proposed Definition #2</u></p> <p>The rationale is similar to the proposed definition 1, but absent a clear definition of military purpose contained in the ITAR, DTAG proposes this definition as an alternative.</p> <p>If Definition Option # 2 for §120.3 is used, then the form, fit and function note may be</p>

<p>controls of this subchapter. Any item covered by the U.S. Munitions List must be within the categories of the U.S. Munitions List. The scope of the U.S. Munitions List shall be changed only by amendments made pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778).</p>	<p>articles provided that they are the performance equivalent to those used for commercial applications (e.g., fasteners, sealants, raw materials, hydraulic systems, wiring harnesses, brackets, etc.) and that are based on industry and government published standards/specifications.</p> <p>Proposed Definition 2 – if “military purpose” is not added as a definition in the ITAR</p> <p>An article or service may be designated or determined in the future to be a defense article (see §120.6) or defense service (see § 120.9) if it:</p> <p>(a) Is specially designed or developed for a military purpose, and</p> <p>(i) Does not have predominant commercial purpose, and</p> <p>(ii) Does not have performance equivalent (defined by form, fit and function) to those of an article or service used for commercial purposes; or</p> <p>(b) Is specially designed or developed for a military purpose, and</p> <p>(i) Has significant military or intelligence applicability such that control under this subchapter is necessary; or</p> <p>(c) Is specially configured, adapted or modified for a military purpose, and</p> <p>(i) The performance equivalent (defined by form, fit and function) exceeds those of an article or service used for</p>	<p>removed from §120.4 to avoid redundancy.</p>
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	<p>commercial purposes.</p> <p>The intended use of the article or service (i.e., for a military purpose or for normal commercial use) is not relevant in determining whether the article or service is subject to the controls of this subchapter. Any item covered by the U.S. Munitions List must be within the categories of the U.S. Munitions List. The scope of the U.S. Munitions List shall be changed only by amendments made pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778).</p> <p>Standard parts, components, accessories and attachments, even if specially designed or developed for a military purpose, shall not be designated defense articles provided that they are the performance equivalent to those used for commercial applications (e.g., fasteners, sealants, raw materials, hydraulic systems, wiring harnesses, brackets, etc.) and that are based on industry and government published standards/specifications.</p> <p>NOTE: The form of the item is its defined configuration, including the geometrically measured configuration, density, and weight or other visual parameters which uniquely characterize the item, component or assembly. The fit of the item is its ability to physically interface or interconnect with or become an integral part of another item. The function of the item is the action, or actions, it is designed to perform.</p>	
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§120.4 Commodity Jurisdiction

Current Definition	Proposed Change	Rationale/Comments
<p>(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 re-designation 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.</p> <p>(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</p>	<p>(a) Any non-governmental entity may seek a determination on the jurisdictional control of a commodity through the Commodity Jurisdiction process if doubt exists as to whether an article or service is covered by the U.S. Munitions List. A Commodity Jurisdiction request may also be used for consideration to redesignate an article or service currently controlled on 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.</p> <p>(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</p>	<p>DTAG members proposed slight modifications to the current CJ definition. The proposed definition clarifies that it is a "process". Exporters or any non-governmental entity may use the "process" to determine jurisdiction. Adds the exception for Category XV in Section 3 (ii).</p>

<p>services (see part 122 of this subchapter), as well as for brokers who are engaged in brokering activities related to such articles or services.</p> <p>(c) Requests shall identify the article or service, and include a history of the product's design, development and use. Brochures, specifications and any other documentation related to the article or service shall be submitted in seven collated sets.</p> <p>(d)(1) A determination that an article or service does not have predominant civil applications shall be made by the Department of State, in accordance with this subchapter, on a case-by-case basis, taking into account:</p> <p>(i) The number, variety and predominance of civil applications;</p> <p>(ii) The nature, function and capability of the civil applications; and</p> <p>(iii) The nature, function and capability of the military applications.</p> <p>(2) A determination that an article does not have the performance equivalent, defined by form, fit and function, to those used for civil applications shall be made by the Department of State, in accordance with this subchapter, on a case-by-case basis, taking into account:</p>	<p>subchapter), as well as for brokers who are engaged in brokering activities related to such articles or services.</p> <p>(c) A Commodity Jurisdiction request shall identify the article or service, a history of the product's design and development (including the original design intent, and the use(s)). Brochures, specifications and any other supporting documentation related to the article or service shall be submitted in seven collated sets.</p> <p>(d)(1) A determination that an article or service does not have predominant commercial purposes shall be made by the Department of State, in accordance with this subchapter, on a case-by-case basis, taking into account:</p> <p>(i) The number, variety and predominance of commercial purposes;</p> <p>(ii) The nature, function and capability of the commercial purposes; and</p> <p>(iii) The nature, function and capability of the military purposes.</p> <p>(2) A determination that an article does not have the performance equivalent, defined by form, fit and function to those used for commercial purposes shall be made by the Department of</p>	
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<p>(i) The nature, function, and capability of the article;</p> <p>(ii) Whether the components used in the defense article are identical to those components originally developed for civil use.</p> <p>NOTE: The form of the item is its defined configuration, including the geometrically measured configuration, density, and weight or other visual parameters which uniquely characterize the item, component or assembly. For software, form denotes language, language level and media. The fit of the item is its ability to physically interface or interconnect with or become an integral part of another item. The function of the item is the action or actions it is designed to perform.</p> <p>(3) A determination that an article has significant military or intelligence applications such that it is necessary to control its export as a defense article shall be made, in accordance with this subchapter, on a case-by-case basis, taking into account:</p> <p>(i) The nature, function, and capability of the article;</p> <p>(ii) The nature of controls imposed by other nations on such items (including Wassenaar Arrangement and other multilateral controls), and</p>	<p>State, in accordance with this subchapter, on a case-by-case basis, taking into account:</p> <p>(i) The nature, function, and capability of the article;</p> <p>(ii) Whether the components used in the defense article are identical to those components originally developed for commercial use.</p> <p>NOTE: The form of the item is its defined configuration, including the geometrically measured configuration, density, and weight or other visual parameters which uniquely characterize the item, component or assembly. For software, form denotes language, language level and media. The fit of the item is its ability to physically interface or interconnect with or become an integral part of another item. The function of the item is the action or actions it is designed to perform.</p> <p>(3) A determination that an article has significant military or intelligence purposes such that it is necessary to control its export as a defense article shall be made, in accordance with this subchapter, on a case-by-case basis, taking into account:</p> <p>(i) The nature, function, and capability of the article;</p> <p>(ii) The nature of controls imposed by other</p>	
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<p>(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.</p> <p>(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.</p> <p>(f) State, Defense and Commerce will resolve commodity jurisdiction disputes in accordance with established procedures. State shall notify Defense and Commerce of the initiation and conclusion of each case.</p> <p>(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</p>	<p>nations on such items, including Wassenaar Arrangement and other multilateral controls; and</p> <p>(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.</p> <p>(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.</p> <p>(f) State, Defense and Commerce will resolve commodity jurisdiction disputes in accordance with established procedures. State shall notify Defense and Commerce of the initiation and conclusion of each case.</p> <p>(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</p>	
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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.

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.

§120.6 Defense article.

Current Definition	Proposed Change	Rationale/Comments
<p>Defense article means any item or technical data designated in §121.1 of this subchapter. The policy described in §120.3 is applicable to designations of additional items. This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated in §121.1 of this subchapter. It does not include basic marketing information on function or purpose or general system descriptions.</p>	<p><i>Defense article</i> means any item and its related technical data (See §120.10) controlled on the United States Munitions List (USML). See §121.1 of this subchapter.</p> <p>The policy described in §120.3 is applicable to designations of defense articles and services.</p> <p>The term <i>defense article</i> does not include basic marketing information on function or purpose, general system descriptions, or certain parts, components, and accessories as described in §121.1 of this subchapter.</p> <p>The term <i>defense article</i> does not include items fabricated solely for fundamental research purposes, provided that all of the information about the item would normally be published and shared broadly within the scientific community.</p>	<p>DTAG tightened the definition to clearly state Defense Articles include any item and related technical data on the USML. Added caveat to exclude items fabricated solely for fundamental research when all of the information will be published and shared.</p>

§120.9 Defense service

Current Definition	Proposed Change	Rationale/ Comments
<p>(a) <i>Defense service</i> means:</p> <p>(1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles;</p> <p>(2) The furnishing to foreign persons of any technical data controlled under this subchapter (see § 120.10), whether in the United States or abroad; or</p> <p>(3) Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice. (See also §124.1.)</p> <p>(b) [Reserved]</p>	<p>(a) <i>Defense service</i> means:</p> <p>(1) The furnishing of assistance (including training) to or for the benefit of foreign persons, whether in the United States or abroad, in the design, development, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of U.S. or foreign defense articles even if such assistance is based on information in the public domain, as defined in §120.11, or otherwise authorized for export. (See also §124.1) The conduct of fundamental research using only public domain information does not constitute a defense service.</p> <p>(2) Military training of foreign units and forces, regular and irregular, in the use of U.S. or foreign defense articles, including formal or informal instruction of foreign persons in the United States or abroad. (See also §120.17)</p> <p>(b) [Reserved]</p>	<p>The additional language referencing §120.11 and §124.1 strengthens and clarifies the definition by noting that assistance based on technology in the public domain can be a defense service.</p> <p>The addition of the fundamental research explanation provides consistency with the existing and proposed fundamental research references in the ITAR. The added language explains that services falling under the definition of fundamental research do not constitute a defense service.</p> <p>Removal of previous “(a)(2)” - it was removed all together because as currently written, the definition encompasses any exchange of technical data, which overtakes the numerous exemptions and licenses that authorize export of technical data. With the addition of the reference to § 124.1 in part (a)(1), this section is confusing and does not add any guidance beyond what is already in (a)(1) and § 124.1.</p> <p>A definition for military training and advice was added in an effort to be consistent with §124.1.</p>

Current Definition	Proposed Change	Rationale/ Comments
		<p>The phrase in the current definition within (a)(3) "... or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice ..." are examples of exports and are entirely captured under §120.17. In the interest of strengthening the definition and providing clarity to the readers, the phrase is replaced with reference to the definition of an export at §120.17.</p>

§120.10 Technical data.

Current Definition	Proposed Change	Rationale/ Comments
<p>(a) Technical data means, for purposes of this subchapter:</p> <p>(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 and documentation.</p> <p>(2) Classified information relating to defense articles and defense services;</p> <p>(3) Information covered by an invention secrecy order;</p> <p>(4) Software as defined in §121.8(f) of this subchapter directly related to defense articles;</p> <p>(5) This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in §120.11. It also does not include basic marketing information on</p>	<p>Technical data means, for the purposes of this subchapter:</p> <p>Information that is required for the design, development, production, manufacture, assembly, operation, repair, maintenance or modification of defense articles or that is listed in the USML. This includes information in both tangible and intangible form.</p> <p>(1) The term “technical data” includes:</p> <p>(a) Classified information related to defense articles and defense services;</p> <p>(b) Software as defined in §120.XX of this subchapter that is specially developed, configured or modified for a defense article;</p> <p>(c) Operational systems measurements (e.g. operating frequencies, flight profiles, radar cross sections etc.)</p> <p>(2) The term “technical data” does not include:</p> <p>(a) Information related to standard parts, components, accessories and attachments that are the performance equivalent to those used for commercial applications (e.g., fasteners,</p>	<p>Clarification of the definition is required to remove some of ambiguity and to limit control to the technical data which is of concern to the USG. This includes clarifying that the measured end item performance of the defense articles are controlled (e.g. operating frequencies, flight profiles, radar cross sections, etc.) even if unclassified. A number of exclusions are also recommended as a means by which to define “required” in the first sentence.</p> <p>Substituted “commercial” for the term “civil” in order to be consistent with §120.3.</p>

Current Definition	Proposed Change	Rationale/ Comments
<p>function or purpose or general system descriptions of defense articles.</p> <p>(b) [Reserved]</p>	<p>sealants, raw materials, hydraulic systems, wiring harnesses, brackets, etc.) and that are based on industry and government published standards/specifications;</p> <p>(b) Information in the public domain as defined in §120.11;</p> <p>(c) Information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities;</p> <p>(d) Top-level requirements related to form, fit or function;</p> <p>(e) General descriptive information such as block diagrams, schematics, and parts or components lists;</p> <p>(f) Marketing information on form, fit, function or general system descriptions of defense articles.</p>	

§120.11 Public domain.

Current Definition	Proposed Change	Rationale/Comments
<p>(a) <i>Public domain</i> means information which is published and which is generally accessible or available to the public:</p> <p>(1) Through sales at newsstands and bookstores;</p> <p>(2) Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;</p> <p>(3) Through second class mailing privileges granted by the U.S. Government;</p> <p>(4) At libraries open to the public or from which the public can obtain documents;</p> <p>(5) Through patents available at any patent office;</p> <p>(6) Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States;</p> <p>(7) Through public release (<i>i.e.</i>, unlimited distribution) in any form (<i>e.g.</i>, not necessarily in published form) after approval by the cognizant U.S. government department or agency (see also §125.4(b)(13) of this subchapter);</p> <p>(8) Through fundamental research in science and engineering at accredited institutions of higher learning in the</p>	<p>(a) <i>Public domain information</i> means:</p> <p>(1) Information that has been published or released in any manner and that is generally accessible or available to the public;</p> <p>(2) Information available through lawful unlimited distribution at a conference, meeting, seminar, trade show or exhibition generally accessible to the public in the United States;</p> <p>(3) Information that has been approved for public release (<i>i.e.</i>, unlimited distribution) by the cognizant U.S. Government agency or the U.S. Department of Defense Office of Security Review, whether or not it has actually been released;</p> <p>(4) Fundamental research as defined by §120.XX of this subsection, or</p> <p>(5) Information that is otherwise generally accessible or available to the public.</p>	<p>Definition is expanded to include all types of lawfully published information (regardless of publication method), and to include certain non-published information that DDTC should have no interest in controlling. In addition, this proposed change moves “Fundamental research” to a separate distinct definition as §120.XX which follows below.</p>

<p>U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if:</p> <ul style="list-style-type: none">(i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or(ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable. <p>(b) [Reserved]</p>		
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§120.XX Fundamental Research

Current Definition	Proposed Change	Rationale/Comments
<p>No separate definition for “fundamental research is included in the ITAR. At the present it is currently embedded in Public Domain §120.11 which states, as follows:</p> <p>Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if:</p> <p>(i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or</p> <p>(ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.</p>	<p>§ 120.XX Fundamental Research (a) <i>Fundamental research</i> means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.</p> <p>(1) Basic research is a systemic study directed toward greater knowledge or understanding of the fundamental aspects of phenomena and observable facts without specific applications towards processes or products in mind. In basic research, the emphasis is on achieving specified objectives and knowledge rather than on achieving predetermined end results prescribed in a statement of specific performance characteristics. This emphasis applies particularly during the early or conceptual phases of the research and development efforts.</p> <p>(2) Applied research related to the basic research is the systemic study to gain</p>	<p>§120.XX Rationale</p> <p>Current definition of fundamental research elevates form over substance by limiting fundamental research to activities that occur at an institution of higher learning. Proposed change ensures that industrial or proprietary information does not qualify as fundamental research, but that basic research and applied research related to fundamental research articles is not controlled, regardless of where it occurs. Also clarifies the definitions of basic and applied research. Clarifies that certain limited reviews prior to publication do not constitute a publication restriction making the information ineligible for fundamental research exclusion.</p> <p>The definition also raises an issue that should be addressed if this definition passes. We will need a change to 123.16(b)(10) - to allow hardware resulting from fundamental research to be exported under this exemption. This again ties fundamental research to universities.</p>

	<p>knowledge or understanding necessary to determine the means by which the specific basic research objective may be met.</p> <p>(i) Applied research does not include proprietary research or industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons.</p> <p>(ii) Applied research does include design, development, and production of articles fabricated solely for fundamental research purposes, provided that all of the information about the article will be published and shared broadly within the scientific community.</p> <p>(b) Research will not be considered fundamental research if the research is subject to restrictions on publication or security review procedures for any purpose other than editorial review, ensuring that the publication would not inadvertently divulge proprietary information provided by the sponsor to the researchers, or ensuring that the publication would not compromise patent rights.</p>	
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§ 120.15 U.S. person

Current Definition	Proposed Change	Rationale/Comments
<p><i>U.S. person</i> 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.</p>	<p><i>U.S. person</i> means a person (as defined in §120.14 of this part) who is a U.S. citizen or 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.</p>	<p>Added words “is a U.S. citizen” to make definition clearer and more accurate.</p>

§120.21 Manufacturing license agreement

Current Definition	Proposed Change	Rationale/Comments
<p>An agreement (e.g., contract) whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates:</p> <p>(a) The export of technical data (as defined in §120.10) or defense articles or the performance of a defense service; or</p> <p>(b) The use by the foreign person of technical data or defense services previously exported by the U.S. person. (See part 124 of this subchapter)</p>	<p>An agreement whereby the Directorate of Defense Trade Controls authorizes a U.S. person to grant or license manufacturing rights and/or related manufacturing know-how to a foreign person to manufacture defense articles abroad and which involves:</p> <p>(a) The export of technical data (as defined in § 120.10) or defense articles or the performance of a defense service; or</p> <p>(b) The use by the foreign person of technical data or defense articles previously exported by the U.S. person. (See Part 124 of this subchapter).</p> <p>[For purposes of this definition this does not include those instances where the U.S. person is only granting or licensing the rights for the assembly of defense articles. This level of activity would be subject to a technical assistance agreement. See §120.22]</p>	<p>The recommended rewording:</p> <ul style="list-style-type: none"> • Provides clarification that an “agreement” is an authorization and not a contract; • Deletes the term “contemplates” to minimize confusion; and • Provides clarification that assembly of defense articles is can be accomplished under a technical assistance agreement. • Adds “DDTC” (rather than “State”) so as to be consistent with other references in the ITAR to DDTC.

§120.XX Build-to-print.

Current Definition	Proposed Change	Rationale/ Comments
<p>No definition currently included in Part 120, but the term is used in the following sections of the ITAR: 124.13, 125.4, & 126.5.</p> <p>125.4(c)(1): “Build-to-print” means that a foreign consignee can produce a defense article from engineering drawings without any technical assistance from a U.S. exporter. This transaction is based strictly on a “hands-off” approach since the foreign consignee is understood to have the inherent capability to produce the defense article and only lacks the necessary drawings. Supporting documentation such as acceptance criteria, and specifications, may be released on an as-required basis (i.e. “must have”) such that the foreign consignee would not be able to produce an acceptable defense article without this additional supporting documentation. Documentation which is not absolutely necessary to permit manufacture of an acceptable defense article (i.e. “nice to have”) is not considered within the boundaries of a “Build-to-Print” data package.”</p>	<p>A technical data package (e.g., engineering drawings, electronic data files, product specifications, object code software for numerically controlled machines, and acceptance criteria) which is required to manufacture a defense article without technical assistance. This does not preclude the U.S. party from providing clarification of the requirements of the data package to the foreign person. Build-to-print does not include the release of any information which discloses design methodology, engineering analysis, or manufacturing know-how.</p>	<p>The ITAR currently has defined this term in three different sections (§§124.13, 125.4 and 126.5). The recommendation is to provide one standard definition in Part 120. The basic intent of the definition has been retained with changes made for clarification purposes only. For example, the elimination of subjective phrases such as: “hands-off”, “must have” and “nice to have” which cause confusion.</p> <p>Furthermore the definition has been revised to reflect the fact that the exporter can provide clarifications to the data package provided no design methodology, engineering analysis or manufacturing know-how is released. <i>This is based on the fact that even in US defense contractor manufacturing and modification facilities and/or government depots, there is an engineering liaison function between the design departments and the production departments to advise on and clarify engineering documentation questions.</i></p>

§120.XX Build/design-to-specification.

Current Definition	Proposed Change	Rationale/Comments
<p>No definition currently included in Part 120, but the term is used in the following sections of the ITAR: 125.4 & 126.5.</p> <p>§125.4(c)(2): “Build/Design-to-Specification” means that a foreign consignee can design and produce a defense article from requirement specifications without any technical assistance from the U.S. exporter. This transaction is based strictly on a “hands-off” approach since the foreign consignee is understood to have the inherent capability to both design and produce the defense article and only lacks the necessary requirement information;”</p>	<p>Technical data in the form of functional, performance and other requirements and acceptance criteria that are sufficient in detail to enable a foreign person to both design and manufacture a defense article without technical assistance. This does not preclude the U.S. party from providing clarification of the requirements of the data package to the foreign person. A build/design-to-specification package does not include the release of any information which discloses design methodology, engineering analysis, or manufacturing know-how.</p>	<p>The ITAR currently has defined this term in two different sections. The recommendation is to provide one standard definition in Part 120. The basic intent of the definition has been retained with changes made for clarification purposes only. For example the elimination of the phrase “hands-off” to reflect the fact that the exporter can provide clarifications to the data package.</p>

§120.XX Design methodology.

Current Definition	Proposed Change	Rationale/ Comments
<p>No definition currently included in Part 120, but the term is used in the following sections of the ITAR: 124.2, 125.4, & 126.5</p> <p>§124.2(c)(4)(i): “Design Methodology, such as: The underlying engineering methods and design philosophy utilized (i.e. the “why” or information that explains the rationale for particular design decision, engineering feature, or performance requirement); engineering experience (e.g. lessons learned); and the rationale and associated databases (e.g. design allowables, factors of safety, component life predictions, failure analysis criteria) that establish the operational requirements (e.g., performance, mechanical, electrical, electronic, reliability and maintainability) of a defense article.</p>	<p>A set of engineering rules, methods, and procedures that are required to establish the operational requirements (e.g. performance, mechanical, electrical, electronic, reliability and maintainability) of a defense article. This includes the underlying engineering methods and design philosophy that explains the rationale for a particular design decision, engineering feature, or performance requirement. This does not include basic engineering rules, methods, procedures, databases, etc., that are standard industry practice in the design and development of both commercial and military items.</p>	<p>The ITAR currently has defined this term in three different sections. The recommendation is to provide one standard definition in Part 120. The current definition requires clarification so that it is limited to those aspects of the design and development effort that are related to the defense article. Currently, it is excessively broad in scope and implies that every aspect of the design and development effort would be controlled even if it is standard industry practice.</p>

§120.XX Engineering analysis.

Current Definition	Proposed Change	Rationale/Comments
<p>No definition currently included in Part 120, but the term is used in the following sections of the ITAR: 124.2, 125.4 & 126.5</p> <p>§124.2(c)(4)(ii): “Engineering Analysis, such as: Analytical methods and tools used to design or evaluate a defense article’s performance against the operational requirements. Analytical methods and tools include the development and/or use of mockups, computer models and simulations, and test facilities.</p>	<p>The scientific analytical principles, processes and tools used to design and/or evaluate a defense article’s performance against a set of design and operational requirements, including the development and/or use of mock-ups, computer models and simulations, and test facilities.</p>	<p>The ITAR currently has defined this term in three different sections. The recommendation is to provide one standard definition in Part 120. Clarified to reflect the fact that it is the application of the analytical methods and tools that constitute “engineering analysis” and not just the tools and methods.</p>

§120.XX Employee.

Current Definition	Proposed Change	Rationale/Comments
<p>Not specifically defined in ITAR, but referenced in following sections:</p> <ul style="list-style-type: none"> - 122.1(b)(1) [refers to employees of the USG]; - 123.16(b)(7) [refers to 123.16 exemption for civilian employees of USG]; - 123.18 [exemption for civilian employees of USG]; - 124.16 [refers to employees of foreign signatory]; - 125.4(b)(9)(ii) [refers to US person employed by {US corp} overseas and employee of USG]; - 125.4(b)(10) [refers to employees of US institutions of higher learning]; - 127.1(b) [responsibility for violations of employees]; - 128.3(b)(1) [refers to service of process to employee of the respondent]; - 129.3(b)(1) [broker registration requirement exempt for employees of USG]; - 129.3(b)(2) [broker registration requirement exempt for employees of foreign governments]; - 129.3(b)(3) [broker registration requirement and application to employees of banks] - 130.5(b)(2) [refers to “employee of applicant, supplier or vendor]; - 130.6(a) [refers to employee of foreign candidate, committee, political party, political faction or government or governmental subdivision]. 	<p>For the purposes of this subchapter:</p> <p>(a) An <i>employee</i> is a natural person who is hired (directly or indirectly) by another person, company or governmental entity (hiring entity) to perform services (on a full time or part time basis) in exchange for a salary paid by the hiring entity (directly or indirectly) and who performs such services under the direct supervision and control of the hiring entity, and who does not provide such services as part of an independent business. This term includes a “contract employee” hired through staffing agencies or other contract employee providers.</p> <p>(b) A foreign person is considered an “employee” of a U.S. person (hiring entity) when the foreign person is directly hired/fired, paid, insured, and/or promoted exclusively by the US person (hiring entity). The employee need not live in the United States to be employed by the U.S. person (hiring entity).</p> <p>NOTE: The definition of “employee” set forth above is applicable only for purposes of administering and enforcing the requirements of this Part. This definition does not apply to, and shall have no effect on, the determination</p>	<p>Under the AECA and ITAR, the term “employee” appears in several provisions and pertains to both US and foreign governments and US and foreign private parties, but is undefined. The term also appears in DDTC licenses and authorizations, but is undefined. Recently, DDTC has provided guidance on the term “employee” and related licensing requirements, which are incorporated into this proposed definition.</p>

	of who qualifies as an “employee” under other laws and regulations (e.g., tax laws, discrimination laws, employment laws, etc.)	
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§120.XX Maintenance.

Current Definition	Proposed Change	Rationale/Comments
<p>The term is not included in Part 120, but referenced in §125.4(b)(5):</p> <p>“Technical data, including classified information, in the form of <u>basic operations, maintenance,</u> and training information relating to a defense article lawfully exported or authorized for export to the same recipient. <u>Intermediate or depot-level repair and maintenance</u> information may be exported only under a license or agreement approved specifically for that purpose;”</p>	<p>(a)“<i>Organizational-level maintenance</i>” is the responsibility of, and performed by, a using organization on its assigned equipment. Its phases normally consist of inspecting, servicing, lubricating and adjusting, as well as the replacing of parts, components and line-replaceable units.</p> <p>(b)“<i>Intermediate-level maintenance</i>” is the responsibility of, and performed by, designated maintenance activities for direct support of using organizations. Its phases typically consist of: calibration, repair, or replacement of damaged or unserviceable parts, components, or assemblies.</p> <p>(c)“<i>Depot-level maintenance</i>” means an activity which is typically required to be performed at a designated facility for the overhaul, upgrading, or rebuilding of parts, assemblies, or subassemblies, and the testing and reclamation of a defense article.</p> <p>For purposes of this definition “organizational-</p>	<p>A new definition is being proposed for inclusion in Part 120. References to the various levels of maintenance activities in both this exemption as well as in provisos have resulted in some degree of confusion. This does not change the coverage of the ITAR.</p>

Current Definition	Proposed Change	Rationale/Comments
	level maintenance” is synonymous with “basic-level maintenance.”	

§120.XX Manufacturing know-how.

Current Definition	Proposed Change	Rationale/ Comments
<p>No definition currently included in Part 120, but the term is used in the following sections of the ITAR: 124.2, 125.4, & 126.5</p> <p>124.2(c)(4)(iii): "Manufacturing Know-how, such as: Information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a qualified, finished defense article."</p>	<p>Information that provides manufacturing processes and techniques required to translate a detailed design into a qualified, finished defense article.</p>	<p>The ITAR currently has defined this term in three different sections. The recommendation is to provide one standard definition in Part 120. The term "detailed" has historically caused interpretation issues and was deleted for clarification purposes.</p>

§120.XX National & Nationality/ Dual National/ Third Country National

Current Definition	Proposed Change	Rationale/Comments
<p>No definition currently included in Part 120, but the term is used in the following sections of the ITAR: § 124.8(5); § 124.15(a) & (c); § 125.1(c); § 125.4(b)(10)(ii); § 125.4(c), (d)(1) & (d)(2); § 126.5(b); § 126.13(a)(4) & (c); § 130.5(a)(1)-(3); § 130.10(b)(2)(ii); Section 3.5 of the <i>Guidelines for Preparing Agreements</i> (Jan. 2009) ITAR § 121.1 (Category XV(f)); § 123.16(b)(10)(i) & (iii); § 124.2(c)(6);</p> <p><i>National</i>: Not defined.</p> <p><i>Dual National</i>: Holds nationality from the country of a foreign signatory and one or more additional foreign countries</p> <p><i>Third Country National</i>: An individual holding nationality from a country or countries other than the country of the foreign signatory to the agreement.</p>	<p>(a) <i>“National”</i> and <i>“Nationality”</i></p> <p>(1) A “national” of a country is a natural person who is recognized by the government of a country as a national of that country under the domestic laws of that country. (Note: Country of birth and nationality of parent(s) can be significant factors for determining nationality under the laws of many countries.)</p> <p>(2) A natural person’s “nationality” refers to the country or countries of which that person is a citizen and any other country to which that person owes a permanent allegiance.</p> <p>(3) If a person has, in accordance with the requirements of the domestic law of a foreign country, renounced his or her citizenship of that country, then that person is no longer treated as a national of that foreign country for purposes of licensing decisions or other authorizations under this subchapter. With respect to foreign governments that do not recognize renunciation of citizenship or that require the permission of, or acceptance by, the foreign government for renunciation of citizenship, a national will be treated as having renounced that citizenship for purposes of this subchapter if he or she has taken all steps reasonably within his or her control to satisfy the requirements for</p>	<p>Recommendation: Move the definition to an ITAR definition section and revise definition</p> <ol style="list-style-type: none"> Most countries do not distinguish between “nationality” and “citizenship” – the terms are synonymous. <ul style="list-style-type: none"> In the United States, a “national of the United States” is defined in 8 U.S.C. § 1101(a)(22) as either “(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.” Item (B), however, is a very limited category of persons born in outlying U.S. possessions, such as American Samoa and Swains Islands, who are not legally citizens but owe allegiance to the United States. The only way to obtain either U.S. citizenship or nationality is via birth or naturalization. U.S. and international law recognize that every country has the exclusive right to determine which persons are entitled to be its nationals. Other countries are required to recognize such determinations.

	<p>renunciation.</p> <p>(b) <u>“Dual National”</u></p> <p>(1) A “dual national” is a natural person who is a national of more than one country. All nationalities of a natural person must be considered for purposes of making licensing determinations or determining eligibility for other authorizations (<i>e.g.</i>, exemptions) under this subchapter.</p> <p>(2) For purposes of this subchapter, a dual national having nationality of a country identified in §126.1 will be presumed to retain that nationality until he or she produces documentation sufficient to establish that he or she:</p> <p>(i) has renounced the nationality of that country or,</p> <p>(ii) in accordance with paragraph (a)(3) above, has taken all steps reasonably within his or her control to renounce the nationality. Such documentation would include an acknowledgement from the foreign government of the renunciation of citizenship or a statement made by the dual national under oath describing all steps taken to renounce his or her nationality.</p> <p>(c) <u>“Third Country National”</u> For purposes of this subchapter, a “third country national” is a natural person who is not a national of the</p>	<ul style="list-style-type: none"> • <i>United States v. Wong Kim Ark</i>, 169 U.S. 649, 668 (1898) (noting “It is the inherent right of every independent nation to determine for itself, and according to its own constitution and laws, what classes or persons shall be entitled to citizenship”) • Hague Convention of Certain Questions Relating to the Conflict of Nationality Laws, Art. 1, Apr. 12, 1930, 179 L.N.T.S. 101 (“It is for each State to determine under its own laws who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.”) (Note: The United States is not a party) <p>3. <u>Expatriation:</u> International and U.S. law clearly recognize that a person has a basic right to renounce his or her nationality (<i>i.e.</i>, the right to expatriation).</p> <ul style="list-style-type: none"> • Universal Declaration of Human Rights, Art. 15(2), G.A. Res. 217A, U.N. Doc. A/810 (1948) (stating that “No one shall be arbitrarily deprived of his nationality or denied the right to change his nationality”) • American Convention on Human Rights, Art. 20(3), Nov. 22, 1969, O.A.S. T.S.
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	<p>country or countries to which the export of defense articles, technical data or defense services are authorized, either via a license, Agreement under Part 124 of this subchapter, or an exemption.</p>	<p>No. 36 (“No one shall be arbitrarily deprived of his nationality or the right to change it.”)</p> <ul style="list-style-type: none"> • Restatement (Third) of the Foreign Relations Law of the U.S., § 211, Comment d (noting “For a state to impose its nationality on a person against his will, or to insist on a nationality that the individual has renounced, may violate international law”) • A U.S. law enacted in July 1868 (<i>i.e.</i>, the Act Concerning the Rights of American Citizens in Foreign States) stated: “Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the
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		<p>right of expatriation, is declared inconsistent with the fundamental principles of the Republic.” Rev. Stat. § 1999, 15 Stat. 223 <i>reprinted in part in</i> note to 8 USC § 1481.</p> <ul style="list-style-type: none"> • <i>Afroyim v. Rusk</i>, 387 U.S. 253 (1967) (recognizing the right to voluntarily relinquish citizenship); <p>4. Country of birth is <i>not</i> a reliable surrogate for determining nationality. According to the survey of citizenship laws conducted by the U.S. Office of Personnel Management in 2001, of 43 of 184 countries surveyed use place of birth to determine citizenship rights. <i>See</i> http://www.opm.gov/EXTRA/INVESTIGAT E/is-01.PDF</p> <p>5. The proposed definitions set forth above retain the “long standing” (according to DDTTC) policy of considering each nationality of a foreign person when making a licensing determination. However, it improves upon the current policy as follows:</p> <ul style="list-style-type: none"> • Eliminates the ambiguous distinction between “nationality” and “citizenship” and provides a bright line that nationality (as defined under foreign country laws) is the factor used to determine the country or countries of which a person is a national. • Eliminates the generally understood
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		<p>policy that “country of birth” automatically determines nationality, which is not accurate for most countries and is, arguably, a violation of international law.</p> <ul style="list-style-type: none">• Takes into account concerns expressed by DDTC regarding nationals of ITAR § 126.1 countries and requires nationals of such countries to take affirmative steps to document their renunciation of such nationalities.
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§120.XX Platform.

Current Definition	Proposed Change	Rationale/Comments
Not currently defined.	An upper-level system assembly typically referred to as a vehicle or stationary system (e.g., aircraft, vessel, land vehicle, spacecraft, satellite, ground station, etc.)	Add definition to ITAR Part 120.

§120.XX Software

Current Definition	Proposed Change	Rationale/Comments
<p>Not currently defined except in §121.8(f): “Software includes but is not limited to the system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis and repair....”</p>	<p>Is a collection of one or more programs fixed in any tangible medium of expression when formatted or modified to machine readable form (i.e. object code) allows the application to function or operate. It is typically a collection of computer programs, procedures and documentation that performs tasks on a computer system. For purposes of this definition “program” is a sequence of instructions to carry out a process in, or convertible into, a form executable by a computer.</p> <p>(a) “Software documentation” is the human-readable information within software routines (e.g., algorithms) that when utilized allows the computer processor to interpret instructions on how to execute the application.</p> <p>(b) Object code or object files are an organized collection of objects or sequences of microprocessor instructions in machine code format. Object code or files are typically produced by a compiler resulting from the processing of a source code file.</p> <p>(c) Source code is any collection of statements written in some human-readable computer</p>	<p>A more comprehensive definition of the various elements that comprise “software” is recommended. This new definition is consistent with that used under the EAR and hence will provide a more common understanding.</p> <p>Consideration should also be given to defining additional subsets such as: embedded data; electronic databases; software control/environment, software interfaces and proactive software.</p> <p>Note: This definition of “software” is one of two submitted for DDTC’s consideration. The second proposed definition (found in Addendum) is Vice-Chair Sevier’s version, whereas this one was written by the Working Group’s team leads.</p>

Current Definition	Proposed Change	Rationale/Comments
	<p>programming language. It allows the programmer to communicate with the computer. A compiler or processor interprets the source code into object code.</p> <p>Note: Often, software used by industry and government is controlled under the EAR. The source code, developed for the specific operation of a defense article is typically limited for export [by way of provisos and limitations] for release for defense articles which include embedded software.</p>	

§120.XX Space-Qualified.

Current Definition	Proposed Change	Rationale
Not currently defined. Proposed definition taken directly from EAR.	The term " <i>space qualified</i> " refers to products that are designed, manufactured and tested to meet the special electrical, mechanical or environmental requirements for use in the launch and deployment of satellites or high-altitude flight systems operating at altitudes of 100 km or higher.	Add definition to ITAR Part 120.

§120.XX Specially designed.

Current Definition	Proposed Change	Rationale/Comments/ Comments
<p>Not currently defined in Part 120. The MTCR defines “specially designed” as follows: “describes equipment, parts, components or “software” which, as a result of “development”, have unique properties that distinguish them for certain predetermined purposes. For example, a piece of equipment that is “specially designed” for use in a missile will only be considered so if it has no other function or use. Similarly, a piece of manufacturing equipment that is “specially designed” to produce a certain type of component will only be considered such if it is not capable of producing other types of components.”</p> <p>EAR uses the MTCR definition in the EAR list of Definitions (EAR Part 772).</p>	<p>“Specially designed” means a defense article that has a unique property or properties that distinguish the article for military purposes and that the article has no function other than for a military purpose. For example, a part or component that is “specially designed” for use in a missile will only be considered to be “specially designed” if it has no other function. Manufacturing tooling that is designed to produce a certain defense article will be considered as “specially designed” to produce that defense article only if it is not capable of producing other types of articles.</p>	<p>The two terms: “Specifically designed” and “Specially designed” appear to be used interchangeably with no intention of carrying a different meaning. The Working Group proposes “Specially designed” be used throughout the ITAR for consistency. Note this term will need to replace “Specifically designed” where ever it currently is used in the ITAR. <i>An example of “specifically designed” applies in many cases to production “tooling, jigs and fixtures” which may be materials provided under MLAs or TAAs in “offset” programs.</i></p>

§120.XX Sublicensing

Current Definition	Proposed Change	Rationale/ Comments
None	As used in Technical Assistance Agreements and Manufacturing License Agreements, <i>sublicensing</i> is the authorized retransfer or reexport of U.S. origin defense articles (including technical data) to a third party that is not a signatory to the Technical Assistance Agreement or Manufacturing License Agreement, but whose participation based on the scope of the authorization and work-share requirements, is essential to fulfilling the objectives of the authorization.	The DTAG Working Group proposes removing the term “defense services” for clarification purposes as a US applicant cannot provide defense services to sub-licensee.

§120.XX United States Munitions Import List

Current Definition	Proposed Change	Rationale/ Comments
None, although mentioned in §120.5. Proposed definition from 27 CFR part 447.	<i>The United States Munitions Import List (USMIL)</i> , 27 CFR Part 447.21, designates those articles subject to controls under 27 CFR Part 447 on permanent importation of arms, ammunition and implements of war administered by the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. USMIL articles subject to controls under 27 CFR Part 447, 27 CFR Part 478 on commerce in firearms and ammunition, or 27 CFR 479 on machine guns, destructive devices, and certain other firearms, are subject to the import permit procedures of those regulations.	Add definition to ITAR Part 120.

§120.XX U.S Origin

Current Definition	Proposed Change	Rationale/Comments
Not currently defined, but term used in the following ITAR sections: 123.9(e)(1)-(2) (“U.S.-origin components...”); 124.2(c)(1) (“U.S.-origin defense articles lawfully exported...”); 124.13(b) (“The technical data of U.S.-origin to be used in the foreign manufacture of defense articles...”); 124.15(c) (“U.S.-origin satellites...”); 127.1(a)(1) (“...any U.S.-origin defense article or technical data...”).	The term <i>U.S.-origin</i> , when used in reference to a defense article, means an article that is designed, developed, produced, manufactured or generated in the United States. The term <i>U.S.-origin</i> , when used in reference to a defense service, means a service that is furnished by a U.S. person.	Add definition to ITAR Part 120.

Addendum

§120.XX Software: Proposed Definition by Vice-Chair Sevier

Proposed Change	Notes
<p>(a) <i>“Software program definition data”</i> –the total software program documentation package which includes high level requirements definition (e.g. Mil-Standard required items, etc.), test requirements, source code documentation, COTS and commercial definitional data and data structure listings and other pertinent software operation and maintenance information.</p> <p>(b) <i>“Software”</i> – for this regulation, it is defined as an installed program, in machine readable form (object code), that allows processor based equipment to function as they are originally intended to (e.g. complied/linked binary executables, execution scripts, configuration files, etc.)</p> <p>(c) <i>“Source code documentation”</i> – human readable documentation of the software routines (algorithms) that are combined to provide the computer processor instructions on how to execute the equipment program. It is a “point-in-time” set of instruction (good for the initial specified functions, only) that guides the functions of the hardware system. If there is a need to modify the system functions or hardware, the existing “source code documentation” would be the starting point for modification, test, trouble shooting, and compiling of a new object code program.</p> <p>(d) <i>“Compiler”</i> - a language standard (source code standard, e.g. Ada, C++, etc.) COTS software tool that interprets source code into object code.</p> <p>(e) <i>“Object code”</i> – machine readable form of the original source, e.g. the executable program(s).</p> <p>(f) <i>“Linker”</i> – a COTS software tool that creates the executable program(s) for the system computer.</p> <p>(g) <i>“Special function data tables/software modules”</i> – such data tables or data definition may include unclassified or classified comparative information for certain defensive or offensive subsystem use, special operational tracking routines, and/or specific employment techniques for equipment of weapons. They may be embedded in the modular software or read at system initialization and may require specific handling on a case-by-case basis (configuration data – e.g. data files XML, COTS software or applications, etc.).</p> <p>(h) <i>“Test/Analysis software”</i> – tools that support testing of analysis of software for development, testing, and/or verification. These include simulations, computer models used to verify software operation.</p>	<p>The present terminology in the ITAR is a product of the understanding of software architecture (legacy software) and the defense industry development practices that were valid in the 1980s and 1990s (such software was very linear in architecture). Modern weapon system software architecture (now quite modular in structure) and development practices have changed significantly in the intervening years. Using the Air Force and Navy’s Joint Strike Fighter and the Navy’s P-8 programs as examples, the mission system software for both is very modular in structure and uses a number of different processors in their hardware architecture. Additionally, the software incorporates a significant amount of commercial off the shelf (COTS) software and</p>

Proposed Change	Notes
	<p>commercial definitional data and data structures (e.g. XML files, JAVA, etc.). This COTS/Commercial software/data is merged with the system object code at system start up. It is used for cost saving (development time) purposes and is possible because of the significant advances in processor capacity (through put speed and storage).</p> <p><i>The problem with the DTAG team's proposed language for "software documentation" is that it is incomplete and really just a restatement of the definition for "source code". Software Documentation will include "source code" and also include a printed (or other medium) copy of the "object code", but it primarily included the planning, architecture, and other pertinent software program design information.</i></p> <p><i>Additionally, as the modern process of large scale software design/creation includes large quantities of COTS software</i></p>

Proposed Change	Notes
	<p><i>available as a "free" good from various sources detailed above. The reason that it is important that this is noted is that it comes from the Public Domain and is used in its original form. Thus, the requirement needs to be on the government reviewer to specify any specific items, or areas in the programs source code that need not to be released, or that need special protection.</i></p>

Current ITAR definitions

The following terms, currently defined throughout the ITAR, should be moved to §120:

Current Definition	Notes
<p><i>Accessories and attachments</i> are associated equipment for any component, end-item, or system, and which are not necessary for their operation, but which enhance their usefulness or effectiveness. (Examples: Military riflescopes, special paints, etc.) (§121.8(c))</p>	
<p>A <i>component</i> is an item which is useful only when used in conjunction with an end-item. A major component includes any assembled element which forms a portion of an end-item without which the end-item is inoperable. (Example airframes, tail sections, transmissions, tank treads, hulls, etc.) A minor component includes any assembled element of a major component.</p>	

Current Definition	Notes
<p>(§121.8(b))</p>	
<p>An <i>end-item</i> is an assembled article ready for its intended use. Only ammunition, fuel or another energy source is required to place it in an operating state. (§121.8(a))</p>	
<p><i>Firmware</i> and any related unique support tools (such as computers, linkers, editors, test case generators, diagnostic checkers, library of functions and system test diagnostics) specifically designed for equipment or systems covered under any category of the U.S. Munitions List are considered as part of the end-item or component. <i>Firmware</i> includes but is not limited to circuits into which software has been programmed. (§121.8(e))</p>	
<p><i>Forgings, castings and machined bodies</i> Articles on the U.S. Munitions List include articles in a partially completed state (such as forgings, castings, extrusions and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the U.S. Munitions List (including components, accessories, attachments and parts as defined in §121.8), then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of this subchapter, except for such items as are in normal commercial use. (§121.10)</p>	
<p>A <i>part</i> is any single unassembled element of a major or a minor component, accessory, or attachment which is not normally subject to disassembly without the destruction or the impairment of design use. (Examples: Rivets, wire, bolts, etc.) (§121.8(d))</p>	
<p>A <i>system</i> is a combination of end-items, components, parts, accessories, attachments, firmware or software, specifically designed, modified or adapted to operate together to perform a specialized military function. (§121.8(f))</p>	

