

that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

#### List of Subjects in 21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 179 is amended as follows:

#### PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

1. The authority citation for 21 CFR part 179 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 343, 348, 373, 374.

##### § 179.45 [Amended]

2. Section 179.45 *Packaging materials for use during the irradiation of prepackaged foods* is amended in the introductory text of paragraph (b) by adding the phrase “, electron beam, or X-” after the word “gamma” and in the introductory text of paragraph (d) by adding the phrase “, electron beam,” after the word “gamma”.

Dated: January 31, 2001.

**Ann M. Witt,**

*Acting Associate Commissioner for Policy.*  
[FR Doc. 01-3885 Filed 2-15-01; 8:45 am]

**BILLING CODE 4160-01-F**

#### DEPARTMENT OF STATE

#### 22 CFR Part 126

##### [Public Notice 3575]

#### Bureau of Political-Military Affairs; Amendments to the International Traffic in Arms Regulation: Canadian Exemption

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Canadian Exemption of the International Traffic in Arms Regulations (ITAR) to change the

authorized end-users to Canadian Federal or Provincial government authority acting in an official capacity or a Canadian-registered person. The amendment also adds a new defense service exemption. Further, it amends the list of defense articles requiring a license.

**EFFECTIVE DATE:** May 30, 2001.

#### FOR FURTHER INFORMATION CONTACT:

William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, ATTN: Regulatory Change Canadian Exemption (202) 663-2862 or (202) 261-8264.

**SUPPLEMENTARY INFORMATION:** The United States Government (USG) and the Government of Canada (GOC) have completed bilateral discussions on export controls that have resulted in each Government making changes to their respective regulations. The Government of Canada has made numerous changes to its export control system by law and regulation, including providing coverage for all items of the type controlled on the United States Munitions List (USML) on its control lists. Their changes also involve establishing a system that identifies and permits registration of persons who will be eligible on the basis of Canadian citizenship or permanent residence and of risk assessment to have access to USML articles exported from the United States or re-transferred within Canada without a U.S. license. Furthermore, the GOC promulgated regulations requiring USG approval prior to any re-export or retransfer of the International Traffic in Arms Regulations (“ITAR”)-controlled items either within Canada or to a third country. In response, the USG is amending Section 126.5 of ITAR to expand significantly the scope of the Canadian exemption, specifically by reflecting the Canadian registration system. The amendment makes corresponding changes to permit specified end users eligible to receive defense articles exported under this exemption. Those end users are Canadian Federal or Provincial government authorities acting in an official capacity and Canadian-registered persons. For purposes of this section only, a Canadian-registered person is any Canadian national (including Canadian business entities organized under the laws of Canada), dual national, and permanent resident registered in Canada in accordance with the Canadian Defence Production Act. Even where a Canadian business entity is so registered, this does not qualify any employee to receive items subject to this exemption unless the employee is

also a national, dual national or permanent resident of Canada.

The Government of Canada published a regulatory change effective April 30, 2001, establishing a registration system that will permit Canadian firms to be registered as eligible to receive exports from the United States on May 30, 2001, the effective date of this regulatory change.

Section 126.5 is also amended to add a new defense service exemption that provides registered United States and Canadian-registered persons the ability to, without obtaining a license, work together to respond to U.S. and Canadian Government requests for a quote or a bid proposal. This amendment also permits exchanges necessary to respond to a registered U.S. company's request to produce, design, assemble, maintain or service a defense article. To utilize this amendment, U.S. exporters are advised to ensure that they can meet all the criteria prior to export and that adequate records of disclosure are maintained to verify that only the information exempt is exported.

Also, the list of items requiring a license prior to export is being amended to change the coverage. The changes include a requirement to obtain a license prior to export to Canada for all technical data and defense services for gas turbine engine hot sections covered by Categories VI(f) and VIII(b)—not to include hardware; developmental aircraft, engines and components identified in Category VIII(f); all category XII(c), except 1st- and 2nd-generation image intensification tubes and 1st- and 2nd-generation image intensification night sighting equipment and end items in Category XII(c) and related technical data limited to basic operations, maintenance and training information as authorized under exemption in Section 125.4(b)(5) when exported directly to a Canadian Government; chemical agents listed in Category XIV(a), biological agents in Category XIV(b), and equipment listed in Category XIV(c) for dissemination of the chemical agents and biological agents in (a) and (b); nuclear radiation-measuring devices manufactured to military specifications listed in XIV(d); all spacecraft in Category XV(a), except commercial communications satellites; XV(c), except end items when for use by the Federal Government of Canada; Category XV(d); certain systems, components and parts included within the coverage of XV(e); and, miscellaneous articles covered by Category XXI.

It remains the responsibility of the U.S. exporter of record to determine, in writing, the Canadian end-user, end-use,

that the Canadian recipient is registered with the Canadian Government, and that the defense articles are for end-use in Canada and not for reexport or retransfer to another foreign destination. Should this information not be available or the exporter has knowledge or reason to know that the export would result in a transfer or sale to a proscribed destination (see 126.1), this exemption is not available.

As a general matter, the regulation does not affect the continuing application of requirements of this subchapter to parties utilizing this exemption, in particular § 126.1(e) which requires any person who knows or has reason to know of a prohibited activity involving a proscribed destination to immediately inform the Office of Defense Trade Controls. Specifically, too, Canadian-registered persons will be eligible recipients of ITAR-controlled items under this exemption for purposes of this regulation, except where application of U.S. law may require prohibiting (e.g., by treating a transaction as non-exempt or a Canadian-registered person as ineligible on a case-by-case basis, or more broadly) an export, reexport or transfer of such an item to a person with citizenship or nationality of a country to which U.S. defense exports are prohibited by law.

This amendment involves a foreign affairs function of the United States and therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with § 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Order Nos. 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, Canadian Exemption, 13th Floor, H1304, 2401 E Street, NW., Washington, DC 20037. Such persons must be so registered with the

Department of State's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of § 38 of the Arms Export Control Act. Comments are welcomed and could assist both governments in joint outreach program to be conducted following this publication.

#### List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, chapter I, subchapter M, part 126, is being amended as follows:

#### PART 126—GENERAL POLICIES AND PROVISIONS

1. The authority citation for part 126 continues to read as follows:

**Authority:** Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778 (as amended by P.L. 106-280), 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR 1994 Comp., p. 899.

2. Section 126.5 is revised to read as follows:

##### § 126.5 Canadian exemptions.

(a) *Temporary import of defense articles.* District Director of Customs and postmasters shall permit the temporary import and return to Canada without a license of any unclassified defense articles (see § 120.6 of this subchapter) that originate in Canada for temporary use in the United States and return to Canada. All other temporary imports shall be in accordance with §§ 123.3 and 123.4 of this subchapter.

(b) *Permanent and temporary export of defense articles.* Except for the defense articles and related technical data, and defense services identified in paragraph (b) (1) through (20) of this section for exports that transit third countries, and provided the requirements of this subchapter are met, (to include § 120.1 (c) and (d), parts 122 and 123 (except insofar as exemption from licensing requirements is herein authorized) and § 126.1, and the requirement to obtain non-transfer and use assurances for all significant military equipment), District Director of Customs and postmasters shall permit, when for end-use in Canada by Canadian Federal or Provincial governmental authorities acting in an official capacity or by a Canadian-registered person or return to the United States, the permanent and temporary export to Canada without a license of defense articles and related technical data identified in § 121.1 of this subchapter, except as described in paragraphs (b)(1) through (20) of this

section and the defense services and technical data described in paragraph (c) of this section. For purposes of this section, "Canadian-registered person" is any Canadian national (including Canadian business entities organized under the laws of Canada), dual national, and permanent resident registered in Canada in accordance with the Canadian Defence Production Act, and such other Canadian Crown Corporations as may be identified by the Department of State. The defense articles, related technical data, and defense services identified in § 121.1 of this subchapter continuing to require a license are:

(1) All classified articles, technical data and defense services covered by § 121.1 of this subchapter.

(2) All Missile Technology Control Regime (MTCR) Annex Items.

(3) Defense services covered by part 124 of this subchapter, except for those in paragraph (c) of this section.

(4) Any transaction involving the export of defense articles and defense services for which congressional notification is required in accordance with § 123.15 and § 124.11 of this subchapter.

(5) All technical data and defense services for gas turbine engine hot sections covered by Categories VI(f) and VIII(b). (This does not include hardware).

(6) Firearms listed in Category I.

(7) Ammunition listed in Category III for the firearms in Category I.

(8) Nuclear weapons strategic delivery systems and all components, parts, accessories and attachments specifically designed for such systems and associated equipment.

(9) Naval nuclear propulsion equipment listed in Category VI(e).

(10) Aircraft listed in Category VIII(a) and developmental aircraft, engines and components identified in Category VIII(f).

(11) All Category XII(c), except any 1st- and 2nd-generation image intensification tube and 1st- and 2nd-generation image intensification night sighting equipment. End items (see § 121.8 of this subchapter) in Category XII(c) and related technical data limited to basic operations, maintenance and training information as authorized under the exemption in § 125.4(b)(5) of this subchapter may be exported directly to a Canadian Government entity (*i.e.* federal, provincial, territorial, or municipal) without a license.

(12) Chemical agents listed in Category XIV(a), biological agents in Category XIV(b), and equipment listed in Category XIV(c) for dissemination of

the chemical agents and biological agents listed in Category XIV(a) and (b).

(13) Nuclear radiation measuring devices manufactured to military specifications listed in Category XIV(d).

(14) All spacecraft in Category XV(a), except commercial communications satellites.

(15) Category XV(c), except end items (see § 121.8 of this subchapter) for end use by the Federal Government of Canada exported directly or indirectly through a Canadian-registered person.

(16) Category XV(d).

(17) The following systems, components and parts included within the coverage of Category XV(e):

(i) Anti-jam systems with the ability to respond to incoming interference by adaptively reducing antenna gain (nulling) in the direction of the interference.

(ii) Antennas:

(A) With aperture (overall dimension of the radiating portions of the antenna) greater than 30 feet; or

(B) With all sidelobes less than or equal to  $-35\text{dB}$ , relative to the peak of the main beam; or

(C) Designed, modified, or configured to provide coverage area on the surface of the earth less than 200 nautical miles in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam).

(iii) Optical intersatellite data links (cross links) and optical ground satellite terminals.

(iv) Spaceborne regenerative baseband processing (direct up and down conversion to and from baseband) equipment.

(v) Propulsion systems which permit acceleration of the satellite on-orbit (*i.e.*, after mission orbit injection) at rates greater than  $0.1\text{g}$ .

(vi) Attitude control and determination systems designed to provide spacecraft pointing determination and control or payload pointing system control better than  $0.02$  degrees per axis.

(vii) All specifically designed or modified systems, components, parts, accessories, attachments, and associated equipment for all Category XV(a) items, except when specifically designed or modified for use in commercial communications satellites.

(18) Nuclear weapons design and test equipment listed in Category XVI.

(19) Submersible and oceanographic vessels and related articles listed in Category XX(a) through (d).

(20) Miscellaneous articles covered by Category XXI.

(c) *Defense service exemption.* A defense service is exempt from the licensing requirements of part 124 of this subchapter, when the following criteria can be met.

(1) The item, technical data, defense service and transaction is not identified in paragraphs (b)(1) through (20) of this section; and

(2) The transfer of technical data and provision of defense service is limited to the following activities:

(i) Canadian-registered person or a registered and eligible U.S. company (in accordance with part 122 of this subchapter) preparing a quote or bid proposal in response to a written request from a Department or Agency of the United States Federal Government or from a Canadian Federal, Provincial, or Territorial Government; or

(ii) Produce, design, assemble, maintain or service a defense article (*i.e.* hardware, technical data) for use by a registered U.S. company; or, a U.S. Federal Government Program; or for end use in a Canadian Federal, Provincial, or Territorial Government Program; and

(iii) The defense services and technical data are limited to that defined in paragraph (c)(6) of this section; and

(3) The Canadian contractor and subcontractor certify, in writing, to the U.S. exporter that the technical data and defense service being exported will be used only for an activity identified in paragraph (c)(2) of this section; and

(4) A written arrangement between the U.S. exporter and the Canadian recipient (such as a consummated Non-Disclosure or other multi-party agreement, Technology Transfer Control Plan, contract or purchase order) must:

(i) Limit delivery of the defense articles being produced directly to an identified manufacturer in the United States registered in accordance with part 122 of this subchapter; a Department or Agency of the United States Federal Government; a Canadian-registered person authorized in writing to manufacture defense articles by and for the Government of Canada; a Canadian Federal, Provincial, or Territorial Government; and

(ii) Prohibit the disclosure of the technical data to any other contractor or subcontractor who is not a Canadian-registered person; and

(iii) Provide that any subcontract contain all the limitations of this section; and

(iv) Require that the Canadian contractor, including subcontractors, destroy or return to the U.S. exporter in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of

the contract, unless for use by a Canadian or United States Government entity that requires in writing the technical data be maintained. The U.S. exporter must be provided written certification that the technical data is being retained or destroyed; and

(v) Include a clause requiring that all documentation created from U.S. technical data contain the statement "This document contains technical data, the use of which is restricted by the U.S. Arms Export Control Act. This data has been provided in accordance with, and subject to, the limitations specified in § 126.5 of the International Traffic In Arms Regulations (ITAR). By accepting this data, the consignee agrees to honor the requirements of the ITAR"; and

(5) The U.S. exporter must provide the Office of Defense Trade Controls a semi-annual report of all their on-going activities authorized under this section. The report shall include the article(s) being produced; the end user(s) (*i.e.* name of U.S. or Canadian company); the end item into which the product is to be incorporated; the intended end use of the product (*e.g.*, United States or Canadian Defense contract number and identification of program); the name and address of all the Canadian contractors and subcontractors; and

(6) The defense services and technical data are limited to those in paragraphs (c)(6)(i), (ii), (iii) and (iv), and do not include paragraphs (c)(6)(v), (vi) and (vii) of this section:

(i) *Build-to-Print.* Build-to-Print means that a foreign consignee can produce a defense article from engineering drawings without any technical assistance from a U.S. exporter. This transaction is based strictly on a "hand-off" approach because the foreign consignee is understood to have the inherent capability to produce the defense article and only lacks the necessary drawings. Supporting documentation such as acceptance criteria, and specifications, may be released on an as-required basis (*i.e.* "must have") such that the foreign consignee would not be able to produce an acceptable defense article without this additional supporting documentation. Documentation which is not absolutely necessary to permit manufacture of an acceptable defense article (*i.e.* "nice to have") is not considered within the boundaries of a "Build-to Print" data package; and/or

(ii) *Build/Design-to-Specification.* "Build/Design-to-Specification" means that a foreign consignee can design and produce a defense article from requirement specifications without any technical assistance from the U.S. exporter. This transaction is based

strictly on a “hands-off” approach since the foreign consignee is understood to have the inherent capability to both design and produce the defense article and only lacks the necessary requirement information; and/or

(iii) *Basic Research*. “Basic Research”—means a systemic study directed toward greater knowledge or understanding of the fundamental aspects of phenomena and observable facts without specific applications towards processes or products in mind. It does not include “Applied Research” (*i.e.* a systemic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met. It is a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.); and

(iv) *Maintenance* (*i.e.*, inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components, but excluding any modification, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item); and does not include

(v) *Design Methodology*, such as: The underlying engineering methods and design philosophy utilized (*i.e.*, the “why” or information that explains the rationale for particular design decision, engineering feature, or performance requirement); engineering experience (*e.g.* lessons learned); and the rationale and associated databases (*e.g.* design allowables, factors of safety, component life predictions, failure analysis criteria) that establish the operational requirements (*e.g.*, performance, mechanical, electrical, electronic, reliability and maintainability) of a defense article. (Final analytical results and the initial conditions and parameters may be provided.)

(vi) *Engineering Analysis*, such as: Analytical methods and tools used to design or evaluate a defense article’s performance against the operational requirements. Analytical methods and tools include the development and/or use of mockups, computer models and simulations, and test facilities. (Final analytical results and the initial conditions and parameters may be provided.)

(vii) *Manufacturing Know-how*, such as: Information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a qualified, finished defense article. (Information may be provided in a

build-to-print package identified in paragraph (c)(6)(i) of this section that is necessary in order to produce an acceptable defense article.).

(d) *Reexports/retransfer*. Rexport/retransfer in Canada to another end user or end use or from Canada to another destination, except the United States, must in all instances have the prior approval of the Office of Defense Trade Controls. Unless otherwise exempt in this subchapter, the original exporter is responsible, upon request from a Canadian-registered person for obtaining or providing reexport/retransfer approval. In any instance when the U.S. exporter is no longer available to the Canadian end user the request for reexport/retransfer may be made directly to Department of State, Office of Defense Trade Controls. All requests must include the information in § 123.9(c) of this subchapter. Rexport/retransfer approval is acquired by:

(1) If the reexport/retransfer being requested could be made pursuant to this section (*i.e.*, a retransfer within Canada to another eligible Canadian recipient under this section) if exported directly from the U.S., upon receipt by the U.S. company of a request by a Canadian end user, the original U.S. exporter is authorized to grant on behalf of the U.S. Government by confirming in writing to the Canadian requester that the reexport/retransfer is authorized subject to the conditions of this section; or

(2) If the reexport/retransfer is to an end use or end user that, if directly exported from the U.S. requires a license, retransfer must be handled in accordance with § 123.9 of this subchapter.

#### Notes to § 126.5:

1. In any instance when the exporter has knowledge that the defense article exempt from licensing is being exported for use other than by a qualified Canadian-registered person or for export to another foreign destination, other than the United States, in its original form or incorporated into another item, an export license must be obtained prior to the transfer to Canada.

2. Additional exemptions exist in other sections of this subchapter that are applicable to Canada, for example §§ 123.9, 125.4 and 124.2 which allows for the performance of defense services related to training in basic operations and maintenance, without a license, for defense articles lawfully exported, including those identified in paragraphs (b)(1) through (20) of this section.

Dated: January 24, 2001.

Colin L. Powell,

Secretary of State.

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BILLING CODE 4710–25–P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

#### 31 CFR Part 210

RIN 1510–AA81

#### Federal Government Participation in the Automated Clearing House

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Interim rule with request for comment.

**SUMMARY:** This rule amends our regulation governing the use of the Automated Clearing House (ACH) system by Federal agencies. The regulation adopts, with some exceptions, the ACH Rules developed by NACHA—The Electronic Payments Association (NACHA) as the rules governing the use of the ACH system by Federal agencies. We’re issuing this interim rule to address changes that NACHA has made to the ACH Rules during the past year.

**DATES:** This interim rule is effective March 19, 2001. The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register as of March 19, 2001.

**ADDRESSES:** You can download this interim rule at the following website: <http://www.fms.treas.gov/ach/>. You may also inspect and copy this rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

You can view Treasury’s procedural guidelines for ACH payments in the Green Book at the following website: <http://www.fms.treas.gov/greenbook>. You may also register at this website for e-mail notification of updates to the Green Book.

You may send comments electronically to the following address: 210comments@fms.treas.gov. You may also mail comments to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, 401 14th Street, SW, Room 420, Washington, DC 20227.

**FOR FURTHER INFORMATION CONTACT:** Walt Henderson, Senior Financial Program