

<i>Control(s)</i>	<i>Country chart (see supp. No. 1 to part 738)</i>
NS applies to entire entry except equipment for ECCN 0A501.y.	NS Column 1
RS applies to entire entry except equipment for ECCN 0A501.y.	RS Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
AT applies to entire entry.	AT Column 1

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

LVS: \$3000  
GBS: N/A

**Special Conditions for STA**

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used to ship any item in this entry.

**List of Items Controlled**

*Related Controls:* N/A  
*Related Definitions:* N/A  
*Items:*

- a. Small arms chambering machines.
- b. Small arms deep hole drilling machines and drills therefor.
- c. Small arms rifling machines.
- d. Small arms boring/reaming machines.
- e. Production equipment (including dies, fixtures, and other tooling) “specially designed” for the “production” of the items controlled in 0A501.a through .x. or USML Category I.

■ 17. In Supplement No. 1 to part 774, Category 0, revise Export Control Classification Number (ECCN) 0E505 to read as follows:

**0E505 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 0A505.**

**License Requirements**

*Reason for Control:* NS, RS, UN, CC, AT

<i>Control(s)</i>	<i>Country chart (see supp. No. 1 to part 738)</i>
NS applies to “technology” for “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing commodities in 0A505.a and .x; for equipment for those commodities in 0B505; and for “software” for that equipment and those commodities in 0D505.	NS Column 1

<i>Control(s)</i>	<i>Country chart (see supp. No. 1 to part 738)</i>
RS applies to “technology” for “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing commodities in 0A505.a and .x; for equipment for those commodities in 0B505 and for “software” for those commodities and that equipment in 0D505.	RS Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
CC applies to “technology” for the “development” or “production” of commodities in 0A505.b.	CC Column 1
AT applies to “technology” for “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing commodities in 0A505.a, .d, and .x.	AT Column 1

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

TSR: N/A

**Special Conditions for STA**

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any “technology” in 0E505.

**List of Items Controlled**

*Related Controls:* Technical data required for and directly related to articles enumerated in USML Category III are “subject to the ITAR”.

*Related Definitions:* N/A

*Items:* The list of items controlled is contained in this ECCN heading.

■ 18. In Supplement No. 1 to part 774, Category 1, revise Export Control Classification Number (ECCN) 1A984 to read as follows:

**1A984 Chemical agents, including tear gas formulation containing 1 percent or less of orthochlorobenzalmalononitrile (CS), or 1 percent or less of chloroacetophenone (CN), except in individual containers with a net weight of 20 grams or less; liquid pepper except when packaged in individual containers with a net weight of 3 ounces (85.05 grams) or less; smoke bombs; non-irritant smoke flares, canisters, grenades and charges; and other pyrotechnic articles having dual military and commercial use, and “parts” and**

“components” “specially designed” therefor, n.e.s.

**License Requirements**

*Reason for Control:* CC

<i>Control(s)</i>	<i>Country chart (see supp. No. 1 to part 738)</i>
CC applies to entire entry.	CC Column 1

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

LVS: N/A  
GBS: N/A

**List of Items Controlled**

*Related Controls:* N/A

*Related Definitions:* N/A

*Items:*

The list of items controlled is contained in the ECCN heading.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

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**BILLING CODE 3510–33–P**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 117**

[Docket ID: DoD–2020–OS–0045]

**RIN 0790–AL41**

**National Industrial Security Program Operating Manual (NISPOM); Amendment**

**AGENCY:** Office of the Under Secretary of Defense for Intelligence & Security, Department of Defense (DoD).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** DoD is amending its NISPOM regulation to extend the implementation date for those contractors under DoD security cognizance to report and obtain pre-approval of unofficial foreign travel to the Department of Defense.

**DATES:** This rule is effective August 19, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Valerie Heil, 703–692–3754.

**SUPPLEMENTARY INFORMATION:** This final rule amends 32 CFR part 117, “National Industrial Security Program Operating Manual (NISPOM)” final rule that published in the **Federal Register** on December 21, 2020 (85 FR 83300). The rule includes reporting requirements for contractor personnel who have been granted eligibility for access to classified information through the National Industrial Security Program to follow

Security Executive Agent Directive (SEAD) 3, “Reporting Requirements for Personnel with Access to Classified Information or Who Hold a Sensitive Position.” Reporting requirements in the rule include provisions for covered individuals to report and obtain pre-approval of unofficial foreign travel. DoD received comments from regulated parties concerning how burdensome it would be for contractors under DoD security cognizance to submit individual foreign travel reports. Regulated parties recommended DoD modify its IT system so multiple or batched foreign travel reports can be submitted in a single submission. DoD agrees with this recommendation and intends to modify its IT system. However, DoD cannot complete modifications to its IT system before the original implementation date of August 24, 2021. This amendment will extend until August 24, 2022, the implementation date for those contractors under DoD security cognizance to report and obtain pre-approval of unofficial foreign travel to DoD to allow for the modifications to DoD’s IT system to be completed. If a government contracting activity’s (GCA) contract separately requires reporting or pre-approval of unofficial foreign travel (*i.e.*, contains a provision requiring such reports other than by incorporating the NISPOM), the contractor should consult with the GCA on when and where to submit such reports and the procedures for obtaining pre-approval.

#### Exception to Notice and Comment

This regulation can be effective immediately, notwithstanding the general requirement in the Administrative Procedure Act (APA) for advance notice and comment. Principally, this rule follows from a final rule with comment. This final rule is a logical outgrowth of the notice and comment incorporated in the prior final rule, because it is directly responsive to public comments made in response to the final rule. Several commenters specifically requested a delay in the August 24, 2021 implementation date. For example, one commenter stated that for contractors under DoD security cognizance, reporting foreign travel and foreign contacts will be impractical for companies of size without a mass or bulk upload capability that doesn’t exist in the system as designed today. Further, the commenter stated this capability should be pursued and aligns with one of the stated goals of SEAD 3, which encourages “automation and centralization.” Even absent the prior notice and comment incorporated in the final rule, this rule would be exempt

from the APA’s notice-and-comment requirement, because it satisfies the good-cause exception in 553(b)(3)(B). Specifically, notice-and-comment rulemaking is “unnecessary,” *id.*, because as noted in the preamble, DoD already took comments on its NISPOM regulation and the regulated parties affected by the regulation requested that the Department change its IT system before they must report and obtain pre-approval of unofficial foreign travel to DoD. Indeed, DoD is amending the NISPOM regulation for the purpose of extending the implementation date at the request of the regulated parties affected by the rule who provided comments on the NISPOM regulation during a previous notice and comment period provided for the final rule. The need for this change to DoD’s IT system was discovered in the comments received on the NISPOM regulation. While DoD desired to modify its IT system before the original implementation date to meet the requested change by the regulated parties, the Department discovered through the comment process that such modification is not feasible. DoD has therefore concluded that there is good cause to dispense with the advanced notice-and-comment rulemaking requirements in 5 U.S.C. 553.

#### Regulatory Analysis

##### Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is a significant regulatory action. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB) under the requirements of these E.O.s.

#### Congressional Review Act

This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

##### Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. Chapter 6)

The Under Secretary of Defense for Intelligence and Security, pursuant to a delegation of authority from the

Secretary of Defense, certifies that this final rule would not, if promulgated, have a significant economic impact on a substantial number of small business entities in accordance with the Regulatory Flexibility Act (5 U.S.C. 601) requirements since a contractor cleared legal entity may, in entering into contracts requiring access to classified information, negotiate for security costs determined to be properly chargeable by a Government Contracting Activity.

##### Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose any new information collection or record keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

##### Section 202, Public Law 104–4, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. This final rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

##### Executive Order 13132, “Federalism”

E.O. 13132 establishes certain requirements that an agency must meet when it promulgates a final rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

##### List of Subjects in 32 CFR Part 117

Classified information; Government contracts; USG contracts, National Industrial Program (NISP); Prime contractor, Subcontractor.

Accordingly, 32 CFR part 117 is amended as follows:

#### PART 117—NATIONAL INDUSTRIAL SECURITY PROGRAM OPERATING MANUAL (NISPOM)

- 1. The authority citation for 32 CFR part 310 continues to read as follows:

**Authority:** 32 CFR part 2004; E.O. 10865; E.O. 12333; E.O. 12829; E.O. 12866; E.O. 12968; E.O. 13526; E.O. 13563; E.O. 13587; E.O. 13691; Pub. L. 108–458; Title 42 U.S.C. 2011 *et seq.*; Title 50 U.S.C. Chapter 44; Title 50 U.S.C. 3501 *et seq.*

- 2. In § 117.1, paragraph (b)(3) is revised to read as follows:

**§ 117.1 Purpose.**

\* \* \* \*

(b) Prescribes that contractors will implement the provisions of this part no later than 6 months from February 24, 2021, with the exception of requirements for reporting foreign travel to the Department of Defense prescribed in SEAD 3 and implemented through this rule. Contractors under the security cognizance of the Department of Defense will begin reporting foreign travel to the Department of Defense no later than 18 months from February 24, 2021.

Dated: August 12, 2021.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

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**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 269**

[Docket ID: DOD-2016-OS-0045]

**RIN 0790-AL18**

**Civil Monetary Penalty Inflation Adjustment**

**AGENCY:** Office of the Under Secretary of Defense (Comptroller), Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense is issuing this final rule to adjust each of its statutory civil monetary penalties (CMP) to account for inflation. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016 and for each year thereafter.

**DATES:** This rule is effective August 19, 2021.

**FOR FURTHER INFORMATION CONTACT:** Kellie Allison, 703-614-0410.

**SUPPLEMENTARY INFORMATION:****Background Information**

The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 104 Stat. 890 (28 U.S.C. 2461, note), as amended by the Debt Collection Improvement Act of 1996,

Public Law 104-134, April 26, 1996, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), Public Law 114-74, November 2, 2015, required agencies to annually adjust the level of CMPs for inflation to improve their effectiveness and maintain their deterrent effect. The 2015 Act required that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency must adjust each CMP within its jurisdiction by the inflation adjustment described in the 2015 Act. The inflation adjustment is determined by increasing the maximum CMP or the range of minimum and maximum CMPs, as applicable, for each CMP by the cost-of-living adjustment, rounded to the nearest multiple of \$1. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index (CPI) for the month of October preceding the date of the adjustment, exceeds the CPI for the month of October in the previous calendar year.

The initial catch up adjustments for inflation to the Department of Defense's CMPs were published as an interim final rule in the **Federal Register** on May 26, 2016 (81 FR 33389-33391) and became effective on that date. The interim final rule was published as a final rule without change on September 12, 2016 (81 FR 62629-62631), effective that date. The revised methodology for agencies for 2017 and each year thereafter provides for the improvement of the effectiveness of CMPs and to maintain their deterrent effect. The Department of Defense is adjusting the level of all civil monetary penalties under its jurisdiction by the Office of Management and Budget (OMB) directed cost-of-living adjustment multiplier for 2021 of 1.01182 prescribed in OMB Memorandum M-21-10, "Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015," dated December 16, 2019. The Department of Defense's 2021 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Defense after the effective date of the new CMP level.

**Statement of Authority and Costs and Benefits**

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The

Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies, effective 2017, to make annual adjustments for inflation to CMPs notwithstanding section 553 of title 5, United States Code. Additionally, the methodology used, effective 2017, for adjusting CMPs for inflation is established in statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department of Defense is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs.

Further, there are no significant costs associated with the regulatory revisions that would impose any mandates on the Department of Defense, Federal, State or local governments, or the private sector. Accordingly, prior public notice and an opportunity for public comment are not required for this rule. The benefit of this rule is the Department of Defense anticipates that civil monetary penalty collections may increase in the future due to new penalty authorities and other changes in this rule. However, it is difficult to accurately predict the extent of any increase, if any, due to a variety of factors, such as budget and staff resources, the number and quality of civil penalty referrals or leads, and the length of time needed to investigate and resolve a case.

**Regulatory Procedures****Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"**

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a "significant regulatory action," and was not reviewed by the Office of Management and Budget.

**Unfunded Mandates Reform Act (2 U.S.C. Chapter 25)**

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits