

**§120.1 General authorities, receipt of licenses, and ineligibility.**

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to control the export and import of defense articles and defense services. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 11958, as amended. This subchapter implements that authority, as well as other relevant authorities in the Arms Export Control Act (22 U.S.C. 2751 et seq.). By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Deputy Assistant Secretary of State for Defense Trade and Regional Security and the Managing Director for the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs.

(b)(1) *Authorized officials.* All authorities conferred upon the Deputy Assistant Secretary of State for Defense Trade and Regional Security or the Managing Director for the Directorate of Defense Trade Controls by this subchapter may be exercised at any time by the Under Secretary of State for Arms Control and International Security or the Assistant Secretary of State for Political-Military Affairs unless the Legal Adviser or the Assistant Legal Adviser for Political-Military Affairs of the Department of State determines that any specific exercise of this authority under this paragraph may be inappropriate.

(2) In the Bureau of Political-Military Affairs, there is a Deputy Assistant Secretary of State for Defense Trade and Regional Security and a Managing Director for the Directorate of Defense Trade Controls. The Deputy Assistant Secretary of State for Defense Trade and Regional Security and

Managing Director for the Directorate of Defense Trade Controls are responsible for exercising the authorities conferred under this subchapter. The Deputy Assistant Secretary of State for Defense Trade and Regional Security is responsible for oversight of the defense trade controls function. The Managing Director for the Directorate of Defense Trade Controls is responsible for the Directorate of Defense Trade Controls, which oversees the subordinate offices described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section.

(i) The Managing Director's staff, Directorate of Defense Trade Controls, which have responsibilities related to the management of defense trade controls operations, to include the exercise of general authorities in this part 120, and the design, development, and refinement of processes, activities, and functional tools for the export licensing regime and to effect export compliance/enforcement activities;

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*(c) Receipt of Licenses and Eligibility.*

(1) A U.S. person may receive a license or other approval pursuant to this subchapter. A foreign person may not receive such a license or other approval, except as follows:

(i) A foreign governmental entity in the U.S. may receive a license or other approval;

(ii) A foreign person may receive a reexport or retransfer approval; or

(iii) A foreign person may receive a prior approval for brokering activities.

Requests for a license or other approval other than by a person referred to in paragraphs (c)(1)(i) and (c)(1)(ii) of this section will be considered only if the applicant has registered with the Directorate of Defense Trade Controls pursuant to part 122 or 129 of this subchapter, as appropriate.

(2) Persons who have been convicted of violating the U.S. criminal statutes defined in §120.27 of this subchapter, who have been debarred pursuant to part 127 or 128 of this subchapter, who are subject to indictment or are otherwise charged (e.g., charged by information following waiver of indictment) for violating the U.S. criminal statutes defined in §120.27 of this subchapter, who are ineligible to contract with or to receive a license or other form of authorization to import defense articles or defense services from any agency of the U.S. Government, who are ineligible to receive an export license or other approval from any other agency of the U.S. Government, or who are subject to a Department of State policy of denial, suspension, or revocation under §126.7(a) of this subchapter, or to interim suspension under §127.8 of this subchapter, are generally ineligible to be involved in activities regulated under the subchapter.

(d) The exemptions provided in this subchapter do not apply to transactions in which the exporter, any party to the export (*see* §126.7 (e) of this subchapter), any source or manufacturer, broker or other participant in the brokering activities, is generally ineligible as set forth in paragraph (c)(2) of this section, unless prior written authorization has been granted by the Directorate of Defense Trade Controls.

**§120.20 License or other approval.**

*License* means a document bearing the word “license” issued by the Managing Director, Directorate of Defense Trade Controls, or his authorized designee that permits the export, temporary import, or brokering of a specific defense article or defense service controlled by this subchapter.

*Other approval* means a document issued by the Managing Director, Directorate of Defense Trade Controls, or his authorized designee, that

approves an activity regulated by this subchapter (e.g., approvals for brokering activities or retransfer authorizations), or the use of an exemption to the license requirements as described in this subchapter.

**§120.25 Empowered Official.**

(a) \* \* \*

\* \* \* \* \*

(4) \* \* \*

(i) Inquire into any aspect of a proposed export, temporary import, or brokering activity by the applicant, and

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(b) For the purposes of a broker who is a foreign person, the empowered official may be a foreign person who otherwise meets the criteria for an empowered official in paragraph (a) of this section.

**§120.40 Affiliate.**

An *affiliate* of a registrant is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such registrant.

*Note:* For purposes of this subsection, control means having the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Control is presumed to exist where there is ownership of 25 percent or more of the outstanding voting securities if no other person controls and equal or larger percentage.

**§122.1 Registration requirements.**

(a) Any person who engages in the United States in the business of manufacturing or exporting defense articles or furnishing defense services is required to register with the Directorate of Defense Trade Controls under §122.2 of this subchapter. For the purpose of this subchapter, engaging in such a business requires only one occasion of manufacturing or exporting a defense article or furnishing a defense service. A manufacturer who does not engage in exporting must nevertheless register. (*See* part 129 of this subchapter for requirements for registration of persons who engage in brokering activities.)

(b) *Exemptions.* The registration requirements of paragraph (a) of this section do not apply to:

(1) Officers and employees of the U.S. 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; or

(4) \* \* \*

*Note:* Persons who qualify for the exemptions in paragraphs (b)(2) or (b)(4) of this section remain subject to the requirements for licenses or other approvals for exports of defense articles (including technical data) and defense services and may not receive an export license or approval unless registered under §122.2 of this subchapter.

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## **§122.2 Submission of registration statement.**

\* \* \* \* \*

(b) \* \* \*

(1) Whether the intended registrant, chief executive officer, president, vice-presidents, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel), or any member of the board of directors of the registrant or of its parent, subsidiary, or other affiliate or other persons required to be listed in the Statement of Registration:

(i) Has ever been indicted or otherwise charged (e.g., charged by information following waiver of indictment) for or convicted of violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter; or

(ii) \* \* \*

(2) Whether the intended registrant is foreign owned or foreign controlled (*see* §120.37 of this subchapter). If the intended registrant is foreign owned or foreign controlled, the certification shall include an explanation of such ownership or control, including the identities of all foreign persons who ultimately own or control the registrant.

#### **§122.4 Notification of changes in information furnished by registrants.**

(a) A registrant must, within five days of the event, provide the Directorate of Defense Trade Controls a written notification, signed by a senior officer (e.g., chief executive officer, president, secretary, partner, member, treasurer, general counsel), if:

(1) Any of the persons referred to in §122.2(b) are indicted or otherwise charged (e.g., by information) for or convicted of violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter, or become ineligible to contract with, or to receive a license or other approval to export or temporarily import defense articles or defense services from any agency of the U.S. Government; or

(2) There is a change in the following information contained in the Statement of Registration: (i) registrant's name, (ii) registrant's address, (iii) registrant's legal organization structure, (iv) ownership or control, (v) the establishment, acquisition, or divestment of a U.S. or foreign subsidiary or other affiliate who is engaged in manufacturing defense articles, exporting defense articles or defense services, or otherwise required to be listed on registrant's Statement of Registration.

*Note:* All other changes in the Statement of Registration must be provided as part of annual registration renewal.

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### **§126.1 Prohibited exports, imports, and sales to or from certain countries.**

(a) *General.* It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Belarus, Cuba, Eritrea, Iran, North Korea, Syria, and Venezuela. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g., Burma, China, and the Republic of the Sudan) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a State Department notice published in the *Federal Register*. The exemptions provided in this subchapter, except §123.17(c) through §123.17(e) of this subchapter, do not apply with respect to articles originating in or for export

to any proscribed countries, areas, or other persons referred to in this §126.1 or to brokering activities involving such countries, areas or persons. (*See* §129.5 of this subchapter, which imposes restrictions on brokering activities similar to those in this section.)

(b) *Shipments.* A defense article licensed or otherwise authorized for export, temporary import, reexport, or retransfer under this subchapter may not be shipped on a vessel, aircraft, spacecraft, or other means of conveyance that is owned by, operated by, leased to, or leased from any of the proscribed countries, areas, or other persons referred to in this section.

\* \* \*

(e) *Final sales.* No sale, export, transfer, reexport, or retransfer and no proposal to sell, export, transfer, reexport, or retransfer any defense articles or defense services subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of the Directorate of Defense Trade Controls. However, in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny licenses and approvals in such cases.

(1) *Duty to notify:* Any person who knows or has reason to know of such a proposed, final or actual sale, export, transfer, reexport, or retransfer of such articles, services, or data must immediately inform the Directorate of Defense Trade Controls. Such notifications should be submitted to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.

(2) [Reserved]

\* \* \* \* \*

## **§127.1 Violations.**

(a) \* \* \*



\* \* \* \* \*

(5) To engage in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services without complying with the registration requirements. For the purposes of this subchapter, engaging in the business of manufacturing or exporting defense articles or furnishing defense services requires only one occasion of manufacturing or exporting a defense article or furnishing a defense service; or

\* \* \* \* \*

(b) Any person who is granted a license or other approval or acts pursuant to an exemption under this subchapter is responsible for the acts of employees, agents, brokers, and all authorized persons to whom possession of the defense article or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article or technical data abroad. All persons abroad subject to U.S. jurisdiction who obtain custody of a defense article exported from the United States or produced under an agreement described in part 124 of this subchapter, and irrespective of the number of intermediate transfers, are bound by the regulations of this subchapter in the same manner and to the same extent as the original owner or transferor.

(c) A person who is ineligible pursuant to §120.1(c)(2) of this subchapter, or a person with knowledge that another person is ineligible pursuant to §120.1(c)(2), may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to and written authorization from the Directorate of Defense Trade Controls:

(1) Apply for, obtain, or use any export control document as defined in §127.2(b) of this subchapter for such ineligible person; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any manner in any transaction that may involve any defense article, including technical data, defense service, or brokering activities subject to this subchapter where such ineligible person may obtain any benefit there from or have any direct or indirect interest therein.

\* \* \* \* \*

(e) No person may knowingly or willfully attempt, solicit, cause, or aid, abet, counsel, demand, induce, procure or permit the commission of any act prohibited by, or the omission of any act required by 22 U.S.C. 2778, 22 U.S.C. 2779, or any regulation, license, approval, or order issued thereunder.

**§127.2 Misrepresentation and omission of facts.**

\* \* \* \* \*

(b) \* \* \*

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(13) Any other document used in the regulation or control of a defense article, including technical data, defense service, or brokering activities regulated by this subchapter.

**§127.7 Debarment.**

(a) *Debarment.* In implementing section 38 of the Arms Export Control Act, the Assistant Secretary of State for Political-Military Affairs may prohibit any person from participating directly or indirectly in the export of defense articles, including technical data, in the furnishing of defense services, or in brokering activities that are subject to this subchapter for any of the reasons listed below. Any such prohibition is referred to as a debarment for

purposes of this subchapter. The Assistant Secretary of State for Political-Military Affairs shall determine the appropriate period of time for debarment, which shall generally be for a period of three years.

Reinstatement is not automatic, however, and in all cases the debarred persons must submit a request for reinstatement and be approved for reinstatement before engaging in any export or brokering activities subject to the Arms Export Control Act or this subchapter.

\* \* \* \* \*

(c) *Statutory debarment.* Section 38(g)(4) of the Arms Export Control Act prohibits the issuance of licenses to persons who have been convicted of violating the U.S. criminal statutes enumerated in Section 38(g)(1) of the Arms Export Control Act. Discretionary authority to issue licenses is provided, but only if certain statutory requirements are met. It is the policy of the Department of State not to consider applications for licenses or requests for approvals involving any person who has been convicted of violating the Arms Export Control Act or convicted of conspiracy to violate that Act for a three year period following conviction. Such individuals shall be notified in writing that they are debarred pursuant to this policy. A list of persons who have been convicted of such offenses and debarred for this reason shall be published periodically in the Federal Register. Debarment in such cases is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. The procedures of part 128 of this subchapter are not applicable in such cases.

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### **§127.8 Interim suspension.**

(a) The Managing Director of the Directorate of Defense Trade Controls or the Director of the Office of Defense Trade Controls Compliance is authorized to order the interim suspension of any person when the Managing Director or Director of Compliance believes that grounds for debarment (*see* §127.7 of this subchapter) exist and where and to the extent the Managing Director or Director of Compliance, as applicable, finds that interim suspension is reasonably necessary to protect world peace or the security or foreign policy of the United States. The interim suspension order prohibits that person from participating directly or indirectly in the export of any defense article or defense service or in brokering activities subject to this subchapter. A copy of the interim suspension order will be served upon the suspended person in the same manner as provided in §128.3(b) of this subchapter. The interim suspension order may be made immediately effective, without prior notice. The order will state the relevant facts, the grounds for issuance of the order, and describe the nature and duration of the interim suspension. No person may be suspended for a period exceeding 60 days, absent extraordinary circumstances, (e.g., unless proceedings under part 128 of this subchapter, or criminal proceedings, are initiated).

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## **PART 129 -- REGISTRATION AND LICENSING OF BROKERS**

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### **§ 129.1 Purpose.**

Section 38(b)(1)(A)(ii) of the Arms Export Control Act (22 U.S.C. 2778) provides that persons engaged in the business of brokering activities shall register and pay a registration fee as prescribed in regulations, and that no person may engage in the business of brokering activities without a license issued in accordance with the Act.

### **§129.2 Definitions.**

(a) *Broker* means any person (*see* §120.14 of this subchapter) described below who engages in the business of brokering activities:

- (1) Any U.S. person wherever located;
- (2) Any foreign person located in the United States;
- (3) Any foreign person located outside the United States where the foreign person is owned or controlled by a U.S. person; or
- (4) Any foreign person located outside the United States involving the temporary import into the United States of any defense article or service.

*Note to paragraph (a)(3):* For purposes of this subsection, owned by a U.S. person means more than 50 percent of the outstanding voting securities of

the firm are owned by the U.S. person. Controlled by a U.S. person means one or more U.S. persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. U.S. person control is presumed to exist where U.S. persons own 25 percent or more of the outstanding voting securities unless one foreign person controls an equal or larger percentage.

(b) *Brokering activities* means any action on behalf of another to facilitate the manufacture, export, import, or transfer of a U.S. or foreign defense article or defense service, irrespective of its origin.

(1) Such action includes, but is not limited to:

(i) Financing, insuring, transporting, or freight forwarding defense articles and defense services; or

(ii) Soliciting, promoting, negotiating, contracting for, arranging, or otherwise assisting in the purchase, sale, transfer, loan, or lease of a defense article or defense service.

(2) Such action does not include:

(i) Activities by a U.S. person in the United States that are limited exclusively to U.S. domestic sales or transfers (e.g., not for export);

(ii) Activities by employees of the U.S. Government acting in an official capacity;

(iii) Activities that do not extend beyond administrative services, such as providing or arranging office space and equipment, hospitality, advertising, or clerical, visa, or translation services, or activities by an attorney that do not extend beyond providing legal advice to their client; or

(iv) Activities performed by an affiliate on behalf of another affiliate.

Note to paragraph (b): The term “*foreign defense article or defense service*” means any non-U.S.-origin article or service described on the U.S.

Munitions List. Unless otherwise provided in this part, the terms “*defense article*” and “*defense service*” refer to both U.S. and foreign origin defense articles and defense services described on the U.S. Munitions List. A “defense article” and “defense service” are determined exclusively in accordance with the ITAR, irrespective of any designation (either affirming or contrary) that may be attributed to same article by any foreign government, or international or intergovernmental organization.

(c) For the purposes of this subchapter, engaging in the business of brokering activities requires only one action as described above.

### **§129.3 Requirement to register.**

(a) Except as provided in §129.3(b) of this subchapter, any person who engages in brokering activities, as defined by §129.2 of this subchapter, is required to register with the Directorate of Defense Trade Controls. Registration under this section is generally a precondition for the issuance of approval for brokering activities required under part 129 of this subchapter or the use of exemptions.

(b) *Exemptions.* Registration, approval, recordkeeping or reporting under this section is not required as provided in paragraphs (b)(1) through (b)(3):

(1) Employees of foreign governments, or international or intergovernmental organizations acting in an official capacity are exempt from registration.

Such employees are also exempt from the requirements in §129.6 of this subchapter for approval for brokering activities, as well as reporting and recordkeeping requirements.

(2) Persons exclusively in the business of financing, insuring, transporting, customs brokering or freight forwarding, whose activities do not extend beyond financing, insuring, transporting, customs brokering or freight forwarding, are exempt from registration. Examples include air carriers or

other freight forwarders who merely transport or arrange transportation for licensed U.S. Munitions List defense articles, and banks or credit companies who merely provide commercially available lines or letters of credit to persons registered or required to register in accordance with parts 122 or 129 of this subchapter. Such persons exempt from registration are also exempt from the requirements in §129.4 of this subchapter for approval for brokering activities, as well as reporting and recordkeeping requirements. However, banks, firms, or other persons providing financing for defense articles or defense services are required to register under certain circumstances, such as when the bank or its employees are directly involved in arranging transactions involving defense articles or defense services or hold title to defense articles, even when no physical custody of defense articles is involved.

(3) Persons (including their regular employees per §120.39 of this subchapter) whose activities do not extend beyond acting as an end-user of a defense article or defense service exported pursuant to a license or other approval under parts 123, 124, or 125 of this subchapter, or subsequently acting as a reexporter or retransferor of such article or service under such license or other approval, or under an approval pursuant to §123.9 of this subchapter are exempt from registration. Such persons exempt from registration for these activities are also exempt from the requirements in §129.4 of this subchapter for approval for brokering activities, as well as reporting and recordkeeping requirements.

(c) Persons exempt from registration, approval, recordkeeping or reporting as provided in paragraphs (a) and (b) of this section are subject to the policy on embargoes and other proscriptions as outlined in §129.7 of this subchapter.



(d) U.S. persons who are registered as a manufacturer or exporter in accordance with part 122 of this subchapter, including their U.S. or foreign subsidiaries and other affiliates and other persons required to be listed on their Statement of Registration who are required to register under part 129, are not required to submit a separate broker registration or pay a separate broker registration fee as long as they have listed and identified themselves as brokers within their manufacturer or exporter Statement of Registration. All other requirements of part 129 apply to such brokers and their brokering activities.

(e) Registration under this section is generally a precondition for the issuance of approval for brokering activities required under this section or the use of exemptions.

#### **§129.4 Requirement for approval.**

Except as provided in §129.5 of this subchapter, no person who is required to register as a broker pursuant to §129.3 of this subchapter may engage in the business of brokering activities without first obtaining approval of the Directorate of Defense Trade Controls for the following:

- (1) Any foreign defense article or defense service (*see* §129.2(b) Note); or
- (2) Any of the following U.S. origin defense articles or defense services:
  - (i) Firearms and other weapons of a nature described by Category I(a) through (d), Category II(a) and (d), and Category III(a) of part 121 of this subchapter;
  - (ii) Rockets, bombs and grenades as well as launchers for such defense articles of a nature described by Category IV(a), and launch vehicles and missile and anti-missile systems of a nature described by Category IV(b) of part 121 of this subchapter (including Man-Portable Air-Defense Systems);
  - (iii) Vessels of War described by Category VI;

- (iv) Tanks and Military Vehicles described by Category VII;
- (v) Aircraft and Unmanned Aerial Vehicles described by Category VIII;
- (vi) Night vision-related defense articles and inertial platform, sensor, and guidance-related systems of a nature described by Category XII(c) and (d) of part 121 of this subchapter;
- (vii) Chemical agents and precursors described by Category XIV(a), (c), and (e) of part 121 of this subchapter, biological agents and biologically derived substances described by Category XIV(b), and equipment described by Category XIV(f) for dissemination of the chemical agents and biological agents described by Category XIV(a), (b), and (e) of part 121 of this subchapter;
- (viii) Submersible Vessels described by Category XX; and
- (ix) Miscellaneous articles of a nature described by Category XXI of part 121 of this subchapter.

**§129.5 Exemption from approval.**

(a) Unless the provisions of section 129.5(b) apply brokering activities undertaken for an agency of the U.S. Government pursuant to a contract between the broker and that agency are exempt from the requirement for approval provided that:

- (1) The brokering activities concern defense articles or defense services solely for the use of the agency; or
- (2) The brokering activities are undertaken for carrying out a foreign assistance or sales program authorized by law and subject to control by the President by other means, as demonstrated by one of the following conditions being met:

- (i) The U.S. Government agency contract with the broker contains an explicit provision stating the contract supports a foreign assistance or sales program authorized by law and the contracting agency has established control of the activity covered by the contract by other means equivalent to that established under the ITAR; or
  - (ii) The Directorate of Defense Trade Controls provides written concurrence in advance that the condition is met.
- (b) Brokers engaging in brokering activities described in section 129.5(a) are not exempt from obtaining approval from the Directorate of Defense Trade Controls if:
- (1) The broker is not registered as required by §129.3 of this subchapter;
  - (2) The broker or any person who has a direct or indirect interest in or may benefit from the brokering activities, including any related defense article or defense service transaction, is ineligible as defined in §120.1(c)(2) of this subchapter; or
  - (3) A country or other person referred to in §126.1 of this subchapter is involved in the brokering activities or such activities are otherwise subject to §129.7 of this subchapter.
- (c) Brokers who use the exemptions in this section must comply with all other provisions of part 129 of this subchapter.

#### **§129.6 Procedures for obtaining approval.**

- (a) All requests for approval of brokering activities must be made to the Directorate of Defense Trade Controls, be signed by an empowered official, and include the following information:
- (1) The applicant's name, address and registration code;
  - (2) A certification on whether:

(i) The applicant, chief executive officer, president, vice president, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel), or any member of the board of directors of the registrant or of its parent, subsidiary or other affiliate required to be listed in the Statement of Registration is the subject of an indictment or has been otherwise charged (e.g., by information) for, or has been convicted of, violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter;

(ii) The applicant, chief executive officer, president, vice president, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel), or any member of the board of directors of the registrant or of its parent, subsidiary or other affiliate or other person required to be listed in the Statement of Registration is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government; and

(iii) To the best of the applicant's knowledge, any other person involved in the brokering activities enumerated in the request for approval as defined in §129.2 of this subchapter is the subject of an indictment or has been otherwise charged (e.g., charged by information following waiver of indictment) for or has been convicted of violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter, , or is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. Government.

(b) The request for approval shall describe fully the brokering activities that will be undertaken, including:

- (1) The action to be taken by the applicant to facilitate the manufacture, export, import, or transfer of a defense article or defense service (which may be referred to as a “defense article or defense service transaction”);
- (2) The name, nationality, address and place of business of all persons who may participate in the brokering activities;
- (3) A description of each defense article or defense service that may be involved, including:
  - (i) The U.S. Munitions List category and sub-category;
  - (ii) Name or military nomenclature of the defense article;
  - (iii) Whether the article or service is significant military equipment;
  - (iv) Estimated quantity of defense articles;
  - (v) Estimated U.S. dollar value of defense articles and defense services;
  - (vi) Security classification; and
  - (vii) End-user and end-use; and
- (4) A statement whether the brokering activities are related to a sale through direct commercial sale or under the U.S. Foreign Military Sales Program or other activity in support of the U.S. Government.
  - (c) The empowered official signing the request for approval shall include a certification that the request is complete and accurate.
  - (d) If at the time of submission certain information required by paragraph (b) of this section is not yet available, this fact must be stated and explained in the certification required by paragraph (c) of this section. The Directorate of Defense Trade Controls will take any such explanation into account in deciding whether or not to approve the request.
  - (e) The period of validity for an approval may not exceed four years.

**§129.7 Policy on embargoes and other proscriptions.**

- (a) This section applies to brokering activities defined in §129.2 of this subchapter, regardless of whether the person involved in such activities has registered or is exempt from registration under §129.3 of this subchapter. The exemptions in §129.5 of this subchapter from the requirement for approval are not applicable to brokering activities subject to this section.
- (b) No person may engage in or make a proposal to engage in brokering activities that involve any country, area, or other person referred to in §126.1 of this subchapter without first obtaining the approval of the Directorate of Defense Trade Controls.
- (c) No person may engage in or make a proposal to engage in brokering activities without first obtaining approval of the Directorate of Defense Trade Controls if such activities involve other countries or persons identified by the Department of State through notice in the *Federal Register*, with respect to which certain limitations on defense articles or defense services are imposed for reasons of U.S. national security, foreign policy, or law enforcement interests (e.g., an individual subject to debarment pursuant to §127.7 of this subchapter). (*See* §127.1(c) of this subchapter for additional disclosure and approval requirements applicable to brokering activities.)
- (d) It is the policy of the Department of State to deny requests for approval of brokering activities or proposals to engage in brokering activities involving the countries or other persons referred to in paragraph (b) or (c) of this section. Any person who knows or has reason to know of brokering activities involving such countries or other persons must immediately inform the Directorate of Defense Trade Controls.

**§129.8 Submission of registration statement, registration fees, and notification of changes in information furnished by registrants.**

(a) An intended registrant must submit a Department of State form DS-2032 (Statement of Registration) by registered or overnight mail delivery to the Office of Defense Trade Controls Compliance, and must submit an electronic payment via Federal Reserve Wire Network (FedWire) or Automated Clearing House (ACH), or Society for Worldwide Interbank Financial Telecommunications (SWIFT), payable to the Department of State of a registration fee as set forth in paragraph (b) of this section. FedWire and ACH are electronic networks used to process financial transactions in the United States and SWIFT is the messaging service used by financial institutions worldwide to issue international transfers for foreign accounts. Payment methods (i.e., FedWire, ACH, or SWIFT) are dependent on the source of the funds (U.S. or foreign bank). Intended registrants should access the Directorate of Defense Trade Controls website at [www.pmdtcc.state.gov](http://www.pmdtcc.state.gov) for detailed guidelines on submitting a FedWire, ACH, or SWIFT electronic payment. Payments, including from foreign brokers, must be in U.S. currency and must be payable through a U.S. financial institution. Cash, checks, foreign currency, or money orders will not be accepted. The Statement of Registration must be signed by a senior officer (e.g., chief executive officer, president, secretary, partner, member, treasurer, general counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant, whether a U.S. or foreign person, shall submit documentation that demonstrates it is incorporated or otherwise authorized to do business in its respective country. Foreign persons who are required to register shall provide information that is substantially similar in content to that which a U.S. person would provide under this provision (e.g., foreign business license or similar authorization to do business). The Directorate of Defense Trade Controls will notify the

registrant if the Statement of Registration (Form DS-2032) is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

(b) A person who is required to register must do so on an annual basis upon submission of a completed Statement of Registration (Form DS-2032) and a fee of \$2,250. Registrants are not required to submit a separate statement of registration and pay an additional fee when provisions in §129.3(d) of this subchapter are met.

(c) *Statement of Registration Certification.* The Statement of Registration (Form DS-2032) of the intended registrant shall include a certification by an authorized senior officer of the following:

(1) Whether the intended registrant, chief executive officer, president, vice presidents, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel), or any member of the board of directors of the intended registrant, or of any parent, subsidiary, or other affiliate or other person required to be listed in the Statement of Registration:

(i) Is the subject of an indictment or has otherwise been charged (e.g., by information) for or has been convicted of violating any U.S. criminal statutes enumerated in §120.27 of this subchapter; or

*(ii) Is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S.*

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(2) Whether the intended registrant is foreign owned or foreign controlled (*see* §120.37 of this subchapter). If the intended registrant is foreign owned or foreign controlled, the certification shall include an explanation of such



ownership or control, including the identities of the foreign person or persons who ultimately own or control the registrant. This requirement applies to a registrant who is a U.S. person and is owned or controlled by a foreign person. It also applies to a registrant who is a foreign person and is owned or controlled by a foreign person from the same country or a foreign person from another country.

(d) A registrant must, within five days of the event, provide the Directorate of Defense Trade Controls a written notification, signed by a senior officer (e.g., chief executive officer, president, secretary, partner, member, treasurer, general counsel) if:

(1) Any of the persons referred to in §129.8(c) of this subchapter are indicted or otherwise charged (e.g., charged by information following waiver of indictment) for or convicted of violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter; or become ineligible to contract with, or to receive a license or other approval to export or import defense articles or defense services from any agency of the U.S.

government; or (2) There is a change in the following information contained in the Statement of Registration (Form DS-2032): (i) registrant's name, (ii) registrant's address, (iii) registrant's legal organization structure, (iv) ownership or control, or (v) the establishment, acquisition or divestment of a U.S. or foreign subsidiary or other affiliate who is engaged in brokering activities or otherwise required to be listed registrant's Statement of Registration (Form DS-2032).

Note to paragraph (d): All other changes in the Statement of Registration must be provided as part of annual registration renewal.

(e) A U.S. or foreign registrant must provide written notification to the Directorate of Defense Trade Controls at least sixty (60) days in advance of

any intended sale or transfer to a foreign person of ownership or control of the registrant or any parent, subsidiary or other affiliate listed and covered in their Statement of Registration. Such notice does not relieve the registrant from obtaining any prior approval required under this subchapter.

(f) The new entity formed when a registrant merges with another company or acquires, or is acquired by, another company or a subsidiary or division of another company, shall advise the Directorate of Defense Trade Controls of the following:

(1) The new firm name and all previous firm names being disclosed;

(2) The registration number that will survive and those that are to be discontinued (if any); and

(3) The numbers of all approvals for brokering activities under the surviving registration number, since any approval not the subject of notification will be considered invalid.

(g) A registrant whose registration lapses because of failure to renew 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 brokering activities.

### **§129.9 Guidance.**

(a) Any person desiring guidance on whether an activity constitutes a brokering activity within the scope of part 129 of this subchapter may request in writing guidance from the Directorate of Defense Trade Controls. The request for guidance shall identify the applicant and registrant code (if applicable) and describe fully the activities that will be undertaken, including:

- (1) The specific activities to be undertaken by the applicant and any other U.S. or foreign person;
  - (2) The name, nationality, and geographic location of all U.S. and foreign persons who may participate in the activities;
  - (3) A description of each defense article or defense service that may be involved, including:
    - (i) The U.S. Munitions List category and sub-category;
    - (ii) Name or military nomenclature of the defense article;
    - (iii) Whether the article or service is significant military equipment;
    - (iv) Estimated quantity of defense articles;
    - (v) Estimated U.S. dollar value of defense articles and defense services; and
    - (vi) Security classification;
  - (4) End-user and end-use; and
  - (5) A copy of any agreement or documentation, if available, between or among the requester and other persons who will be involved in the activity or related transactions that describes the activity to be taken by such persons.
- (b) If at the time of submission certain information is not yet available, this circumstance must be stated and explained. The Directorate of Defense Trade Controls will take the completeness of the information into account in providing guidance on whether or not the activities constitute brokering activities. The guidance will constitute an official determination by the Department of State. The guidance shall not substitute for approval when required under §129.4 of this subchapter.
- (c) Persons desiring guidance on other aspects of part 129 may also request guidance from the Directorate of Defense Trade Controls in a similar manner by submitting a description of the relevant facts or copies of relevant documentation.

### **§129.10 Reports.**

(a) Any person required to register under this part (including those registered in accordance with §129.3(d) of this subchapter) shall provide to the Directorate of Defense Trade Controls on an annual basis a report of its brokering activities in the previous twelve months. Such report shall be submitted along with the registrant's annual renewal submission or, if not renewing, within 30 days after expiration of registration.

(b) The report shall include brokering activities that received or were exempt from approval as follows:

(1) The report shall identify the broker's name, address, and registration code and be signed by an empowered official who shall certify that the report is complete and accurate. The report shall describe each of the brokering activities, including the number of the approval or the exemption claimed; and

(2) For each of the brokering activities, the report shall identify all persons who participated in the activities, including each person's name, address, nationality, and country where located and role or function; the quantity, description, and U.S. dollar value of the defense articles or defense services; the type and U.S. dollar value of any consideration received or expected to be received, directly or indirectly, by any person who participated in the brokering activities, and the source thereof.

(c) If there were no brokering activities, the report shall certify that there were no such activities.

### **§129.11 Maintenance of Brokering Records by Registrants.**

A person who is required to register pursuant to this part (including those registered in accordance with §129.3(d) of this subchapter) must maintain records concerning brokering activities in accordance with §122.5 of this subchapter.