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Chapter 32—National Defense

sultants shall execute an agreement never to reveal any classified information obtained by virtue of his or her service with the Board except to the President or to such persons as the President may designate.

SEC. 6. Members of the Board shall serve without compensation, but may receive transportation, expense, and per diem allowances as authorized by law. Staff and consultants to the Board shall receive pay and allowances as authorized by the President.

Executive Order 12333—United States intelligence activities

SOURCE: The provisions of Executive Order 12333 of Dec. 4, 1981, appear at 46 FR 59941, 3 CFR, 1981 Comp., p. 200, unless otherwise noted.

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Timely and accurate information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence available. For that purpose, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the National Security Act of 1947, as amended, and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

PART 1

Goals, Direction, Duties and Responsibilities With Respect to the National Intelligence Effort

1.1 *Goals.* The United States intelligence effort shall provide the President and the National Security Council with the necessary information on which to base decisions concerning the conduct and development of foreign, defense and economic policy, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

(a) Maximum emphasis should be given to fostering analytical competition among appropriate elements of the Intelligence Community.

(b) All means, consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, shall be used to develop intelligence information for the President and the National Security Council. A balanced approach between technical collection efforts and other means should be maintained and encouraged.

(c) Special emphasis should be given to detecting and countering espionage and other threats and activities directed by foreign intelligence services against the United States Government, or United States corporations, establishments, or persons.

(d) To the greatest extent possible consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, all agencies and departments should seek to ensure full and free exchange of information in order to derive maximum benefit from the United States intelligence effort.

1.2 The National Security Council.

(a) *Purpose.* The National Security Council (NSC) was established by the National Security Act of 1947 to advise the President with respect to the integration of domestic, foreign and military policies relating to the national security. The NSC shall act as the highest Executive Branch entity that provides review of, guidance for and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs.

(b) *Committees.* The NSC shall establish such committees as may be necessary to carry out its functions and responsibilities under this Order. The NSC, or a committee established by it, shall consider and submit to the President a policy recommendation, including all dissents,

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on each special activity and shall review proposals for other sensitive intelligence operations.

1.3 *National Foreign Intelligence Advisory Groups.*

(a) *Establishment and Duties.* The Director of Central Intelligence shall establish such boards, councils, or groups as required for the purpose of obtaining advice from within the Intelligence Community concerning:

- (1) Production, review and coordination of national foreign intelligence;
- (2) Priorities for the National Foreign Intelligence Program budget;
- (3) Interagency exchanges of foreign intelligence information;
- (4) Arrangements with foreign governments on intelligence matters;
- (5) Protection of intelligence sources and methods;
- (6) Activities of common concern; and
- (7) Such other matters as may be referred by the Director of Central Intelligence.

(b) *Membership.* Advisory groups established pursuant to this section shall be chaired by the Director of Central Intelligence or his designated representative and shall consist of senior representatives from organizations within the Intelligence Community and from departments or agencies containing such organizations, as designated by the Director of Central Intelligence. Groups for consideration of substantive intelligence matters will include representatives of organizations involved in the collection, processing and analysis of intelligence. A senior representative of the Secretary of Commerce, the Attorney General, the Assistant to the President for National Security Affairs, and the Office of the Secretary of Defense shall be invited to participate in any group which deals with other than substantive intelligence matters.

1.4 *The Intelligence Community.* The agencies within the Intelligence Community shall, in accordance with applicable United States law and with the other provisions of this Order, conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States, including:

(a) Collection of information needed by the President, the National Security Council, the Secretaries of State and Defense, and other Executive Branch officials for the performance of their duties and responsibilities;

(b) Production and dissemination of intelligence;

(c) Collection of information concerning, and the conduct of activities to protect against, intelligence activities directed against the United States, international terrorist and international narcotics activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents;

(d) Special activities;

(e) Administrative and support activities within the United States and abroad necessary for the performance of authorized activities; and

(f) Such other intelligence activities as the President may direct from time to time.

1.5 *Director of Central Intelligence.* In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the President and the NSC and shall:

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(a) Act as the primary adviser to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;

(b) Develop such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence;

(c) Promote the development and maintenance of services of common concern by designated intelligence organizations on behalf of the Intelligence Community;

(d) Ensure implementation of special activities;

(e) Formulate policies concerning foreign intelligence and counterintelligence arrangements with foreign governments, coordinate foreign intelligence and counterintelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments, and establish procedures governing the conduct of liaison by any department or agency with such services on narcotics activities;

(f) Participate in the development of procedures approved by the Attorney General governing criminal narcotics intelligence activities abroad to ensure that these activities are consistent with foreign intelligence programs;

(g) Ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information, and products;

(h) Ensure that programs are developed which protect intelligence sources, methods, and analytical procedures;

(i) Establish uniform criteria for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;

(j) Establish appropriate staffs, committees, or other advisory groups to assist in the execution of the Director's responsibilities;

(k) Have full responsibility for production and dissemination of national foreign intelligence, and authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations, ensuring that appropriate mechanisms for competitive analysis are developed so that diverse points of view are considered fully and differences of judgment within the Intelligence Community are brought to the attention of national policymakers;

(l) Ensure the timely exploitation and dissemination of data gathered by national foreign intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate government entities and military commands;

(m) Establish mechanisms which translate national foreign intelligence objectives and priorities approved by the NSC into specific guidance for the Intelligence Community, resolve conflicts in tasking priority, provide to departments and agencies having information collection capabilities that are not part of the National Foreign Intelligence Program advisory tasking concerning collection of national foreign intelligence, and provide for the development of plans and arrangements for transfer of required collection tasking authority to the Secretary of Defense when directed by the President;

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(n) Develop, with the advice of the program managers and departments and agencies concerned, the consolidated National Foreign Intelligence Program budget, and present it to the President and the Congress;

(o) Review and approve all requests for reprogramming National Foreign Intelligence Program funds, in accordance with guidelines established by the Office of Management and Budget;

(p) Monitor National Foreign Intelligence Program implementation, and, as necessary, conduct program and performance audits and evaluations;

(q) Together with the Secretary of Defense, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs consistent with the requirement to develop competitive analysis, and provide to and obtain from the Secretary of Defense all information necessary for this purpose;

(r) In accordance with law and relevant procedures approved by the Attorney General under this Order, give the heads of the departments and agencies access to all intelligence, developed by the CIA or the staff elements of the Director of Central Intelligence, relevant to the national intelligence needs of the departments and agencies; and

(s) Facilitate the use of national foreign intelligence products by Congress in a secure manner.

1.6 Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies.

(a) The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant procedures approved by the Attorney General under this Order, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States, and shall give due consideration to the requests from the Director of Central Intelligence for appropriate support for Intelligence Community activities.

(b) The heads of departments and agencies involved in the National Foreign Intelligence Program shall ensure timely development and submission to the Director of Central Intelligence by the program managers and heads of component activities of proposed national programs and budgets in the format designated by the Director of Central Intelligence, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities.

(c) The heads of departments and agencies involved in the National Foreign Intelligence Program may appeal to the President decisions by the Director of Central Intelligence on budget or reprogramming matters of the National Foreign Intelligence Program.

1.7 Senior Officials of the Intelligence Community. The heads of departments and agencies with organizations in the Intelligence Community or the heads of such organizations, as appropriate, shall:

(a) Report to the Attorney General possible violations of federal criminal laws by employees and of specified federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a

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manner consistent with the protection of intelligence sources and methods, as specified in those procedures;

(b) In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;

(c) Furnish the Director of Central Intelligence and the NSC, in accordance with applicable law and procedures approved by the Attorney General under this Order, the information required for the performance of their respective duties;

(d) Report to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed, concerning any intelligence activities of their organizations that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive;

(e) Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the Director of Central Intelligence;

(f) Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;

(g) Participate in the development of procedures approved by the Attorney General governing production and dissemination of intelligence resulting from criminal narcotics intelligence activities abroad if their departments, agencies, or organizations have intelligence responsibilities for foreign or domestic narcotics production and trafficking;

(h) Instruct their employees to cooperate fully with the Intelligence Oversight Board; and

(i) Ensure that the Inspectors General and General Counsels for their organizations have access to any information necessary to perform their duties assigned by this Order.

1.8 *The Central Intelligence Agency.* All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by this Order; the National Security Act of 1947, as amended; the CIA Act of 1949, as amended; appropriate directives or other applicable law, the CIA shall:

(a) Collect, produce and disseminate foreign intelligence and counterintelligence, including information not otherwise obtainable. The collection of foreign intelligence or counterintelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(b) Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

(c) Conduct counterintelligence activities outside the United States and, without assuming or performing any internal security functions, conduct counterintelligence activities within the United States in coordination with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(d) Coordinate counterintelligence activities and the collection of information not otherwise obtainable when conducted outside the United States by other departments and agencies;

(e) Conduct special activities approved by the President. No agency except the CIA (or the Armed Forces of the United States in time of

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war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 855)¹) may conduct any special activity unless the President determines that another agency is more likely to achieve a particular objective;

(f) Conduct services of common concern for the Intelligence Community as directed by the NSC;

(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

(h) Protect the security of its installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary; and

(i) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (h) above, including procurement and essential cover and proprietary arrangements.

1.9 *The Department of State.* The Secretary of State shall:

(a) Overtly collect information relevant to United States foreign policy concerns;

(b) Produce and disseminate foreign intelligence relating to United States foreign policy as required for the execution of the Secretary's responsibilities;

(c) Disseminate, as appropriate, reports received from United States diplomatic and consular posts;

(d) Transmit reporting requirements of the Intelligence Community to the Chiefs of United States Missions abroad; and

(e) Support Chiefs of Missions in discharging their statutory responsibilities for direction and coordination of mission activities.

1.10 *The Department of the Treasury.* The Secretary of the Treasury shall:

(a) Overtly collect foreign financial and monetary information;

(b) Participate with the Department of State in the overt collection of general foreign economic information;

(c) Produce and disseminate foreign intelligence relating to United States economic policy as required for the execution of the Secretary's responsibilities; and

(d) Conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President of the United States, the Executive Office of the President, and, as authorized by the Secretary of the Treasury or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against such surveillance, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of the Treasury and the Attorney General.

1.11 *The Department of Defense.* The Secretary of Defense shall:

(a) Collect national foreign intelligence and be responsive to collection tasking by the Director of Central Intelligence;

¹ EDITORIAL NOTE: The correct citation is (87 Stat. 555).

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- (b) Collect, produce and disseminate military and military-related foreign intelligence and counterintelligence as required for execution of the Secretary's responsibilities;
 - (c) Conduct programs and missions necessary to fulfill national, departmental and tactical foreign intelligence requirements;
 - (d) Conduct counterintelligence activities in support of Department of Defense components outside the United States in coordination with the CIA, and within the United States in coordination with the FBI pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General;
 - (e) Conduct, as the executive agent of the United States Government, signals intelligence and communications security activities, except as otherwise directed by the NSC;
 - (f) Provide for the timely transmission of critical intelligence, as defined by the Director of Central Intelligence, within the United States Government;
 - (g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized intelligence functions;
 - (h) Protect the security of Department of Defense installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Department of Defense as are necessary;
 - (i) Establish and maintain military intelligence relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations, and ensure that such relationships and programs are in accordance with policies formulated by the Director of Central Intelligence;
 - (j) Direct, operate, control and provide fiscal management for the National Security Agency and for defense and military intelligence and national reconnaissance entities; and
 - (k) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (j) above.
- 1.12 *Intelligence Components Utilized by the Secretary of Defense.* In carrying out the responsibilities assigned in section 1.11, the Secretary of Defense is authorized to utilize the following:
- (a) *Defense Intelligence Agency*, whose responsibilities shall include:
 - (1) Collection, production, or, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs of Staff, other Defense components, and, as appropriate, non-Defense agencies;
 - (2) Collection and provision of military intelligence for national foreign intelligence and counterintelligence products;
 - (3) Coordination of all Department of Defense intelligence collection requirements;
 - (4) Management of the Defense Attache system; and
 - (5) Provision of foreign intelligence and counterintelligence staff support as directed by the Joint Chiefs of Staff.
 - (b) *National Security Agency*, whose responsibilities shall include:
 - (1) Establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operation-

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al control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense;

(2) Control of signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;

(3) Collection of signals intelligence information for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(4) Processing of signals intelligence data for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(5) Dissemination of signals intelligence information for national foreign intelligence purposes to authorized elements of the Government, including the military services, in accordance with guidance from the Director of Central Intelligence;

(6) Collection, processing and dissemination of signals intelligence information for counterintelligence purposes;

(7) Provision of signals intelligence support for the conduct of military operations in accordance with tasking, priorities, and standards of timeliness assigned by the Secretary of Defense. If provision of such support requires use of national collection systems, these systems will be tasked within existing guidance from the Director of Central Intelligence;

(8) Executing the responsibilities of the Secretary of Defense as executive agent for the communications security of the United States Government;

(9) Conduct of research and development to meet the needs of the United States for signals intelligence and communications security;

(10) Protection of the security of its installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the NSA as are necessary;

(11) Prescribing, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the NSA, and exercising the necessary supervisory control to ensure compliance with the regulations;

(12) Conduct of foreign cryptologic liaison relationships, with liaison for intelligence purposes conducted in accordance with policies formulated by the Director of Central Intelligence; and

(13) Conduct of such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (1) through (12) above, including procurement.

(c) *Offices for the collection of specialized intelligence through reconnaissance programs*, whose responsibilities shall include:

(1) Carrying out consolidated reconnaissance programs for specialized intelligence;

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(2) Responding to tasking in accordance with procedures established by the Director of Central Intelligence; and

(3) Delegating authority to the various departments and agencies for research, development, procurement, and operation of designated means of collection.

(d) *The foreign intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps*, whose responsibilities shall include:

(1) Collection, production and dissemination of military and military-related foreign intelligence and counterintelligence, and information on the foreign aspects of narcotics production and trafficking. When collection is conducted in response to national foreign intelligence requirements, it will be conducted in accordance with guidance from the Director of Central Intelligence. Collection of national foreign intelligence, not otherwise obtainable, outside the United States shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;

(2) Conduct of counterintelligence activities outside the United States in coordination with the CIA, and within the United States in coordination with the FBI; and

(3) Monitoring of the development, procurement and management of tactical intelligence systems and equipment and conducting related research, development, and test and evaluation activities.

(e) *Other offices within the Department of Defense appropriate for conduct of the intelligence missions and responsibilities assigned to the Secretary of Defense*. If such other offices are used for intelligence purposes, the provisions of Part 2 of this Order shall apply to those offices when used for those purposes.

1.13 *The Department of Energy*. The Secretary of Energy shall:

(a) Participate with the Department of State in overtly collecting information with respect to foreign energy matters;

(b) Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities;

(c) Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

(d) Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

1.14 *The Federal Bureau of Investigation*. Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall:

(a) Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;

(b) Conduct counterintelligence activities outside the United States in coordination with the CIA as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(c) Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Com-

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munity, or, when requested by the Director of the National Security Agency, to support the communications security activities of the United States Government;

(d) Produce and disseminate foreign intelligence and counterintelligence; and

(e) Carry out or contract for research, development and procurement of technical systems and devices relating to the functions authorized above.

PART 2

Conduct of Intelligence Activities

2.1 *Need.* Accurate and timely information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decisionmaking in the areas of national defense and foreign relations. Collection of such information is a priority objective and will be pursued in a vigorous, innovative and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

2.2 *Purpose.* This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers. Set forth below are certain general principles that, in addition to and consistent with applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

2.3 *Collection of Information.* Agencies within the Intelligence Community are authorized to collect, retain or disseminate information concerning United States persons only in accordance with procedures established by the head of the agency concerned and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order. Those procedures shall permit collection, retention and dissemination of the following types of information:

(a) Information that is publicly available or collected with the consent of the person concerned;

(b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the FBI or, when significant foreign intelligence is sought, by other authorized agencies of the Intelligence Community, provided that no foreign intelligence collection by such agencies may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons;

(c) Information obtained in the course of a lawful foreign intelligence, counterintelligence, international narcotics or international terrorism investigation;

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(d) Information needed to protect the safety of any persons or organizations, including those who are targets, victims or hostages of international terrorist organizations;

(e) Information needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure. Collection within the United States shall be undertaken by the FBI except that other agencies of the Intelligence Community may also collect such information concerning present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting;

(f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;

(g) Information arising out of a lawful personnel, physical or communications security investigation;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Incidentally obtained information that may indicate involvement in activities that may violate federal, state, local or foreign laws; and

(j) Information necessary for administrative purposes.

In addition, agencies within the Intelligence Community may disseminate information, other than information derived from signals intelligence, to each appropriate agency within the Intelligence Community for purposes of allowing the recipient agency to determine whether the information is relevant to its responsibilities and can be retained by it.

2.4 Collection Techniques. Agencies within the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Agencies are not authorized to use such techniques as electronic surveillance, unconsented physical search, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:

(a) The CIA to engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance;

(b) Unconsented physical searches in the United States by agencies other than the FBI, except for:

(1) Searches by counterintelligence elements of the military services directed against military personnel within the United States or abroad for intelligence purposes, when authorized by a military commander empowered to approve physical searches for law enforcement purposes, based upon a finding of probable cause to believe that such persons are acting as agents of foreign powers; and

(2) Searches by CIA of personal property of non-United States persons lawfully in its possession.

(c) Physical surveillance of a United States person in the United States by agencies other than the FBI, except for:

(1) Physical surveillance of present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting; and

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(2) Physical surveillance of a military person employed by a nonintelligence element of a military service.

(d) Physical surveillance of a United States person abroad to collect foreign intelligence, except to obtain significant information that cannot reasonably be acquired by other means.

2.5 Attorney General Approval. The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such techniques shall not be undertaken unless the Attorney General has determined in each case that there is probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power. Electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order.

2.6 Assistance to Law Enforcement Authorities. Agencies within the Intelligence Community are authorized to:

(a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employees, information, property and facilities of any agency within the Intelligence Community;

(b) Unless otherwise precluded by law or this Order, participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities;

(c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the General Counsel of the providing agency; and

(d) Render any other assistance and cooperation to law enforcement authorities not precluded by applicable law.

2.7 Contracting. Agencies within the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with private companies or institutions in the United States and need not reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes. Contracts or arrangements with academic institutions may be undertaken only with the consent of appropriate officials of the institution.

2.8 Consistency With Other Laws. Nothing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.

2.9 Undisclosed Participation in Organizations Within the United States. No one acting on behalf of agencies within the Intelligence Community may join or otherwise participate in any organization in the United States on behalf of any agency within the Intelligence Community without disclosing his intelligence affiliation to appropriate officials of the organization, except in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such participation shall be authorized only if it is essential to achieving lawful purposes as determined by the agency head or designee. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members except in cases where:

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(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation; or

(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power.

2.10 *Human Experimentation.* No agency within the Intelligence Community shall sponsor, contract for or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The subject's informed consent shall be documented as required by those guidelines.

2.11 *Prohibition on Assassination.* No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2.12 *Indirect Participation.* No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.

PART 3

General Provisions

3.1 *Congressional Oversight.* The duties and responsibilities of the Director of Central Intelligence and the heads of other departments, agencies, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be as provided in title 50, United States Code, section 413. The requirements of section 662 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2422), and section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413), shall apply to all special activities as defined in this Order.

3.2 *Implementation.* The NSC, the Secretary of Defense, the Attorney General, and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order. The Attorney General shall provide a statement of reasons for not approving any procedures established by the head of an agency in the Intelligence Community other than the FBI. The National Security Council may establish procedures in instances where the agency head and the Attorney General are unable to reach agreement on other than constitutional or other legal grounds.

3.3 *Procedures.* Until the procedures required by this Order have been established, the activities herein authorized which require procedures shall be conducted in accordance with existing procedures or requirements established under Executive Order No. 12036. Procedures required by this Order shall be established as expeditiously as possible. All procedures promulgated pursuant to this Order shall be made available to the congressional intelligence committees.

3.4 *Definitions.* For the purposes of this Order, the following terms shall have these meanings:

(a) *Counterintelligence* means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not in-

Chapter 32—National Defense

cluding personnel, physical, document or communications security programs.

(b) *Electronic surveillance* means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

(c) *Employee* means a person employed by, assigned to or acting for an agency within the Intelligence Community.

(d) *Foreign intelligence* means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

(e) *Intelligence activities* means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to this Order.

(f) *Intelligence Community and agencies within the Intelligence Community* refer to the following agencies or organizations:

- (1) The Central Intelligence Agency (CIA);
- (2) The National Security Agency (NSA);
- (3) The Defense Intelligence Agency (DIA);
- (4) The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
- (5) The Bureau of Intelligence and Research of the Department of State;
- (6) The intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and
- (7) The staff elements of the Director of Central Intelligence.

(g) *The National Foreign Intelligence Program* includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President:

- (1) The programs of the CIA;
- (2) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance, except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;
- (3) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;
- (4) Activities of the staff elements of the Director of Central Intelligence;
- (5) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

(h) *Special activities* means activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or ac-

Codification of Presidential Proclamations and Executive Orders

knowledge publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions.

(i) *United States person* means a United States citizen, an alien known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

3.5 *Purpose and Effect.* This Order is intended to control and provide direction and guidance to the Intelligence Community. Nothing contained herein or in any procedures promulgated hereunder is intended to confer any substantive or procedural right or privilege on any person or organization.

3.6 *Revocation.* Executive Order No. 12036 of January 24, 1978, as amended, entitled "United States Intelligence Activities," is revoked.

Executive Order 12334—President's Intelligence Oversight Board

SOURCE: The provisions of Executive Order 12334 of Dec. 4, 1981, appear at 46 FR 59955, 3 CFR, 1981 Comp., p. 216, unless otherwise noted.

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to enhance the security of the United States by assuring the legality of activities of the Intelligence Community, it is hereby ordered as follows:

SECTION 1. There is hereby established within the White House Office, Executive Office of the President, the President's Intelligence Oversight Board, which shall be composed of three members. One member, appointed from among the membership of the President's Foreign Intelligence Advisory Board, shall be designated by the President as Chairman. Members of the Board shall serve at the pleasure of the President and shall be appointed by the President from among trustworthy and distinguished citizens outside the Government who are qualified on the basis of achievement, experience and independence. The Board shall utilize such full-time staff and consultants as authorized by the President.

SEC. 2. The Board shall:

(a) Inform the President of intelligence activities that any member of the Board believes are in violation of the Constitution or laws of the United States, Executive orders, or Presidential directives;

(b) Forward to the Attorney General reports received concerning intelligence activities that the Board believes may be unlawful;

(c) Review the internal guidelines of each agency within the Intelligence Community concerning the lawfulness of intelligence activities;

(d) Review the practices and procedures of the Inspectors General and General Counsel of the Intelligence Community for discovering and reporting intelligence activities that may be unlawful or contrary to Executive order or Presidential directive; and

(e) Conduct such investigations as the Board deems necessary to carry out its functions under this Order.

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THE WHITE HOUSE
WASHINGTON

November 7, 1986

NOTE FOR PETER WALLISON

FROM: C. DEAN MCGRATH, JR.

Pursuant to our discussion, please find attached copies of: (1) Section 509 of the Omnibus Terrorism Act, passed August 27, 1986; (2) the Munitions List; (3) 22 U.S.C. 2753(f) which deals with military sales to countries harboring terrorists; and (4) President Carter's Executive Orders dealing with trade with Iran.

According to State, there is no list of terrorist countries. Iran was, however, determined to be such a country in 1984. This finding has been made public and State is tracking down the record of the determination.

Attachments

Signed by the President
August 22, 1986

No effective date provision

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equipment and commodities, and training in the use of such equipment and commodities. The authority contained in this section shall be exercised by the Department of State's office responsible for administering chapter 8 of part II of the Foreign Assistance Act of 1961, in coordination with the Agency for International Development.

SEC. 509. EXPORTS TO COUNTRIES SUPPORTING ACTS OF INTERNATIONAL TERRORISM.

(a) **ITEMS ON THE MUNITIONS LIST.**—Chapter 3 of the Arms Export Control Act (22 U.S.C. 2771-2779) is amended by adding at the end thereof the following new section:

“SEC. 40. EXPORTS TO COUNTRIES SUPPORTING ACTS OF INTERNATIONAL TERRORISM.

“(a) **PROHIBITION.**—Except as provided in subsection (b), items on the United States Munitions List may not be exported to any country which the Secretary of State has determined, for purposes of section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), has repeatedly provided support for acts of international terrorism.

“(b) **WAIVER.**—The President may waive the prohibition contained in subsection (a) in the case of a particular export if the President determines that the export is important to the national interests of the United States and submits to the Congress a report justifying that determination and describing the proposed export. Any such waiver shall expire at the end of 90 days after it is granted unless the Congress enacts a law extending the waiver.”

(b) **OTHER GOODS AND TECHNOLOGY.**—Section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)) is amended by striking out “\$7,000,000” and inserting in lieu thereof “\$1,000,000”.

TITLE VI—INTERNATIONAL NUCLEAR TERRORISM

SEC. 601. ACTIONS TO COMBAT INTERNATIONAL NUCLEAR TERRORISM.

(a) **ACTIONS TO BE TAKEN BY THE PRESIDENT.**—The Congress hereby directs the President—

(1) to seek universal adherence to the Convention on the Physical Protection of Nuclear Material;

(2) to—

(A) conduct a review, enlisting the participation of all relevant departments and agencies of the Government, to determine whether the recommendations on Physical Protection of Nuclear Material published by the International Atomic Energy Agency are adequate to deter theft, sabotage, and the use of nuclear facilities and materials in acts of international terrorism, and

(B) transmit the results of this review to the Director-General of the International Atomic Energy Agency;

(3) to take, in concert with United States allies and other countries, such steps as may be necessary—

(A) to keep to a minimum the amount of weapons-grade nuclear material in international transit, and

(B) to ensure that when any such material is transported internationally, it is under the most effective means for adequately protecting it from acts or attempted acts of sabotage or theft by terrorist groups or nations; and

IRANIAN Determination
was made in 1984.

on 101(a)20, 60 Stat. 163) (i.e., individuals referred to as "immigrant aliens" under previous laws and regulations). It includes foreign corporations (i.e., corporations that are not incorporated in the United States), international organizations, foreign governments, and any agency or subdivision of foreign governments (e.g., diplomatic missions).

§ 120.12 Intransit shipment.

"Intransit shipment" means a temporary import into the United States of a defense article.

Dept. Reg. 108.840, 49 FR 47684, Dec. 6, 1984; 49 FR 48536, Dec. 13, 1984]

§ 120.13 License.

"License" means a document bearing the word "license" which when issued by the Director, Office of Munitions Control, or his authorized designee, permits the export or intransit shipment of a specific defense article, defense service, or technical data.

§ 120.14 Manufacturing license agreement.

An agreement (e.g., contract) whereby a U.S. person grants a foreign person an authorization or a license to manufacture defense articles abroad and which involves or contemplates (a) the export of technical data (as defined in § 120.21) or defense articles or the performance of defense services, or (b) the use by the foreign person of technical data or defense articles previously exported by the U.S. person.

§ 120.15 Office of Munitions Control.

"Office of Munitions Control" means the Office of Munitions Control, Bureau of Politico-Military Affairs, Department of State, Washington, D.C. 20520.

§ 120.16 Person.

"Person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. If a provision in this subchapter does not refer exclusively to a foreign person (§ 120.11) or U.S. person (§ 120.23), then it refers to both.

§ 120.17 Presiding official.

"Presiding official" means a person authorized to conduct hearings in administrative proceedings.

§ 120.18 Public domain.

"Public domain" means information which is published and which is generally accessible or available to the public:

- (a) Through sales at newsstands and bookstores;
- (b) Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;
- (c) Through second class mailing privileges granted by the U.S. Government; or,
- (d) At libraries open to the public.

§ 120.19 Significant military equipment.

(a) "Significant military equipment" means articles, as identified in paragraph (b) of this section, for which special export controls are warranted because of their capacity for substantial military utility or capability.

(b) Articles designated as significant military equipment under the criterion specified in paragraph (a) of this section include all classified articles and the articles enumerated in § 121.1 in Categories I (a) and (c) (in quantity); II (a) and (b); III(a) (excluding ammunition for firearms in Category (I)) and (d); IV (a), (b), (d), (e), (f) and (g); V (a) (in quantity) and (b); VI (a), (b) (inclusive only of turrets and gun mounts, missile systems, and special weapons systems) and (e); VII (a), (b), (c), (e), (f) and (g); VIII (a), (b)(1), (c) and (d), GEMS as defined in (i), and inertial systems as defined in (j); XI (a)(1), (b)(1), (c); XII (a) and (b); XIV (a), (b), (c) and (d); XVI; XVII; and XX (a) and (b).

(c) Items in § 121.1 which are preceded by an asterisk are "significant military equipment."

(d) Section 47(6) of the Arms Export Control Act (22 U.S.C. 2794(6) note) provides a definition of "major defense equipment" and refers to certain significant combat equipment on the U.S. Munitions List. The terms "significant military equipment" and "significant combat equipment" are consid-

ered to be equivalent for purposes of that section of the Arms Export Control Act and this subchapter.

§ 120.20 Technical assistance agreement.

An agreement (e.g., contract) for the performance of defense services or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles.

§ 120.21 Technical data.

"Technical data" means, for purposes of this subchapter:

- (a) Classified information relating to defense articles and defense services;
- (b) Information covered by an invention secrecy order;
- (c) Information which is directly related to the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles. This includes, for example, information in the form of blueprints, drawings, photographs, plans, instructions, computer software and documentation. This also includes information which advances the state of the art of articles on the U.S. Munitions List. This does not include information concerning general scientific, mathematical or engineering principles.

§ 120.22 United States.

"United States", when used in the geographical sense, includes the several States, the Commonwealth of Puerto Rico, the insular possessions of the United States, the District of Columbia, and any territory over which the United States exercises any powers of administration, legislation, and jurisdiction.

§ 120.23 U.S. Person.

"U.S. Person" means a person (§ 120.16) who is a citizen or national of the United States, or a permanent resident of the United States under the Immigration and Nationality Act (8 U.S.C. 1101, section 101(a)20, 60 Stat. 163).

FORMS

§ 120.24 Listing of forms referred to in this subchapter.

The forms referred to in this subchapter are available from the following government agencies:

- (a) *Department of State:*
- (1) Application/License for permanent export of unclassified defense articles and related technical data (Form DSP-5).
 - (2) Application for registration (Form DSP-9).
 - (3) Application/License for temporary import of unclassified defense articles (Form DSP-61).
 - (4) Application/License for temporary export of unclassified defense articles (Form DSP-73).
 - (5) Nontransfer and use certificate (Form DSP-83).
 - (6) Application/License for permanent/temporary export or temporary import of classified defense articles and related classified technical data (Form DSP-85).
 - (7) Authority to Export Defense Articles and Defense Services sold under the Foreign Military Sales program (Form DSP-94).
- (b) *Department of Commerce:*
- (1) International Import Certificate (Form ITA-645P/ATF-4522/DSP-53).
 - (2) Shipper's export declaration (Form No. 7525-V).
- (c) *Department of Defense:*
- Offer and acceptance (DD Form 1513).

[Dept. Reg. 108.840, 49 FR 47684, Dec. 6, 1984; Dept. Reg. 108.841, 50 FR 12787, Apr. 1, 1985]

PART 121—THE UNITED STATES MUNITIONS LIST

ENUMERATION OF ARTICLES

- Sec.
- 121.1 General. The United States Munitions List.
 - 121.2 Interpretations of the United States Munitions List.
 - 121.3 Aircraft and related articles.
 - 121.4 Amphibious vehicles.
 - 121.5 Apparatus and devices under Category IV(c).
 - 121.6 Cartridge and shell casings.
 - 121.7 Chemical agents.

- Sec.
121.8 End-items, components, accessories, attachments, parts, firmware, software and systems.
121.9 Firearms.
121.10 Forgings, castings and machined bodies.
121.11 Military demolition blocks and blasting caps.
121.12 Military explosives.
121.13 Military fuel thickeners.
121.14 Propellants.
121.15 Vessels of war and special naval equipment.

AUTHORITY: Sec. 38, Arms Export Control Act, 96 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.
SOURCE: Dept. Reg. 108.840, 49 FR 47686, Dec. 6, 1984, unless otherwise noted.

ENUMERATION OF ARTICLES

§ 121.1 General. The United States Munitions List.

- (a) The following articles, services and related technical data are designated as defense articles and defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act (22 U.S.C. 2778 and 2794(7)). Changes in designations will be published in the FEDERAL REGISTER. Information and clarifications on whether specific items are defense articles and services under this subchapter may appear periodically in the Munitions Control Newsletter published by the Office of Munitions Control.
- (b) *Significant Military Equipment.* An asterisk precedes certain defense articles in the following list. The asterisk means that the article is deemed to be "significant military equipment" to the extent specified in § 120.19. The asterisk is placed as a convenience to help identify such articles.

CATEGORY I—FIREARMS

- * (a) Nonautomatic, semi-automatic and fully automatic firearms to caliber .50 inclusive, and all components and parts for such firearms. (See §§ 121.9 and 123.16-123.19.)
(b) Riflescopes manufactured to military specifications, and specifically designed or modified components therefor; firearm silencers and suppressors, including flash suppressors.
(c) Insurgency-counterinsurgency type firearms or other weapons having a special military application (e.g. close assault weapons systems) regardless of caliber and all components and parts therefor.

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CATEGORY II—ARTILLERY PROJECTORS

- * (a) Guns over caliber .50, howitzers, mortars, and recoilless rifles.
* (b) Military flamethrowers and projectors.
(c) Components, parts, accessories and attachments for the articles in paragraphs (a) and (b) of this category, including but not limited to mounts and carriages for these articles.

CATEGORY III—AMMUNITION

- * (a) Ammunition for the arms in Categories I and II of this section. (See § 121.6.)
(b) Components, parts, accessories, and attachments for articles in paragraph (a) of this category, including but not limited to cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun shells), projectiles, boosters, fuzes and components therefor, primers, and other detonating devices for such ammunition. (See § 121.6.)
(c) Ammunition belting and linking machines.
(d) Ammunition manufacturing machines and ammunition loading machines (except handloading ones).

CATEGORY IV—LAUNCH VEHICLES, GUIDED MISSILES, BALLISTIC MISSILES, ROCKETS, TORPEDOES, BOMBS AND MINES

- * (a) Rockets (including but not limited to meteorological and other sounding rockets), bombs, grenades, torpedoes, depth charges, land and naval mines, as well as launchers for such defense articles, and demolition blocks and blasting caps. (See § 121.11.)
* (b) Launch vehicles and missile and anti-missile systems including but not limited to guided, tactical and strategic missiles, launchers, and systems.
(c) Apparatus, devices, and materials for the handling, control, activation, monitoring, detection, protection, discharge, or detonation of the articles in paragraphs (a) and (b) of this category. (See § 121.5.)
(d) Missile and space vehicle powerplants.
(e) Military explosive excavating devices.
(f) Ablative materials fabricated or semi-fabricated from advanced composites (e.g., silica, graphite, carbon, carbon/earbon, and silicon filaments) for the articles in this category that are derived directly from or specifically developed or modified for defense articles.
(g) Non/nuclear warheads for rockets and guided missiles.
(h) All specifically designed or modified components, parts, accessories, attachments, and associated equipment for the articles in this category.

CATEGORY V—EXPLOSIVES, PROPELLANTS, AND INCENDIARY AGENTS

- * (a) Military explosives. (See § 121.12.)

Department of State

* (b) Military fuel thickeners. (See § 121.13.)

(c) Propellants for the articles in Categories III and IV of this section. (See § 121.14.)

(d) Military pyrotechnics, except pyrotechnic materials having dual military and commercial use.

(e) All compounds specifically formulated for the articles in this category.

CATEGORY VI—VESSELS OF WAR AND SPECIAL NAVAL EQUIPMENT

* (a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels and service craft, experimental types of naval ships and any vessels specifically designed or modified for military purposes. (See § 121.15.)

* (b) Turrets and gun mounts, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments, and accessories specifically designed or modified for combatant vessels.

(c) Mine sweeping equipment, components, parts, attachments and accessories specifically designed or modified therefor.

(d) Harbor entrance detection devices, (magnetic, pressure, and acoustic ones) and controls and components therefor.

* (e) Naval nuclear propulsion plants, their land prototypes, and special facilities for their construction support, and maintenance. This includes any machinery, device, component, or equipment specifically developed, designed or modified for use in such plants or facilities. (See § 123.21.)

CATEGORY VII—TANKS AND MILITARY VEHICLES

* (a) Military type armed or armored vehicles, military railway trains, and vehicles specifically designed or modified to accommodate mountings for arms or other specialized military equipment or fitted with such items.

* (b) Military tanks, combat engineer vehicles, bridge launching vehicles, half-tracks and gun carriers.

* (c) Self-propelled guns and howitzers.

(d) Military trucks, trailers, hoists, and skids specifically designed, modified, or equipped to mount or carry weapons of Categories I, II and IV or for carrying and handling the articles in paragraph (a) of Categories III and IV.

* (e) Military recovery vehicles.

* (f) Amphibious vehicles. (See § 121.4.)

* (g) Engines specifically designed or modified for the vehicles in paragraphs (a), (b), (c), and (f) of this category.

(h) All specifically designed or modified components and parts, accessories, attachments, and associated equipment for the articles in this category, including but not limited to military bridging and deep water fording kits.

CATEGORY VIII—AIRCRAFT, SPACECRAFT, AND ASSOCIATED EQUIPMENT

* (a) Aircraft, including but not limited to helicopters, non-expansive balloons, drones, and lighter-than-air aircraft, which are specifically designed, modified, or equipped for military purposes. This includes but is not limited to the following military purposes: gunnery, bombing, rocket or missile launching, electronic and other surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, airborne warning and control, and military training. (See § 121.3.)

(b) * (1) Spacecraft, including manned and unmanned, active and passive satellites (except those listed in Category VIII(b)(2)).

(2) Non-military communication satellites (excluding ground stations and associated equipment not enumerated elsewhere in § 121.1).

* (c) Military aircraft engines, except reciprocating engines, and spacecraft engines specifically designed or modified for the aircraft and spacecraft in paragraphs (a) and (b) of this category.

* (d) Cartridge-actuated devices utilized in emergency escape of personnel and airborne equipment (including but not limited to airborne refueling equipment) specifically designed or modified for use with the aircraft, spacecraft, and engines of the types in paragraphs (a), (b), and (c) of this category.

(e) Launching and recovery equipment for the articles in paragraphs (a) and (b) of this category, if the equipment is specifically designed or modified for military use or for use with spacecraft. Fixed land-based arresting gear is not included in this category.

(f) Power supplies and energy sources specifically designed or modified for spacecraft.

(g) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (f) of this category, excluding aircraft tires and propellers used with reciprocating engines.

(h) Developmental aircraft components which have a significant military application, excluding aircraft components concerning which Federal Aviation Agency certification has been granted.

* (i) Ground effect machines (GEMS) specifically designed or modified for military use, including but not limited to surface effect machines and other air cushion vehicles, and all components, parts, and accessories, attachments, and associated equipment specifically designed or modified for use with such machines.

* (j) Inertial navigation systems and components designed specifically for such systems.

tems. Systems or components which are standard equipment in civil aircraft, including spare parts and spare units to be used exclusively for the maintenance of inertial navigation equipment incorporated in civil aircraft, and which are certified by the Federal Aviation Administration as being an integral part of such aircraft are subject to export regulation by the Office of Munitions Control only if the export is intended for a controlled country described in section 620(f) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2370(f)) (except Yugoslavia). The Export Administration Act of 1979, as amended (50 U.S.C. App. section 2416(c)) deals with the export of such items to non-controlled countries. All exports of technical data (regardless of destination) relating to the design, development, production or manufacture of inertial navigation equipment (regardless of accuracies) or its related parts, components, or subsystems are subject to the requirements of the regulations contained in this subchapter. The export of technical data relating to the repair of parts, components, or subsystems of inertial navigation systems (including accelerometers and gyroscopes) which are not certified by the FAA as being an integral part of civil aircraft are subject to the requirements of this subchapter. The provisions of XI(e) and XII(c) are not applicable to such exports of technical data.

CATEGORY IX—MILITARY TRAINING EQUIPMENT

(a) Military training equipment including but not limited to attack trainers, radar target trainers, radar target generators, gunnery training devices, antisubmarine warfare trainers, target equipment, armament training units, operational flight trainers, air combat training systems, radar trainers, navigation trainers, and simulation devices related to defense articles.

(b) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraph (a) of this category.

CATEGORY X—PROTECTIVE PERSONNEL EQUIPMENT

(a) Body armor specifically designed, modified or equipped for military use; articles, including but not limited to clothing, designed, modified or equipped to protect against or reduce detection by radar, infrared (IR) or other sensors; military helmets equipped with communications hardware, optical sights, slewing devices or mechanisms to protect against thermal flash or lasers, excluding standard military helmets.

(b) Partial pressure suits and liquid oxygen converters used in aircraft in Category VIII(a).

(c) Protective apparel and equipment specifically designed or modified for use with the articles in paragraphs (a) through (d) in Category XIV.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the articles in paragraphs (a), (b), and (c) of this category.

CATEGORY XI—MILITARY AND SPACE ELECTRONICS

(a) Electronic equipment not included in Category XII of the Munitions List which is assigned a military designation or is specifically designed, modified or configured for military application. This includes but is not limited to the following:

(1) Underwater sound equipment, including but not limited to towed arrays, electronic beam forming sonar, target classification equipment, and spectrographic displays; search, acquisition, tracking, moving target indication and imaging radar systems; active and passive countermeasures and counter-countermeasures equipment; electronic fuses; identification systems; command, control and communications systems; and, regardless of designation, any experimental or developmental electronic equipment specifically designed or modified for military application, or for use with a military system and

(2) Sonic depth finders; underwater telephones; electro-mechanical beam forming sonars and elementary sonobuoys; radios (including transceivers); weather, navigation, and air traffic control radar systems; navigation, guidance, object-locating equipment; displays; and telemetering equipment.

(3) Armored coaxial cable capable of RF, optical, or high voltage power transmission.

(b) Space electronics:

(1) Electronic equipment specifically designed or modified for spacecraft and spaceflight, and

(2) Electronic equipment specifically designed or modified for use with non-military communications satellites.

(c) Electronic systems or equipment specifically designed, modified, configured, used or intended for use in search, reconnaissance, collection, monitoring, direction-finding, display, analysis and production of information from the electromagnetic spectrum for intelligence or security purposes and electronic systems or equipment designed or modified to counteract such surveillance and monitoring.

(d) Very High Speed Integrated Circuit (VHSIC) semiconductor devices that are specifically designed for military applications and which have a high-speed signal and image processing capability with an operational parameter (gate-time-clock-fre-

Department of State

quency) or greater than 10^{11} gates X hertz for an individual semiconductor device.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use or currently used with the equipment in paragraphs (a) through (c) of this category, except for such items as are in normal commercial use.

CATEGORY XII—FIRE CONTROL, RANGE FINDER, OPTICAL AND GUIDANCE AND CONTROL EQUIPMENT

(a) Fire control systems; gun and missile tracking and guidance systems; military infrared, image intensifier and other night sighting and night viewing equipment; military masers and military lasers; gun laying equipment; range, position and height finders and spotting instruments; aiming devices (electronic, gyroscopic, optic, and acoustic); bomb sights, bombing computers, military television sighting and viewing units, inertial platforms, and periscopes for the articles of this section.

(b) Inertial and other weapons or space vehicle guidance and control systems; spacecraft guidance, control and stabilization systems; astro compasses; and star trackers.

(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (a) and (b) of this category, except for such items as are in normal commercial use.

CATEGORY XIII—AUXILIARY MILITARY EQUIPMENT

(a) Aerial cameras, space cameras, special purpose military cameras, and specialized processing equipment therefor; military photointerpretation, stereoscopic plotting, and photogrammetry equipment, and components specifically designed or modified therefor.

(b) Speech scramblers, privacy devices, cryptographic devices and software (encoding and decoding), and components specifically designed or modified therefor, ancillary equipment, and protective apparatus specifically designed or modified for such devices, components, and equipment.

(c) Self-contained diving and underwater breathing apparatus specifically designed or modified for a military purpose and components specifically designed or modified therefor.

(d) Armor plate and structural materials (including but not limited to plate, rolled and extruded shapes, bars and forgings, castings, welding consumables, carbon/carbon and metal matrix composites) specifically designed or modified for defense articles.

(e) Concealment and deception equipment, including but not limited to special paints, decoys, and simulators and compo-

nents, parts and accessories specifically designed or modified therefor.

(f) Energy conversion devices for producing electrical energy from nuclear, thermal, or solar energy, or from chemical reaction which are specifically designed or modified for military application.

(g) Chemiluminescent compounds and solid state devices specifically designed or modified for military application.

(h) Devices embodying particle beam and electromagnetic pulse technology.

(i) Metal embrittling agents.

CATEGORY XIV—TOXICOLOGICAL AGENTS AND EQUIPMENT AND RADIOLOGICAL EQUIPMENT

(a) Chemical agents, including but not limited to lung irritants, vesicants, lachrymators, tear gases (except tear gas formulations containing 1% or less CN or CS), sternalators and irritant smoke, and nerve gases and incapacitating agents. (See § 121.7.)

(b) Biological agents.

(c) Equipment for dissemination, detection, and identification of, and defense against, the articles in paragraphs (a) and (b) of this category.

(d) Nuclear radiation detection and measuring devices, manufactured to military specification.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category.

CATEGORY XV—[RESERVED]

CATEGORY XVI—NUCLEAR WEAPONS DESIGN AND TEST EQUIPMENT

(a) Any article, material, equipment, or device which is specifically designed or modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices. (See § 123.21 and Department of Commerce Export Regulations, 15 CFR Part 378).

(b) Any article, material, equipment, or device which is specifically designed or modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions, except such items as are in normal commercial use for other purposes.

CATEGORY XVII—CLASSIFIED ARTICLES NOT OTHERWISE ENUMERATED

*All articles and technical data (as defined in § 120.21) relating thereto which are classified in the interests of national security and which are not otherwise enumerated in the U.S. Munitions List.

CATEGORY XVIII—TECHNICAL DATA

Technical data (as defined in § 120.21) relating to the defense articles listed in the other categories of the United States Munitions List. (See § 125.4 for exemptions; see also § 123.21.)

CATEGORY XIX—DEFENSE SERVICES

Defense services (as defined in § 120.8) related to the defense articles listed in the other categories of the United States Munitions List.

CATEGORY XX—SUBMERSIBLE VESSELS, OCEANOGRAPHIC AND ASSOCIATED EQUIPMENT

(a) Submersible vessels, manned or unmanned, designed or modified for military purposes or having independent capability to maneuver vertically or horizontally at depths below 1,000 feet or powered by nuclear propulsion plants.

(b) Submersible vessels, manned or unmanned, designed or modified in whole or in part from technology developed by or for the U.S. Armed Forces.

(c) Any of the articles in Categories VI, IX, XI, XIII, and elsewhere in this subchapter specifically designed or modified for use with submersible vessels, and oceanographic or associated equipment assigned a military designation.

(d) Equipment, components, parts, accessories, and attachments specifically designed or modified for any of the articles in paragraphs (a) and (b) of this category.

CATEGORY XXI—MISCELLANEOUS ARTICLES

Any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specifically designed or modified for military purposes. The decision on whether any article may be included in this category shall be made by the Director of the Office of Munitions Control.

[Dept. Reg. 108.840, 49 FR 47686, Dec. 6, 1984; 49 FR 48536, Dec. 13, 1984; Dept. Reg. 108.841, 50 FR 12787, Apr. 1, 1985]

§ 121.2 Interpretations of the United States Munitions List.

The following interpretations (listed alphabetically) explain and amplify the terms used in § 121.1. These interpretations have the same force as if they were a part of the United States Munitions List category to which they refer.

§ 121.3 Aircraft and related articles.

In Category VIII, "aircraft" means aircraft designed, modified, or

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equipped for a military purpose, including aircraft described as "demilitarized." All aircraft bearing an original military designation are included in Category VIII. However, the following aircraft are not included so long as they have not been specifically equipped, re-equipped, or modified for military operations:

(a) Cargo aircraft bearing "C" designations and numbered C-45 through C-118 inclusive, C-121 through C-125 inclusive, and C-131, using reciprocating engines only.

(b) Trainer aircraft bearing "T" designations and using reciprocating engines or turboprop engines with less than 600 horsepower (s.h.p.).

(c) Utility aircraft bearing "U" designations and using reciprocating engines only.

(d) All liaison aircraft bearing an "L" designation.

(e) All observation aircraft bearing "O" designations and using reciprocating engines.

§ 121.4 Amphibious vehicles.

An "amphibious vehicle" in Category VII(f) is an automotive vehicle or chassis which embodies all-wheel drive, is equipped to meet special military requirements, and which has sealed electrical systems or adaptation features for deep water fording.

§ 121.5 Apparatus and devices under Category IV(c).

Category IV includes but is not limited to the following: Fuzes and components for the items listed in that category, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance system equipment and parts, launching racks and projectors, pistols (explosives), igniters, fuze arming devices, intervalometers, guided missile launchers and specialized handling equipment, and hardened missile launching facilities.

§ 121.6 Cartridge and shell casings.

Cartridge and shell casings are included in Category III unless, prior to export, they have been rendered useless beyond the possibility of restora-

tion for use as a cartridge or shell casing by means of heating, flame treatment, mangling, crushing, cutting, or popping.

§ 121.7 Chemical agents.

A chemical agent in Category XIV(a) is a substance having military application which by its ordinary and direct chemical action produces a powerful physiological effect. The term "chemical agent" includes, but is not limited to, the following chemical compounds:

(a) Lung irritants:

(1) Diphenylcyanoarsine (DC).

(2) Fluorine (but not fluorene).

(3) Trichloronitro methane (chloropicrin PS).

(b) Vesicants:

(1) B-Chlorovinylchloroarsine (Lewisite, L).

(2) Bis(dichloroethyl)sulphide (Mustard Gas, HD or H).

(3) Ethyldichloroarsine (ED).

(4) Methylchloroarsine (MD).

(c) Lachrymators and tear gases:

(1) A-Bromobenzyl cyanide (BBC).

(2) Chloroacetophenone (CN).

(3) Dibromodimethyl ether.

(4) Dichlorodimethyl ether (ClC1).

(5) Ethyldibromoarsine.

(6) Phenylcarbylamine chloride.

(7) Tear gas solutions (CNB and CNS).

(8) Tear gas orthochlorobenzalmononitrile (CS).

(d) Sternutators and irritant smokes:

(1) Diphenylamine chloroarsine (Adamsite, DM).

(2) Diphenylchloroarsine (BA).

(3) Liquid pepper.

(e) Nerve agents, gases and aerosols.

These are toxic compounds which affect the nervous system, such as:

(1) Dimethylaminoethoxycyanophosphine oxide (GA).

(2) Methylisopropoxyfluorophosphine oxide (GB).

(3) Methylpinacolyloxyfluorophosphine oxide (GD).

(f) Antiplant chemicals, such as: Butyl 2-chloro-4-fluorophenoxyacetate (LNF).

§ 121.8 End-items, components, accessories, attachments, parts, firmware, software and systems.

(a) An "end-item" 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.

(b) A "component" 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.

(c) "Accessories" and "attachments" 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: riflescopes, special paints, etc.)

(d) A "part" 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.)

(e) Firmware 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 United States Munitions List are considered as part of the end-item or component. "Firmware" includes but is not limited to circuits into which software has been programmed.

(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. A person who intends to export software only should, unless it is specifically enumerated in § 121.1, apply for a technical data license pursuant to Part 125 of this subchapter.

(g) A "system" is a combination of end-items, components, parts, accesso-

ries, attachments, firmware or software, specifically designed, modified or adapted to operate together to perform a specialized military function.

§ 121.9 Firearms.

(a) Category I includes revolvers, pistols, rifles, carbines, fully automatic rifles, submachine guns, machine pistols and machine guns to caliber .50, inclusive. It includes combat shotguns. It excludes other shotguns with barrels 18" or longer, BB, pellet, and muzzle loading (black powder) firearms.

(b) A "firearm" is a weapon not over .50 caliber which is designed to expel a projectile by the action of an explosive or which may be readily converted to do so.

(c) A "rifle" is a shoulder firearm which can discharge a bullet through a rifled barrel 16 inches or longer.

(d) A "carbine" is a lightweight shoulder firearm with a barrel under 16 inches in length.

(e) A "pistol" is a hand-operated firearm having a chamber integral with or permanently aligned with the bore.

(f) A "revolver" is a hand-operated firearm with a revolving cylinder containing chambers for individual cartridges.

(g) A "submachine gun", "machine pistol" or "machine gun" is a firearm originally designed to fire, or capable of being fired, fully automatically by a single pull of the trigger.

§ 121.10 Forgings, castings and machined bodies.

Articles on the United States 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 United States 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.

§ 121.11 Military demolition blocks and blasting caps.

Military demolition blocks and blasting caps referred to in Category IV(a) do not include the following articles:

- (a) Electric squibs.
- (b) No. 6 and No. 8 blasting caps, including electric ones.
- (c) Delay electric blasting caps (including No. 6 and No. 8 millisecond ones).
- (d) Seismograph electric blasting caps (including SSS, Static-Master, Vibrocap SR, and SEISMO SR).
- (e) Oil well perforating devices.

§ 121.12 Military explosives.

Military explosives in Category V include, but are not limited to, the following:

- (a) Ammonium picrate.
- (b) Black powder made with potassium nitrate or sodium nitrate.
- (c) Cyclotetramethylenetetranitramine (HMX).
- (d) Cyclotrimethylenetrinitramine (RDX, Cyclonite, Hexogen or T4).
- (e) Dinitronaphthalene.
- (f) Ethylenedinitramine.
- (g) Hexanitrodiphenylamine.
- (h) Nitroglycerin.
- (i) Nitrostarch.
- (j) Pentaerythritol tetranitrate (penthrite, pentrite or PETN).
- (k) Tetranitronaphthalene.
- (l) Trinitroanisole.
- (m) Trinitronaphthalene.
- (n) Trinitrophenol (picric acid).
- (o) Trinitrophenylmethylnitramine (Tetryl).
- (p) Trinitrotoluene (TNT).
- (q) Trinitroxylenes.
- (r) Ammonium perchlorate nitrocellulose (military grade).
- (s) Aluminum powder (spherical) with an average particle size of 100 micrometer diameter or less and a purity of 97% or greater.
- (t) Any combinations of the above.

§ 121.13 Military fuel thickeners.

Military fuel thickeners in Category V include compounds (e.g., octal) or mixtures of such compounds (e.g., napalm) specifically formulated for the purpose of producing materials which, when added to petroleum products, provide a gel-type incendiary ma-

terial for use in bombs, projectiles, flame throwers, or other defense articles.

§ 121.14 Propellants.

Propellants in Category V include, but are not limited to, the following:

- (a) Propellant powders, including smokeless shotgun powder.
- (b) Hydrazine (including Monomethyl hydrazine and symmetrical dimethyl hydrazine, but excluding hydrazine hydrate).
- (c) Unsymmetrical dimethyl hydrazine.
- (d) Hydrogen peroxide of over 85 percent concentration.
- (e) Nitroguanidine or picrite.
- (f) Nitrocellulose with nitrogen content of over 12.20 percent.
- (g) Nitrogen tetroxide (nitrogen dioxide, dinitrogen tetroxide).
- (h) Other solid propellant compositions, including but not limited to, the following:
 - (1) Single base (nitrocellulose).
 - (2) Double base (nitrocellulose, nitroglycerin).
 - (3) Triple base (nitrocellulose, nitroglycerin, nitroguanidine).
 - (4) Composite of nitroglycerin, ammonium perchlorate, potassium perchlorate, nitronium perchlorate, guanidine (guanidinium) perchlorate, nitrogen tetroxide, ammonium nitrite or nitrocellulose with plastics, metal fuels, or rubbers added; and compounds composed only of fluorine and halogens, oxygen, or nitrogen.
 - (5) Special purpose high energy solid military fuels with a chemical base.
 - (i) Other liquid propellant compositions, including but not limited to, the following:
 - (1) Monopropellants (hydrazine, hydrazine nitrate, and water).
 - (2) Bipropellants (hydrazine, fuming nitric acid HNO₃).
 - (3) Special purpose chemical base high energy liquid military fuels and oxidizers.

§ 121.15 Vessels of war and special naval equipment.

Vessels of war in Category VI include, but are not limited to, the following:

- (a) Combatant vessels:

(1) Warships (including nuclear-powered versions):

- (i) Aircraft carriers (CV, CVN)
- (ii) Battleships (BB)
- (iii) Cruisers (CA, CG, CGN)
- (iv) Destroyers (DD, DDG)
- (v) Frigates (FF, FFG)
- (vi) Submarines (SS, SSN, SSBN, SSG, SSAG)

(2) Other Combatant Classifications:

- (i) Patrol Combatants (PG, PHM)
- (ii) Amphibious Helicopter/Landing Craft Carriers (LHA, LPD, LPH)
- (iii) Amphibious Landing Craft Carriers (LKA, LPA, LSD, LST)
- (iv) Amphibious Command Ships (LCC)
- (v) Mine Warfare Ships (MSO)

(b) Auxiliaries:

- (1) Mobile Logistics Support:
 - (i) Under way Replenishment (AD, AF, AFS, AO, AOE, AOR)
 - (ii) Material Support (AD, AR, AS)
- (2) Support Ships:
 - (i) Fleet Support Ships (ARS, ASR, ATA, ATF, ATS)
 - (ii) Other Auxiliaries (AG, AGDS, AGF, AGM, AGOR, AGOS, AGS, AH, AK, AKR, AOG, AOT, AP, APB, ARC, ARL, AVM, AVT)

(c) Combatant Craft:

- (1) Patrol Craft:
 - (i) Coastal Patrol Combatants (PB, PCF, PCH, PTF)
 - (ii) River, Roadstead Craft (ATC, PBR)
- (2) Amphibious Warfare Craft:
 - (i) Landing Craft (AALC, LCAC, LCM, LCPL, LCPR, LCU, LWT, SLWT)
 - (ii) Special Warfare Craft (LSSC, MSSC, SDV, SWCL, SWCM)

(3) Mine Warfare Craft:

- (i) Mine Countermeasures Craft (MSB, MSD, MSI, MSM, MSR)

(d) Support and Service Craft:

- (1) Tugs (YTB, YTL, YTM)
- (2) Tankers (YO, YOG, YW)
- (3) Lighters (YC, YCF, YCV, YF, YFN, YFNB, YFNX, YFR, YFRN, YFU, YG, YGN, YOGN, YON, YOS, YSR, YWN)

(4) Floating Dry Docks (AFDB, AFDL, AFDM, ARD, ARDM, YFD)

(5) Miscellaneous (APL, DSRV, DSV, IX, NR, YAG, YD, YDT, YFB, YFND, YEP, YFRT, YHLC, YM, YNG, YP, YPD, YR, YRB, YRBN, YRDH, YRDM, YRR, YRST, YSD)

(e) Coast Guard Patrol and Service Vessels and Craft:

- (1) Coast Guard Cutters (CGC, WHEC, WMEC)
- (2) Patrol Craft (WPB)
- (3) Icebreakers (WAGB)
- (4) Oceanography Vessels (WAGO)
- (5) Special Vessels (WIX)
- (6) Buoy Tenders (WLB, WLM, WLI, WLR, WLIC)
- (7) Tugs (WYTM, WYTL)
- (8) Light Ships (WLV)

[Dept. Reg. 108.840, 49 FR 47684, Dec. 6, 1984; 49 FR 48536, Dec. 13, 1984]

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

- Sec.
- 122.1 Registration requirements.
 - 122.2 Application for registration.
 - 122.3 Refund of fee.
 - 122.4 Notification of changes in information furnished by registrants.
 - 122.5 Maintenance of records by registrants.
 - 122.6 Submission of application.

AUTHORITY: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

SOURCE: Dept. Reg. 108.840, 49 FR 47690, Dec. 6, 1984, unless otherwise noted.

§ 122.1 Registration requirements.

(a) *General.* Any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the Office of Munitions Control. Manufacturers who do not engage in exporting must nevertheless register.

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

- (1) Officers and employees of the United States Government acting in an official capacity.
- (2) Persons whose pertinent business activity is confined to the production of unclassified technical data only.
- (3) Persons all of whose manufacturing and export activities are licensed under the Atomic Energy Act of 1954, as amended.
- (4) Persons who engage only in the fabrication of articles for experimental or scientific purposes, including research and development.

§ 122.2 Application for registration.

(a) *Fees.* A person who is required to register may do so for periods of from 1 to 5 years upon submission of a completed Form DSP-9, and payment of a fee as follows:

1 year.....	\$250
2 years.....	500
3 years.....	700
4 Years.....	850
5 years.....	1,000

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

§ 122.3 Refund of fee.

Fees paid in advance for future years of a multiple year registration will be refunded upon request if the registrant ceases to engage in the manufacture or export of defense articles and defense services. A request for a refund must be submitted to the Office of Munitions Control prior to the beginning of any year for which a refund is claimed.

§ 122.4 Notification of changes in information furnished by registrants.

A registered person must notify the Department of State of material changes in the information contained in the registration. Examples of material changes include the establishment or acquisition of a subsidiary or of a foreign affiliate, a merger, a change of location, or dealing with an additional category of defense articles or defense services. Registrants must also inform the Office of Munitions Control thirty days in advance of any planned transfer of ownership or control of the registered corporation or entity to a foreign person. Such notice does not relieve the registrant from obtaining the approvals required under this subchapter for the export of defense articles and defense services to foreign persons.

§ 122.5 Maintenance of records by registrants.

(a) A person who is required to register must maintain records concerning the manufacture, acquisition and disposition of defense articles and the provision of defense services by the registrant. All such records must be maintained for a period of 6 years. The Director, Office of Munitions Control, may prescribe a longer or shorter period in individual cases.

(b) Records maintained under this section shall be available at all times for inspection and copying by the Director, Office of Munitions Control or a person designated by the Director, or the Commissioner of the U.S. Customs Service or a person designated by the Commissioner.

§ 122.6 Submission of application.

Department of State Form DSP-9, Registration Statement, must be submitted to the Cashier, ESC/C, Department of State, Washington, D.C. 20520, together with payment by check or money order payable to the Department of State of one of the fees prescribed in § 122.2(a). The Office of Munitions Control will return to the sender any registration statement which is incomplete or which is not accompanied by payment of a proper registration fee.

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

- Sec.
- 123.1 Requirement for export licenses.
 - 123.2 Imports.
 - 123.3 Temporary import (intransit) licenses.
 - 123.4 Temporary export licenses.
 - 123.5 [Reserved]
 - 123.6 Foreign trade zones and U.S. Customs bonded warehouses.
 - 123.7 Exports to warehouses or distribution points outside the United States.
 - 123.8 Special controls on vessels of war, military aircraft and satellites.
 - 123.9 Country of ultimate destination.
 - 123.10 Non-transfer and use assurances and Congressional notification.
 - 123.11 Movements of aircraft and vessels of war outside the United States.
 - 123.12 Shipments between U.S. possessions.

- Sec.
- 123.13 Domestic aircraft shipments via a foreign country.
 - 123.14 Import certificate/delivery verification procedure.
 - 123.15 [Reserved]

EXEMPTIONS

- 123.16 Obsolete firearms and models.
- 123.17 Exports of firearms and ammunition for personal use.
- 123.18 Firearms for personal use of members of the U.S. Armed Forces and civilian employees of the U.S. Government.
- 123.19 Minor components.
- 123.20 Canadian and Mexican border shipments.
- 123.21 Nuclear materials.

PROCEDURES

- 123.22 Applications for licenses.
- 123.23 Renewal and disposition of licenses.
- 123.24 Port of exit or entry.
- 123.25 Filing of export and intransit licenses and shipper's export declarations with district directors of customs.
- 123.26 Shipments by mail.
- 123.27 Temporary exports.

AUTHORITY: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

SOURCE: Dept. Reg. 108.840, 49 FR 47691, Dec. 6, 1984, unless otherwise noted.

§ 123.1 Requirement for export licenses.

(a) Any person who intends to export a defense article must obtain a license from the Office of Munitions Control prior to the export unless the export qualifies for an exemption under the provisions of this subchapter.

(b) As a condition to the issuance of a license or other approval, the Office of Munitions Control may require all pertinent documentary information regarding the proposed transaction. It may also require that the applicant be a U.S. person (as defined in § 120.23).

(c) An application for a license under this part for the permanent export of defense articles sold commercially must be accompanied by a copy of a purchaser order, letter of intent or other appropriate documentation. In cases involving the U.S. Foreign Military Sales program, three copies of the relevant Department of Defense Form 1513 are required, unless the procedures of § 126.4(c) or § 126.6 are followed.

(i) International obligations

The provisions of subsections (b), (c), (d), (e), (g), and (h) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

(j) Countries supporting international terrorism

(1) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before any license is approved for the export of goods or technology valued at more than \$7,000,000 to any country concerning which the Secretary of State has made the following determinations:

(A) Such country has repeatedly provided support for acts of international terrorism.

(B) Such exports would make a significant contribution to the military potential of such country, including its military logistics capability, or would enhance the ability of such country to support acts of international terrorism.

(2) Any determination which has been made with respect to a country under paragraph (1) of this subsection may not be rescinded unless the President, at least 30 days before the proposed rescission would take effect, submits to the Congress a report justifying the rescission and certifying that—

(A) the country concerned has not provided support for international terrorism, including support or sanctuary for any major terrorist or terrorist group in its territory, during the preceding 6-month period; and

(B) the country concerned has provided assurances that it will not support acts of international terrorism in the future.

(k) Crime control instruments

(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license. Notwithstanding any other provision of this Act [sections 2401 to 2420 of this Appendix]—

(A) any determination of the Secretary of what goods or technology shall be included on the list established pursuant to subsection (1) of this section as a result of the export restrictions imposed by this subsection shall be made with the concurrence of the Secretary of State, and

(B) any determination of the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 10(e) of this Act [section 2409(e) of this Appendix].

except that, if the Secretary does not agree with the Secretary of State with respect to any determination under subparagraph (A) or (B), the matter shall be referred to the President for resolution.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961 [22 U.S.C. § 2304].

(l) Control list

The Secretary shall establish and maintain, as part of the control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. The Secretary shall clearly identify on the control list which goods or technology, and which countries or destinations, are subject to which types of controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making

such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled for export from the United States under this section.

(m) Effect on existing contracts and licenses

The President may not, under this section, prohibit or curtail the export or reexport of goods, technology, or other information—

(1) in performance of a contract or agreement entered into before the date on which the President reports to the Congress, pursuant to subsection (f) of this section, his intention to impose controls on the export or reexport of such goods, technology, or other information, or

(2) under a validated license or other authorization issued under this Act [sections 2401 to 2420 of this Appendix],

unless and until the President determines and certifies to the Congress that—

(A) a breach of the peace poses a serious and direct threat to the strategic interest of the United States,

(B) the prohibition or curtailment of such contracts, agreements, licenses, or authorizations will be instrumental in remedying the situation posing the direct threat, and

(C) the export controls will continue only so long as the direct threat persists.

(n) Extension of certain controls

Those export controls imposed under this section with respect to South Africa which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983, shall become effective on the date of the enactment of this subsection [July 12, 1985], and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section.

(o) Expanded authority to impose controls

(1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (m) of this section, the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days after the Congress receives the determination and report of the President, that joint resolution shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the appropriate committee of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution.

(2) For purposes of this subsection, the term "joint resolution" means a joint resolution of the matter after the resolving clause which is as follows: "That the Congress, having received on a determination of the President under section 6(o)(1) of the Export Administration Act of 1979 with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls," with the date of the receipt of the determination and report inserted in the blank.

(3) In the computation of the periods of 30 days referred to in paragraph (1), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(Pub.L. 96-72, § 6, Sept. 29, 1979, 93 Stat. 513, amended Pub.L. 96-533, Title I, § 111, Dec. 16, 1980, 94 Stat. 3138; Pub.L. 97-145, § 6, Dec. 29, 1981, 95 Stat. 1728; Pub.L. 99-64, § 108(a)-(g)(1), (h)-(j)(1), (k), (l)(1), July 12, 1985, 99 Stat. 131-136.)

lead-nation procurement identified the transferees on whose behalf the lead-nation procurement was proposed.

(D) Repealed. Pub.L. 97-113, Title I, § 101(a)(3)(C), Dec. 29, 1981, 95 Stat. 1520

[See main volume for text of (e)]

(f) Sales, credits, or guaranties to countries granting sanctuary to international terrorists; prohibitions; ineligibility period; report by President for continuation

(1) Unless the President finds that the national security requires otherwise, he shall terminate all sales under this chapter to any government which aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism. The President may not thereafter make or extend sales to such government until the end of the one year period beginning on the date of such termination, except that if during its period of ineligibility for sales pursuant to this section such government aids or abets, by granting sanctuary from prosecution to, any other individual or group which has committed an act of international terrorism, such government's period of ineligibility shall be extended for an additional year for each such individual or group.

(2) If the President finds that the national security justifies a continuation of sales to any government described in paragraph (1), he shall report such finding to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.

(As amended Pub.L. 96-92, § 11, Oct. 29, 1979, 93 Stat. 705; Pub.L. 96-533, Title I, § 101, Dec. 16, 1980, 94 Stat. 3131; Pub.L. 97-113, Title I, §§ 101(a), 102(a), 109(b)(2), Dec. 29, 1981, 95 Stat. 1519, 1520, 1526; Pub.L. 99-83, Title I, § 115(b)(2), Title V, § 503(b), Aug. 8, 1985, 99 Stat. 201, 221; Pub.L. 99-145, Title XI, § 1102(a)(3), (5), Nov. 8, 1985, 99 Stat. 710.)

Unconstitutionality of Legislative Veto Provisions

The provisions of section 1254(c)(2) of Title 8, Aliens and Nationality, which authorize a House of Congress, by resolution, to invalidate an action of the Executive Branch, were declared unconstitutional in Immigration and Naturalization Service v. Chadha, 1983, 103 S.Ct. 2764, 462 U.S. 919, 77 L.Ed.2d 317. See similar provisions in subsec. (d)(2) of this section.

1985 Amendments. Subsec. (a). Pub.L. 99-145 enacted amendments similar to those provided in Pub.L. 99-83, § 115(b)(2). See Repeals; Effective Date note set out under section 2752 of this title.

Subsec. (a). Pub.L. 99-83, § 115(b)(2)(A), added provisions respecting agreement for a cooperative project.

Subsec. (a)(2). Pub.L. 99-83, § 115(b)(2)(B), added provisions relating to cooperative projects, as defined in section 2767 of this title, and provisions relating to cooperative projects with respect to NATO or member countries, other than the United States.

Subsec. (a)(3). Pub.L. 99-83, § 115(b)(2)(C), added "or service" following "such article" wherever appearing.

Subsec. (f). Pub.L. 99-83, § 503(b), substituted "credits, or guaranties" for "credits, and guaranties" wherever appearing in pars. (1) and (2).

1981 Amendment. Subsec. (a). Pub.L. 97-113, § 109(b)(2)(A), (B), substituted in introductory text "sold or leased" for "sold" and in par. (4) "purchase or lease" for "purchase".

Subsec. (d)(1). Pub.L. 97-113, § 101(a)(1)(A)-(D), substituted: in introductory text "or under section 2314(a)(1) or 2314(a)(4) of this title, to a transfer of any major defense equipment valued (in terms of its original acquisition cost) at \$14,000,000 or more, or any defense article or related training or other defense service valued (in terms of its original acquisition cost) at \$50,000,000 or more," for "to a transfer of a defense article, or related training or other defense service, sold under this chapter and may not give his consent to such a transfer under section 2314(a)(1) or 2314(a)(4) of this title"; subpar. (B) reading "a description of the article or service proposed to be transferred, including its acquisition cost" for prior text reading "a description of the defense article or related training or other defense service proposed to be transferred, including the original acquisition cost of such defense article or related training or other defense service"; in subpar. (C) "article or service" for "defense article or related training or other defense service"; and in last sentence "articles or services" for "defense articles, or related training or other defense services."

Subsec. (d)(2). Pub.L. 97-113, § 102(a), designated existing provisions as subpar. (A), substituted therein "Except as provided in subparagraph (B), unless" for "Unless" and added subpar. (B).

Subsec. (d)(3). Pub.L. 97-113, § 101(a)(2), substituted "transfer of any major defense equipment valued (in terms of its original acquisition cost) at \$14,000,000 or more, or of any defense article or defense service valued (in terms of its original acquisition cost) at \$50,000,000 or more" for "transfer to a third country of a defense article or a defense service valued (in terms of its original acquisition costs) at \$25,000,000 or more, or of major defense equipment valued (in terms of its original acquisition costs) at \$7,000,000 or more" preceding "the export of which has been licensed or approved".

Subsec. (d)(4). Pub.L. 97-113, § 101(a)(3), struck out subpar. (D) respecting nonapplication of subsec. (d) to transfers to the North Atlantic Treaty Organization, any member country of such organization, Japan, Australia, or New Zealand, of any major defense equipment valued (in terms of its original acquisition cost) at less than \$7,000,000 or of any defense article or related training or other defense service valued (in terms of its original acquisition cost) at less than \$25,000,000.

1980 Amendment. Subsec. (d)(1). Pub.L. 96-533, § 101(a)(2)(A), substituted "paragraph" for "subsection" in last sentence.

Subsec. (d)(2). Pub.L. 96-533, § 101(a)(2)(B), substituted "paragraph (1) of this subsection" for "this subsection".

Subsec. (d)(3). Pub.L. 96-533, § 101(a)(1)(B), added par. (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub.L. 96-533, § 101(a)(1)(A), (b), redesignated existing par. (3) as (4) and added subpar. (D).

1979 Amendment. Subsec. (d)(3)(C). Pub.L. 96-92 made the subsec. inapplicable to arrangements between the North Atlantic Treaty Orga-

nization and any of rated existing text and added cl. (ii).

Effective Date of ment by Pub.L. 99 section 1301 of Pu under section 2151-

Repeals; Effect Pub.L. 99-145 repe effective date of si 99-83, § 115(b)(2) Pub.L. 99-145, set Date note under se

Delegation of F President under this functions under sub: (f) of this section. State, provided tha tions delegated to h of this section, the S to find, in the case defense article or rel service by a foreign nization not otherwi of this section, whet strengthen the secu promote world peac sultation with other cics, see section 1(a) Jan. 18, 1977, 42 F under section 2751 i

Legislative Histor purpose of Pub.L. Cong. and Adm. Ne 96-533, 1980 U.S. C p. 6540; Pub.L. 97- and Adm. News, p U.S. Code Cong. anc 99-145, 1985 U.S. C p. 472.

§ 2754. Purposes for which military sales or leases by U rized; report to Congress

Defense articles and defense services shall be sold or leased by the Government under this chapter to friendly countries solely for legitimate self-defense, to permit the recipient country to provide for its collective arrangements or measures consistent with the United Nations, or otherwise to permit the recipient country to take such measures requested by the United Nations for the purpose of restoring international peace and security, or for the purpose of providing military forces in less developed friendly countries to constructively engage in other activities helpful to the economic and social development of friendly countries. It is the sense of the Congress that such activities should not be maintained or established solely for civic action or other civic action activities not significantly detract from the economic and social development of the recipient country. The total economic and social development effort: *Provided*, that the total economic and social development effort contained in this authorization shall be used to guarantee that the recipient country shall participate in an extension of credit in connection with any weapons systems, such as missile systems and jet aircraft, for any underdeveloped country other than Greece, Turkey, Iran, China, the Philippines and Korea unless the President deter-

(e)

(f)

(g) Executive Order 12096 of November 2, 1978, is revoked.

(h) The last paragraph of the Presidential Determination Regarding the Acceptance and Application of Certain International Trade Agreements (dated December 14, 1979) (44 FR 74781, at 74784; December 18, 1979), delegating functions under section 2(b) of the Trade Agreements Act of 1979 and section 701(b) of the Tariff Act of 1930, is revoked.

(i) Any reference to the Office of the Special Representative for Trade Negotiations or to the Special Representative for Trade Negotiations in any Executive order, Proclamation, or other document shall be deemed to refer to the Office of the United States Trade Representative or to the United States Trade Representative, respectively.

[Sec. 1-105(a)-(f) amends EO 11269 of Feb. 14, 1966, Chapter 31, p. 471; EO 11539 of June 30, 1970, Chapter 19, p. 299; EO 11651 of Mar. 3, 1972, this chapter, p. 250; EO 11730 of Feb. 7, 1973, which was superseded by EO 11743 of Oct. 23, 1973; EO 11846 of Mar. 27, 1975, this chapter, p. 251; and EO 11858 of May 7, 1975, Chapter 31, p. 478. The amendments have been incorporated into the orders codified in this volume.]

SEC. 1-106. Incidental Transfers and Reassignments.

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions transferred or reassigned by the provisions of this order as the Director of the Office of Management and Budget shall determine, shall be transferred or reassigned for use in connection with such functions.

SEC. 1-107. Effective Dates.

(a) Sections 1, 2(a), 2(b)(2), 2(c), 2(d), 3, 4, 5(a), 5(b)(2), 5 (c) through (e), and 6 through 8 of Reorganization Plan No. 3 of 1979, and the provisions of this order, shall take effect as of January 2, 1980.

(b) Section 5(b)(1) of such plan shall take effect as of April 1, 1980.

Executive Order 12205—Prohibiting certain transactions with Iran

SOURCE: The provisions of Executive Order 12205 of Apr. 7, 1980, appear at 45 FR 24099, 3 CFR, 1980 Comp., p. 248, unless otherwise noted.

CROSS REFERENCE: Executive Order 12282 of Jan. 19, 1981, this chapter, p. 274, revokes the prohibitions contained in this order.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in order to take steps additional to those set forth in Executive Order No. 12170 of November 14, 1979, to deal with the threat to the national security, foreign policy and economy of the United States referred to in that Order, and in furtherance of the objectives of United Nations Security Council Resolution 461 (1979) adopted on December 31, 1979, it is hereby ordered as follows:

1-101. The following are **prohibited effective immediately**, notwithstanding any contracts entered into or licenses granted before the date of this Order:

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Codification of Presidential Proclamations and Executive Orders

(a) The sale, supply or other transfer, by any person subject to the jurisdiction of the United States, of any items, commodities or products, except food, medicine and supplies intended strictly for medical purposes, and donations of clothing intended to be used to relieve human suffering, from the United States, or from any foreign country, whether or not originating in the United States, either to or destined for Iran, an Iranian governmental entity in Iran, any other person or body in Iran or any other person or body for the purposes of any enterprise carried on in Iran.

(b) The shipment by vessel, aircraft, railway or other land transport of United States registration or owned by or under charter to any person subject to the jurisdiction of the United States or the carriage (whether or not in bond) by land transport facilities across the United States of any of the items, commodities and products covered by paragraph (a) of this section which are consigned to or destined for Iran, an Iranian governmental entity or any person or body in Iran, or to any enterprise carried on in Iran.

(c) The shipment from the United States of any of the items, products and commodities covered by paragraph (a) of this section on vessels or aircraft registered in Iran.

(d) The following acts, when committed by any person subject to the jurisdiction of the United States in connection with any transaction involving Iran, an Iranian governmental entity, an enterprise controlled by Iran or an Iranian governmental entity, or any person in Iran:

- (i) Making available any new credits or loans;
- (ii) Making available any new deposit facilities or allowing substantial increases in non-dollar deposits which exist as of the date of this Order;
- (iii) Allowing more favorable terms of payment than are customarily used in international commercial transactions;
- (iv) Failing to act in a businesslike manner in exercising any rights when payments due on existing credits or loans are not made in a timely manner; or
- (v) Make any payment, transfer of credit, or other transfer of funds or other property or interests therein, except for purposes of family remittances.

(e) The engaging by any person subject to the jurisdiction of the United States in any service contract in support of an industrial project in Iran, except any such contract entered into prior to the date of this Order or concerned with medical care.

(f) The engaging by any person subject to the jurisdiction of the United States in any transaction which evades or avoids, or has the purpose or effect of evading or avoiding, any of the prohibitions set forth in this section.

[Para. 1-101 amended by EO 12211 of Apr. 17, 1980, 45 FR 26685, 3 CFR, 1980 Comp., p. 253]

1-102. The prohibitions in section 1-101 above shall not apply to transactions by any person subject to the jurisdiction of the United States which is a non-banking association, corporation, or other organization organized and doing business under the laws of any foreign country.

1-103. The Secretary of the Treasury is delegated, and authorized to exercise, all functions vested in the President by the International

Emergency E the purposes functions to o

1-104. The pursuant to th for as require U.S.C. 1641).

1-105. This 401 of the Nat of the Intern 1703), it shall b in the FEDERAL

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SOURCE: The pro 26685, 3 CFR, 1980

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By the author statutes of the U Emergency Eco Title 3 of the Ur the United State Act (50 U.S.C. 1 in Executive Ord Order No. 12205 al security, foreig in those Orders, a national security, ated by subsequer the Soviet invasio declare a national e States to deny the ary to those perso in acts of internati

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1-102. The follo any contracts ente Order:

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(b) Effective imm foreign entity by an relating to that pers

(c) Effective sever or on behalf of any who is within Iran o

Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order. The Secretary may redelegate any of these functions to other officers and agencies of the Federal government.

1-104. The Secretary of the Treasury shall ensure that actions taken pursuant to this Order and Executive Order No. 12170 are accounted for as required by Section 401 of the National Emergencies Act (50 U.S.C. 1641).

1-105. This Order is effective immediately. In accord with Section 401 of the National Emergencies Act (50 U.S.C. 1641) and Section 204 of the International Emergency Economic Powers Act (50 U.S.C. 1703), it shall be immediately transmitted to the Congress and published in the FEDERAL REGISTER.

Executive Order 12211—Further prohibitions on transactions with Iran

SOURCE: The provisions of Executive Order 12211 of Apr. 17, 1980, appear at 45 FR 26685, 3 CFR, 1980 Comp., p. 253, unless otherwise noted.

CROSS REFERENCE: Executive Order 12282 of Jan. 19, 1981, this chapter, p. 274, revokes the prohibitions contained in this order.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Sections 1732 and 2656 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in order to take steps additional to those set forth in Executive Order No. 12170 of November 14, 1979, and Executive Order No. 12205 of April 7, 1980, to deal with the threat to the national security, foreign policy and economy of the United States referred to in those Orders, and the added unusual and extraordinary threat to the national security, foreign policy and economy of the United States created by subsequent events in Iran and neighboring countries, including the Soviet invasion of Afghanistan, with respect to which I hereby declare a national emergency, and to carry out the policy of the United States to deny the use of its resources to aid, encourage or give sanctuary to those persons involved in directing, supporting or participating in acts of international terrorism, it is hereby ordered as follows:

1-101.

[Sec. 1-101 amends EO 12205 of Apr. 7, 1980, this chapter, p. 265. The amendment has been incorporated into that order.]

1-102. The following transactions are prohibited, notwithstanding any contracts entered into or licenses granted before the date of this Order:

(a) Effective immediately, the direct or indirect import from Iran into the United States of Iranian goods or services, other than materials imported for news publication or news broadcast dissemination.

(b) Effective immediately, any transactions with a foreign person or foreign entity by any citizen or permanent resident of the United States relating to that person's travel to Iran after the date of this Order.

(c) Effective seven days from the date of this Order, the payment by or on behalf of any citizen or permanent resident of the United States who is within Iran of any expenses for transactions within Iran.

Codification of Presidential Proclamations and Executive Orders

The prohibitions in paragraphs (b) and (c) of this section shall not apply to a person who is also a citizen of Iran and those prohibitions and the prohibitions in section 1-101 shall not apply to a journalist or other person who is regularly employed by a news gathering or transmitting organization and who travels to Iran or is within Iran for the purpose of gathering or transmitting news, making news or documentary films, or similar activities.

1-103. The Secretary of the Treasury is hereby directed, effective fourteen days from the date of this Order, to revoke existing licenses for transactions by persons subject to the jurisdiction of the United States with Iran Air, the National Iranian Oil Company, and the National Iranian Gas Company previously issued pursuant to regulations under Executive Order No. 12170 or Executive Order No. 12205.

1-104. The Secretary of the Treasury is delegated, and authorized to exercise, all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order. The Secretary may redelegate any of these functions to other officers and agencies of the Federal government.

1-105. The Secretary of the Treasury shall ensure that actions taken by him pursuant to the above provisions of this Order, Executive Order No. 12170 and Executive Order No. 12205 are accounted for as required by Section 401 of the National Emergencies Act (50 U.S.C. 1641).

1-106. The Secretary of State is delegated, and authorized to exercise in furtherance of the purposes of this Order, the powers vested in the President by Section 2001 of the Revised Statutes (22 U.S.C. 1732), Section 1 of the Act of July 3, 1926 (22 U.S.C. 211a), and Section 215 of the Immigration and Nationality Act (8 U.S.C. 11885) with respect to:

(a) the restriction of the use of United States passports for travel to, in or through Iran; and

(b) the regulation of departures from and entry into the United States in connection with travel to Iran by citizens and permanent residents of the United States.

1-107. Except as otherwise indicated herein, this Order is effective immediately. In accord with Section 401 of the National Emergencies Act (50 U.S.C. 1641) and Section 204 of the International Emergency Economic Powers Act (50 U.S.C. 1703), it shall be immediately transmitted to the Congress and published in the FEDERAL REGISTER.

Executive Order 12214—Administration of the Export Administration Act of 1979

SOURCE: The provisions of Executive Order 12214 of May 2, 1980, appear at 45 FR 29783, 3 CFR, 1980 Comp., p. 256, unless otherwise noted.

By the authority vested in me as President of the United States of America by Section 4(e) of the Export Administration Act of 1979 (Public Law 96-72; 50 U.S.C. App. 2403(e)), it is hereby ordered as follows:

1-101. Except as provided in Section 1-102, the functions conferred upon the President by the provisions of the Export Administration Act

of 1979, he U.S.C. App.

1-102. (a) 4(e), 5(c), 5 served to the (b) The fu 5(i), and 6(g)

1-103. All forms of adr or continued No. 12002, remain in fu by proper au Executive O

1-104. Exc previously ta Order shall Order.

EDITORIAL NO. Oct. 14, 1983, 4: tive Order 12451

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SOURCE: The p 44245, 3 CFR, 19

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1-101. Exc functions vest ment and Ass the Act), are c (7 U.S.C. 1701

1-102. The quired by the (71 Stat. 345; 7

1-103. The : retary of Stat United States Chairman of t Office of Man for National S required by Se

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1-201. Adm dent by Title I

Codification of Presidential Proclamations and Executive Orders

22. Executive Office of the President
23. Export-Import Bank of the United States
24. Farm Credit Administration
25. Federal Communications Commission
26. Federal Deposit Insurance Corporation
27. Federal Home Loan Bank Board
28. Federal Maritime Commission
29. Federal Mediation and Conciliation Service
30. Federal Trade Commission
31. General Services Administration (Purchases by the Tools Commodity Center, and the Region 9 Office in San Francisco, California are not included)
32. Interstate Commerce Commission
33. Merit Systems Protection Board
34. National Aeronautics and Space Administration
35. National Credit Union Administration
36. National Labor Relations Board
37. National Mediation Board
38. National Science Foundation
39. National Transportation Safety Board
40. Nuclear Regulatory Commission
41. Office of Personnel Management
42. Overseas Private Investment Corporation
43. Panama Canal Commission
44. Railroad Retirement Board
45. Securities and Exchange Commission
46. Selective Service System
47. Smithsonian Institution
48. United States Arms Control and Disarmament Agency
49. United States Information Agency
50. United States International Development Cooperation Agency
51. United States International Trade Commission
52. Veterans Administration
53. Maritime Administration of the Department of Transportation
54. The Peace Corps

[Annex amended by EO 12347 of Feb. 23, 1982, 47 FR 8149, 3 CFR, 1982 Comp., p. 133; EO 12388 of Oct. 14, 1982, 47 FR 46245, 3 CFR, 1982 Comp., p. 225; EO 12474 of Apr. 17, 1984, 49 FR 15539, 3 CFR, 1984 Comp., p. 202]

Executive Order 12282—Revocation of prohibitions against transactions involving Iran

SOURCE: The provisions of Executive Order 12282 of Jan. 19, 1981, appear at 46 FR 7925, unless otherwise noted.

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agree-

Chapter

ments with the Government of the Democratic Republic of the Congo, January 19, 1981, relating to the release of Americans being held as hostages and nationals against Iran, and the relations between the United States and Iran, the effective date of this Order shall be January 19, 1981.

1-101. The prohibitions of Executive Order 12170, as amended by Executive Order 12211, and Executive Order 12211, issued April 17, 1980, and Executive Order 12211, issued April 17, 1980, are hereby revoked.

1-102. The Secretary of State shall exercise all functions vested in the Secretary of State by the International Emergency Economic Powers Act (50 U.S.C. 1601-1606) for the purpose of this Order.

1-103. This Order shall take effect on the date of its publication in the Federal Register.

Executive Order 12282

SOURCE: The provisions of Executive Order 12282 of Jan. 19, 1981, appear at 46 FR 7925, 3 CFR, 1981 Comp., p. 202.

By the authority vested in me as President by the Constitution and laws of the United States, including Section 301 of Title 3 of the United States Code, I hereby order and enforce the International Emergency Economic Powers Act (50 U.S.C. 1601-1606) as follows:

SECTION 1. The functions of the Secretary of State (50 U.S.C. 1601-1606) are hereby delegated to the Secretary of State.

SEC. 2. In carrying out the International Emergency Economic Powers Act (50 U.S.C. 1601-1606) and the Secretary of State may redelegate some of the functions of the Secretary of State to other Executive agencies.

Executive Order 12451

SOURCE: The provisions of Executive Order 12451 of Oct. 14, 1982, appear at 47 FR 46245, 3 CFR, 1982 Comp., p. 225.

By the authority vested in me as President by the Constitution and laws of the United States, including Section 301 of Title 3 of the United States Code, I hereby order and enforce the International Emergency Economic Powers Act (50 U.S.C. 1601-1606) as follows:

SECTION 1. In view of the unusual and extraordinary circumstances (hereinafter referred to as "IEEPA") existing in the United States (hereinafter referred to as "IEEPA"), of the authority vested in me as President by the Constitution and laws of the United States, including Section 301 of Title 3 of the United States Code, I hereby order and enforce the International Emergency Economic Powers Act (50 U.S.C. 1601-1606) as follows:

SEC. 2. The revocation of any violation of any rules or regulations of the Secretary of State under the International Emergency Economic Powers Act (50 U.S.C. 1601-1606) shall be deemed to be an administrative action under the International Emergency Economic Powers Act (50 U.S.C. 1601-1606).

Policy— Arms embargo against Iran continued to be U.S. policy, through State implementation of Chapter 15—Commerce and Foreign Trade Arms Export Control Act, even after E.O. revocation

ments with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostage and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

1-101. The prohibitions contained in Executive Order 12205 of April 7, 1980, and Executive Order 12211 of April 17, 1980, and Proclamation 4702 of November 12, 1979, are hereby revoked.

1-102. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purpose of this Order.

1-103. This Order shall be effective immediately.

Executive Order 12297—International Coffee Agreement 1976

SOURCE: The provisions of Executive Order 12297 of Mar. 12, 1981, appear at 46 FR 16877, 3 CFR, 1981 Comp., p. 142, unless otherwise noted.

By the authority vested in me as President by the International Coffee Agreement Act of 1980 (Public Law 96-599; 94 Stat. 3491) and Section 301 of Title 3 of the United States Code, and in order to carry out and enforce the International Coffee Agreement 1976, it is hereby ordered as follows:

SECTION 1. The functions vested in the President by Public Law 96-599 (94 Stat. 3491) are delegated to the United States Trade Representative.

SEC. 2. In carrying out the functions delegated to him, the United States Trade Representative shall consult with the Secretary of Agriculture and the Secretary of State. The United States Trade Representative may redelegate some or all of those functions to the head of another Executive agency with the consent of the head of such agency.

Executive Order 12451—Continuation of export control regulations

SOURCE: The provisions of Executive Order 12451 of Dec. 20, 1983, appear at 48 FR 56563, 3 CFR, 1983 Comp., p. 223, unless otherwise noted.

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) (hereinafter referred to as "IEEPA"), 22 U.S.C. 287c, and the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*) (hereinafter referred to as "the Act"), it is hereby ordered as follows:

SECTION 1. In view of the extension by Public Law 98-207 (December 5, 1983), of the authorities contained in the Act, Executive Order No. 12444 of October 14, 1983, which continued in effect export control regulations under IEEPA, is revoked, and the declaration of economic emergency is rescinded.

SEC. 2. The revocation of Executive Order No. 12444 shall not affect any violation of any rules, regulations, orders, licenses and other forms of administrative action under that Order which occurred during the

Arms Exports to Iran

A number of legal constraints might apply to the export of arms to Iran, depending on: (1) whether they were provided directly by the U.S. Government or through commercial channels; (2) their character and value; (3) when the exports occurred; and (4) whether, at the time of export to Iran, they were in the United States or had previously been transferred to a third country.

Section 38(b)(2) of the Arms Export Control Act prohibits the export of defense articles and services (as designated in the United States Munitions List) without a license issued under regulations implementing that Section, except for "exports . . . made by or for an agency of the United States Government (A) for official use by a department or agency of the United States Government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means." The implementation of this Section has been delegated by E.O. 11958 to the Secretary of State. The regulations implementing this Section, the International Traffic in Arms Regulations (or ITAR), appear in 22 CFR 121-130.

Part 121 of the ITAR contains the United States Munitions List, which includes a wide range of items deemed to be inherently military in character, including: firearms, munitions and rockets; military aircraft, vehicles and electronics; and equipment and spares for such systems. Part 123 contains the requirements for obtaining export licenses for such items, including non-transfer and use assurances from the foreign consignee and end-user. In particular, Section 123.1 requires that "any person who intends to export a defense article must obtain a license from the Office of Munitions Control prior to the export unless the export qualifies for an exemption under the provisions of this subchapter." Section 123.9 requires that "the written approval of the Department of State must be obtained before reselling, diverting, transferring, transshipping, or disposing of a defense article in any country other than the country of ultimate destination as stated on the export license" Section 126.4 repeats the exemption in Section 38 of the Act for exports by or for U.S. agencies for their use or for assistance and sales programs authorized by law; it states that this exemption applies "only when all aspects of a transaction (export, carriage, and delivery abroad) are effected by a United States Government agency, or when the export is covered by a United States Government Bill of Lading"; and it reiterates that this "does not authorize any department or agency of the U.S. Government to make any export which is otherwise prohibited by virtue of other administrative provisions or by any statute."

Although exports pursuant to sales programs authorized by law -- specifically, the Foreign Military Sales (FMS) Program -- do not require export licenses, special statutory requirements apply to such transactions. In particular, such transactions may only occur for the purpose of internal security, legitimate self-defense or collective measures consistent with the UN Charter (Section 4 of the Arms Export Control Act). They may only be made when the President has determined that the furnishing of defense articles to the country in question "will strengthen the security of the United States and promote world peace", and where that country has agreed not to transfer their title or possession or use them contrary to the purposes for which they were provided without U.S. permission, and to maintain substantially the same degree of security as the U.S. Government would (Section 3 of the Arms Export Control Act). The President must provide a detailed report to Congress 30 days prior to any sale of major defense equipment worth \$14 million or more, or any defense articles worth \$50 million or more (Section 36(b) of the Arms Export Control Act).

In December 1979 the State Department, exercising its discretionary authority under the Arms Export Control Act, suspended all existing licenses and approvals for the export or retransfer to Iran of Munitions List articles and related technical data, and has since that time maintained a publicly-announced policy of denying all applications for such licenses and approvals. (Nothing in the ITAR expressly prohibits the licensing of exports of Munitions List items to Iran.) Likewise, the U.S. has maintained a publicly-announced policy of refraining from providing or consenting to the transfer of FMS items to Iran.

In addition, on August 27, 1986 the Omnibus Diplomatic Security and Antiterrorism Act of 1986 became law; Section 509 of that Act added a new Section 40 to the Arms Export Control Act, which provides in part as follows:

(a) . . . Except as provided in subsection (b), items on the United States Munitions List may not be exported to any country which the Secretary of State has determined, for purposes of section 6(j)(1)(A) of the Export Administration Act of 1979, . . . has repeatedly provided support for acts of international terrorism.

(b) . . . The President may waive the prohibition contained in subsection (a) in the case of a particular export if the President determines that the export is important to the national interests of the United States and submits to the Congress a report justifying that determination and describing the proposed export. Any such waiver shall expire at the end of 90 days after it is granted unless the Congress enacts a law extending the waiver.

UNCLASSIFIED OFFICIAL USE

On January 23, 1984 the Secretary of State determined, for purposes of Section 6 of the Export Administration Act, that Iran is a country which has repeatedly provided support for acts of international terrorism (49 Fed. Reg. 2836), and that determination is still in effect.

Further, the following statutory provisions would have to be considered with respect to any proposed exports of Munitions List items to Iran:

-- Section 502(b) of the Foreign Assistance Act, which restricts sales and licenses for defense articles and services with respect to governments which engage in "a consistent pattern of gross violations of internationally recognized human rights";

-- Section 3(f) of the Arms Export Control Act, which requires the President to terminate all sales under the Act to any government "which aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism"; and

-- Section 6 of the Arms Export Control Act, which prohibits such sales and licenses with respect to any country "determined by the President to be engaged in a consistent pattern of acts of intimidation or harassment directed against individuals in the United States."

With respect to the transfer to third countries of items previously exported, Section 3(d) of the Arms Export Control Act provides that the President may not consent to such a transfer of defense articles exceeding \$50 million in value (in terms of their original acquisition cost), or any "major defense equipment" exceeding \$14 million in value, unless he submits a detailed report concerning the transaction to Congress at least 30 calendar days before giving such consent. In addition, Section 3(a) prohibits the President from consenting to any transfer of defense articles furnished under the Foreign Military Sales (FMS) program or the Military Assistance Program (MAP) "unless the United States itself would transfer the defense article under consideration to that country."

UNITED OFFICIAL USE

The export of items not on the Munitions List, but which may have potential military application, is governed by the Export Administration Act. In particular, Section 6(i) of the Act requires that certain Congressional committees be notified as least 30 days prior to the approval of any license for the export, to any country which the Secretary of State has determined has repeatedly provided support for acts of international terrorism, of any goods or technology worth more than \$1 million which would make a significant contribution to its military potential. As indicated above, Iran has been so designated. The authority of this Act has also been used to impose a requirement for validated licenses (and a presumption of denial) for certain categories of exports to Iran thought to have particular military application, including all aircraft and helicopters and related parts and components, and all goods and technical data subject to national security controls if destined for a military end-user or end-use.

Finally, certain Iranian properties in the United States that were blocked at the time of the hostage crisis remain subject to control by the Treasury Department under the authority of the International Emergency Economic Powers Act. Specifically, under a Treasury directive issued on May 21, 1984, a Treasury license is required for the movement or transfer of any such tangible property the export of which would require any license under U.S. law; this would include munitions list items acquired by Iran through commercial channels prior to the hostage crisis but never exported, as well as the special categories of non-munitions items noted above, but not FMS items exported directly by the U.S. Government.