

NOTICE: This guidance will be effective upon the entry into force of the Treaty. A rule document will be published in the Federal Register announcing the effective date. Until such time, please monitor <http://www.pmddtc.state.gov> for effective date.

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## INDUSTRIAL SECURITY

# LETTER

Industrial Security Letters (ISLs) are issued periodically to inform cleared contractors, user agencies and DoD activities of developments relating to industrial security. The contents of these letters are for information and clarification of existing policy and requirements. Suggestions for Industrial Security Letters are appreciated and should be submitted to the local Defense Security Service (DSS) cognizant industrial security office. Articles and ideas contributed will become the property of DSS. Inquiries concerning specific information in Industrial Security Letters should be addressed to the cognizant DSS industrial security office.

ISL 2012-02

March 21, 2012

### **Transfers of Defense Articles to the United Kingdom without a License or Other Written Authorization**

The U.S. Government signed a treaty with the United Kingdom (UK) Concerning Defense Trade Cooperation on June 21, 2007. This treaty provides a comprehensive framework for exports and transfers to the UK of certain classified and unclassified Defense Articles without a license or other written authorization. This ISL promulgates updated guidance based on the requirements of that treaty, specifically regarding the application of portions of Chapters 4 and 10, National Industrial Security Program Operating Manual (NISPOM), to transfers of defense articles to the United Kingdom.

Part 126 of the ITAR has been amended to add a new exemption in §126.17 to implement the UK Treaty, and to add Supplement No. 1, which identifies those defense articles exempt from the scope of §126.17. The guidance provided in this article applies to contractors registered with the State Department, Directorate of Defense Trade Controls (DDTC) and who are eligible to export defense articles.

**Note:** As of the date of this ISL, the Australian Defense Trade Cooperation Treaty has not yet come into force. DoD will issue an update to this ISL once that occurs.

#### **Definitions:**

Defense Articles are those articles, services, and related technical data, including software, in tangible or intangible form, listed on the United States Munitions List (USML) of the International Traffic in Arms Regulations (ITAR), as modified or amended. Defense articles exempt from the scope of §126.17 of the ITAR are identified in Supplement No. 1 to Part 126 of the ITAR.

Defense Articles fall under the scope of the treaty when they are in support of:

1. United States and UK combined military or counter-terrorism operations;

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2. United States and UK cooperative security and defense research, development, production, and support programs;
3. Mutually agreed specific security and defense projects where the Government of the United Kingdom is the end-user; or
4. U.S. Government end-use.

A listing of approved end uses is available on DDTC's website under the Treaty tab at (<http://pmdrtc.state.gov/>).

UK Community consists of the UK Government entities with facilities and non-governmental facilities identified on the DDTC website (<http://www.pmdrtc.state.gov/>) at the time of export.

**Marking:**

*Contractors are required to mark Defense Articles that fall under the scope of the treaty prior to transferring from the United States to the UK as follows:*

Treaty with the United Kingdom

Classified U.S. Defense Articles shall be marked:

*CLASSIFICATION LEVEL USML//REL USA AND GBR TREATY  
COMMUNITY//*

For example, for defense articles classified SECRET, the marking shall be "SECRET USML//REL USA AND GBR TREATY COMMUNITY//"

All other standard classification markings in accordance with NISPOM Chapter 4, Section 2 shall apply.

Unclassified U.S. Defense Articles shall be marked

*//RESTRICTED USML//REL USA AND GBR TREATY COMMUNITY//*

*When defense articles are returned from the UK to the United States, any Defense Articles marked as RESTRICTED in this manner purely for the purposes of the treaty shall be considered to be unclassified and such marking shall be removed.*

**Transfers:**

In accordance with NISPOM Chapter 10, Section 4, all Defense Articles that fall under the scope of the treaty must be transferred from the U.S. point of embarkation through channels approved by both the United States and the UK.

For transfers of Defense Articles as freight, the contractor shall prepare a transportation plan. For transfer of classified U.S. Defense Articles, a freight forwarder must have a valid facility security clearance (FCL) and storage capability at the appropriate level. For

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unclassified U.S. Defense Articles that are transferred as freight, a freight forwarder is not required to be cleared.

**Records:**

Contractors shall maintain records of exports, transfers, re-exports, or re-transfers of Defense articles falling under the scope of the treaty for a period of five years. Records shall be made available to DSS upon request. The records shall contain the following information (as required by ITAR section 126.17(l)(1)):

1. Port of entry/exit;
2. Date/time of export/import;
3. Method of export/import;
4. Commodity code and description of the commodity, including technical data;
5. Value of export;
6. Reference to ITAR section 126.17(l)(1), and justification for export under the Treaty;
7. End-user/end-use;
8. Identification of all U.S. and foreign parties to the transaction;
9. How export was marked;
10. Security classification of the export;
11. All written correspondence with the U.S. Government on the export;
12. All information relating to political contributions, fees, or commissions furnished or obtained, offered, solicited, or agreed upon as outlined in ITAR section 126.17(m);
13. Purchase order, contract, or letter of intent;
14. Technical data actually exported;
15. The Internal Transaction Number for the Electronic Export Information filing in the Automated Export System;
16. All shipping documentation (including, but not limited to the airway bill, bill of lading, packing list, delivery verification, and invoice); and
17. Statement of Registration (Form DS-2032).

Required