



[Billing Code 4710-25]

DEPARTMENT OF STATE

22 CFR Parts 120, 122, 126, 127, 128, and 129

RIN 1400-AC37

[Public Notice 8437]

**Amendment to the International Traffic in Arms Regulations:
Registration and Licensing of Brokers, Brokering Activities, and
Related Provisions**

AGENCY: Department of State.

ACTION: Interim final rule.

SUMMARY: The Department of State is issuing this interim final rule amending the International Traffic in Arms Regulations (ITAR) relating to brokers and brokering activities and to related provisions of the ITAR. These amendments clarify registration requirements, the scope of brokering activities, prior approval requirements and exemptions, procedures for obtaining prior approval and guidance, and reporting and recordkeeping of such activities. Conforming and technical changes are made to other parts of the ITAR that affect export as well as brokering activities. The revisions contained in this rule are part of the Department of State's retrospective plan under E.O. 13563 completed on August 17, 2011.

DATES: This rule is effective [insert date 60 days from date of publication in the *Federal Register*]. Interested parties may submit comments on this rule by [insert date 45 days after date of publication in the *Federal Register*]. The Department will publish a final rule notifying of any changes to the rule pursuant to public comment assessment.

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

- E-mail: *DDTCResponseTeam@state.gov* with the subject line, “Brokering Rule.”
- Internet: At *www.regulations.gov*, search for this document by using this document’s RIN (1400-AC37).

Comments received after that date will be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not desire to be made public or information for which a claim of confidentiality is asserted because those comments and/or transmittal e-mails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls website at *www.pmdtdc.state.gov*. Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov*, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah J. Heidema, Acting Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663-2809, or e-mail

DDTCResponseTeam@state.gov. ATTN: Brokering Rule. The Department of State’s full retrospective plan can be accessed at

<http://www.state.gov/documents/organization/181028.pdf>.

SUPPLEMENTARY INFORMATION: This rule makes changes to part 129 and related sections of the ITAR that regulate brokers and brokering activities and implement the brokering amendment to the Arms Export Control Act (AECA) (section 38(b)(1)(A)(ii) of the AECA, 22 U.S.C. 2778(b)(1)(A)(ii)).

The AECA was amended in 1996 (Public Law 104-164) to provide for the regulation of brokering activities. The following year, implementing regulations were added to the ITAR in part 129. These regulations have remained unchanged except for two minor technical changes.

In 2003, in a report to Congress, the Department of State noted that it was beginning a review of the brokering regulations. The purpose of the review was to assess the need to modify the regulations in light of the experience gained in administering them. Based on this experience as well as comments received from other agencies and industry, including the Defense Trade Advisory Group, a Department of State Federal advisory committee, the Department published a proposed rule on December 19, 2011 (*see* “Amendment to the International Traffic in Arms Regulations: Registration and Licensing of Brokers, Brokering Activities, and Related Provisions,” 76 FR 78578) modifying the provisions relating to brokering and brokering activities. The comment period ended February 17, 2012. Thirty-one parties filed comments recommending changes, which were reviewed and considered by the Department and other agencies. The Department’s evaluation of the written comments and recommendations follows.

The Department received numerous comments and recommendations regarding the definitions for terms and provisions set forth in ITAR part 129. The Department reviewed and considered these comments, and where the recommendations were in conformance with the requirements for brokering as set forth in the AECA, and clarified the regulation, the Department has made amendments accordingly.

Twenty-seven commenting parties expressed concerns regarding the scope of “broker” and “brokering activities,” and that the revised definition

of “broker” in conjunction with the revised definition of “brokering activities” would result in a greatly increased number of persons requiring to register as brokers. In conformance with the statutory requirements for the brokering of defense articles and services, the Department has revised the proposed changes to these definitions to clarify their scope. In particular, the Department has clarified that foreign persons that are required to register as brokers are those that are in the United States and those foreign persons outside the United States that are owned/controlled by a U.S. person. And the Department has removed from the definition of “brokering activities” the activities of any foreign person located outside the United States acting on behalf of a U.S. person.

One commenting party requested clarification on whether the addition of “or are otherwise charged” to ITAR §120.1(c)(2) would preclude any person charged with any export violation from applying for, obtaining, or using export control documents, and recommended the Department identify such ineligible parties to prevent applicants from including the ineligible parties on export license applications and other submissions. The Department confirms that any person charged with a violation of the U.S. criminal statutes enumerated in ITAR §120.27 is generally ineligible to be involved in ITAR-regulated activities.

One commenting party noted that the addition of “source or manufacturer” to the list of ineligible persons in ITAR §120.1(d) could add a significant burden to applicants. The Department notes that applicants already should be screening all parties to their transaction, including screening the source or manufacturer. The addition of the phrase “source or manufacturer” is not a new requirement, but a clarification of requirements.

Two commenting parties recommended reconsideration of the inclusion of reference to “foreign criminal statutes dealing with subject matter similar to that in the U.S. criminal statutes enumerated in ITAR §120.27,” as the reference is imprecise and may lead to confusion and misapplication, and that it would be an undue burden to supply this information. The Department has revised this provision to apply to the more specific circumstances of a person violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than one year.

One commenting party recommended that the Department allow U.S. exporters registered pursuant to ITAR part 122 to include U.S. and foreign person third parties to be listed and identified as brokers in their Statements of Registration. The new ITAR §129.3(d) allows U.S. and foreign subsidiaries and affiliates owned or otherwise controlled by a registrant to be listed as brokers on the registrant’s manufacturer/exporter registration. The Department notes that while these entities, under these circumstances, are not required to submit a separate broker registration or pay a separate broker registration fee, all other requirements of ITAR part 129 apply to such brokers and their brokering activities.

One commenting party recommended that revised ITAR §122.2 be changed to impose notification requirements on foreign brokers, and not on the registrants. The inclusion of foreign affiliates or brokers in a registrant’s Statement of Registration may occur where the registrant owns or otherwise controls such foreign subsidiaries and affiliates who may be listed as brokers. As the registrant is the responsible party in this regard, the Department did not accept this recommendation.

Several parties commented that the brokering prior approval requirement effectively results in multiple authorizations for the same transaction. These parties recommended that the logic of the removal of the former ITAR §126.8 requirement for prior approval of certain export activities be adopted in this instance, and require prior brokering approval only when no other U.S. export authorization would be applicable for regulation. Because the export or retransfer of U.S. origin defense articles, defense services, and technical data stemming from brokering activities still requires prior written authorization, the Department's review or enforcement authority will not be diminished. The Department agrees with this assessment in part. Rather than requiring prior approval for brokering activities related to all U.S. Munitions List (USML) items, the new ITAR §129.4 specifies which of these items requires prior approval for brokering generally consistent with U.S. international commitments or obligations.

Seven parties expressed concerns regarding the proposed requirement in ITAR §126.13 to identify brokers and brokering activities in all authorization requests. The parties stated this requirement would be burdensome, would supersede any prior approval exemption, would result in registrant liability for the actions of non-employee brokers, and could result in multiple license requirements for the same activity. The Department has removed this provision from the revised regulation.

Two commenting parties recommended that the Department remove the proposed inclusion of brokers and brokering activities from the liabilities of the registrant in ITAR §127.1. The Department notes that this is not a new provision, but a clarification of existing requirements.

One commenting party recommended the Department clarify that activities undertaken within the corporate family of a single registrant do not

qualify as brokering under ITAR part 129. Section 129.2 provides that brokering activity does not include activities performed by an affiliate on behalf of another affiliate.

Two commenting parties recommended reconsideration of including “financing, insuring, transporting, and freight forwarding” and “soliciting” and “promoting” within the scope of “brokering activities.” The Department has provided an exemption for persons whose business is exclusively financing, insuring, transporting, or freight forwarding, as distinct from those who engage in these activities as part of their direct involvement in arranging transactions for defense articles or defense services or hold title to defense articles, even when no physical custody of defense articles is involved. In addition, the Department believes that “soliciting” or “promoting” the purchase, sale, transfer, loan, or lease of a defense article or defense service is an integral aspect of a broker’s brokering activities, and therefore did not accept the recommendation to remove these activities from the definition of “brokering activities.”

Three commenting parties recommended clarification of the services a broker may receive from an attorney, to specifically provide that any kind of legal advice or any export compliance services provided by an attorney to a client is not within the definition of “brokering activities.” The Department has clarified that “activities by an attorney that do not extend beyond the provision of legal advice to clients” is not within the definition, and notes that “legal advice” includes the provision of export compliance advice by an attorney to a client.

One commenting party recommended the removal of the requirement to provide information on what if any consideration is expected to be received with regard to a brokering activity, as it would be a duplication of

reporting given the requirement to provide similar information pursuant to ITAR part 130. While the Department has removed this provision with regard to procedures for obtaining prior approval, it has not removed this requirement from the annual reporting of brokering activities. The part 130 requirement has reporting limitations that the brokering requirement does not have.

One commenting party recommended the provision of an exhaustive list for the definition of brokering activities, which would obviate the need for the regulatory provision enabling Department guidance to industry upon request. The Department does not believe it is practicable to provide such a listing, and therefore did not accept this recommendation.

While the Department agrees with one commenting party that the new reporting provision of the regulation does expand the list of required elements to report to the Department, it disagrees that this would be an undue burden on industry, as the requested information should be readily available to the broker, and would assist the Department in its statutory requirement to monitor this activity.

One commenting party requested an expanded implementation period (12 months) for the new brokering regulation, given the numerous changes involved. The Department notes that the proposed rule was published in December 2011, and an updated version of the regulation has been available on the Department's Directorate of Defense Trade Controls website since November 2012. The Department believes the affected public has had the opportunity to become informed of the impending changes, and therefore does not agree that a prolonged implementation period is necessary.

One commenting party recommended the Department adopt a form DS-2032 amendment process to enable persons to add brokering to their

existing registrations once the new rule is implemented. The Department has added a provision to the regulations instructing registrants to apply for a consolidated registration covering manufacturers/exporters and brokers, as applicable, during their registration renewal rather than upon the effective date of this rule. The Department has added a similar provision to the regulations regarding the listing of firms on a Statement of Registration that are wholly owned or otherwise controlled, providing that registrants should notify the Department of these changes during their registration renewal, rather than within five days of the effective date of this rule (*see* ITAR §129.8(d) and note to paragraph (d)).

Other Changes

Section 120.1 is amended to revise the section heading and make editorial changes in all paragraphs. Section 120.20 is revised to provide a definition for “other approval.” Section 120.25(a)(4) is revised to include “brokering activity.” Section 120.27 is revised to update and clarify the definition for “U.S. criminal statutes.” Section 120.40 is added to provide a definition for “affiliate.” Section 120.44 is added to provide a definition for “foreign defense article or defense service.”

Section 122.1 is revised to provide clarifications and editorial changes. Section 122.2 is revised by removing provisions regarding submission of registration fee payment, adding a provision regarding the reporting of affiliates on the Statement of Registration, and providing other clarifications and editorial changes. Section 122.3(a) is revised by removing the paragraphs describing the registration fee, and providing a reference to the DDTC website for this information. Section 122.4(a) is revised to provide clarifications and editorial changes, and to add provisions instructing registrants to apply for a consolidated registration covering

manufacturers/exporters and brokers, as applicable, and to notify the Department of changes to their registrations regarding the listing of firms that are wholly owned or otherwise controlled, during their registration renewal rather than upon the effective date of this rule.

Section 126.1 is revised to provide clarification and editorial changes, and to provide a definition for terms used in paragraph (e). Section 126.13 is revised to provide updated process information, as well clarifications and editorial changes.

Part 127 is revised to reorganize, clarify, and provide editorial changes to sections 1, 2, and 7, and remove section 8 (regarding interim suspensions). Additionally, ITAR §§127.9, 128.2, 128.3, 128.15, and 128.17 are amended to remove references to interim suspension, given removal of ITAR §127.8.

REGULATORY ANALYSIS AND NOTICES

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department has published this rule as a proposed rule (76 FR 78578) with a 60-day provision for public comment and without prejudice to its determination that controlling the import and export, and brokering thereof, of defense articles and defense services is a foreign affairs function.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

Based on the criteria of 5 U.S.C. 804(2), the Department does not believe this rulemaking will have an annual effect on the economy of \$100,000,000 or more. The Department estimates that approximately 1,300 of the currently-registered brokers will not need to maintain registration following implementation of this rule, and that approximately 300 brokers will be eligible to consolidate into their manufacturer/exporter registration and no longer be required to pay a broker registration fee. This estimate is based on internal data on the number of foreign person brokers who are now registered but will not need to be so after implementation of the revised brokering regulation in the first instance, and the number of registered manufacturers/exporters who are also registered as brokers in the second instance. The submission of 1,600 fewer brokering-only registration applications would result in an annual time burden reduction of 3,200 hours for the public, based on the revised burden of two hours to complete a Statement of Registration. In addition, this would result in the elimination

of approximately \$3,600,000 in registration fees that otherwise would have been collected by the Department.

A rule is also considered “major” if it will result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. The Department does not anticipate major increases in any of those categories. As described in the preceding paragraph, this rule, among other things, clarifies who is required to register as a broker of defense articles and services. The clarification will result in fewer persons registering as brokers. These brokers will no longer have the expense of registering as brokers with the Department.

Finally, a rule is considered major if it will have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and foreign markets. To the extent that a clarification of regulatory scope that leads to the decrease in the types of regulated persons and types of regulated activities results in an economic competitive advantage, the Department anticipates that this rule will not have an adverse effect in these categories.

This rulemaking has been found not to be a major rule within the meaning of the 5 U.S.C. 804.

Executive Orders 13132 and 12372

This rulemaking will not have substantial direct effects on the States, on 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 Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a

federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess 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, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the provisions of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act (“PRA,” 44 U.S.C. 3501 *et seq.*) requires all Federal agencies to analyze proposed regulations for potential burdens on the regulated community created by provisions in the proposed

regulations that require the submission or retention of information. As part of its continuing effort to reduce paperwork and respondent burden, and to conform with the requirements as set forth in this rule, the Department of State has submitted the following approved information collections to the Office of Management and Budget (OMB) for re-approval, in light of the changes to these collections: DS-2032, Statement of Registration (approved by OMB under control number 1405-0002); the Annual Brokering Report (OMB control number 1405-0141); and Brokering Prior Approval (OMB control number 1405-0142).

INFORMATION COLLECTION

- Title of Information Collection: *DS-2032 Statement of Registration*
 - OMB Control Number: *1405-0002*
 - Type of Request: *Revision of Currently Approved Collection*
 - Originating Office: *Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC*
 - Form Number: *DS-2032*
 - Respondents: *Business and Nonprofit Organizations*
 - Estimated Number of Respondents: *11,500*
 - Estimated Number of Responses: *11,500*
 - Average Hours Per Response: *2 hours*
 - Total Estimated Burden: *23,000 hours*
 - Frequency: *Annually and On Occasion*
 - Obligation to Respond: *Mandatory*
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- Title of Information Collection: *Annual Brokering Report*
 - OMB Control Number: *1405-0141*

- Type of Request: *Revision of Currently Approved Collection*
 - Originating Office: *Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC*
 - Form Number: *None*
 - Respondents: *Business and Nonprofit Organizations*
 - Estimated Number of Respondents: *760*
 - Estimated Number of Responses: *760*
 - Average Hours Per Response: *2 hours*
 - Total Estimated Burden: *1,520 hours*
 - Frequency: *Annually*
 - Obligation to Respond: *Mandatory*
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- Title of Information Collection: *Brokering Prior Approval (License)*
 - OMB Control Number: *1405-0142*
 - Type of Request: *Revision of Currently Approved Collection*
 - Originating Office: *Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC*
 - Form Number: *None*
 - Respondents: *Business and Nonprofit Organizations*
 - Estimated Number of Respondents: *760*
 - Estimated Number of Responses: *150*
 - Average Hours Per Response: *2 hours*
 - Total Estimated Burden: *300 hours*
 - Frequency: *On Occasion*
 - Obligation to Respond: *Required to Obtain Benefits*

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collections of information is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the burden of the proposed collections, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Please note that comments submitted in response to this document are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Submit comments on these information collections (and not the rule within which notice of these collections is provided) to OMB up to 30 days from date of publication in the *Federal Register*.

Direct comments on these information collections to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail*: oira_submission@omb.eop.gov. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

- *Fax:* 202-395-5806. Attention: Desk Officer for Department of State.

Comments and questions regarding the collections listed in this document should be directed to Daniel L. Cook, Chief, Compliance and Registration Division, Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls, Department of State, 12th Floor, SA-1, 2401 E Street, N.W., Washington, D.C., 20037; or email DDTCResponseTeam@state.gov, with the subject line “Brokering Rule Information Collections.”

ABSTRACT OF PROPOSED COLLECTIONS: The export, temporary import, temporary export, and brokering of defense articles, defense services, and related technical data are licensed by the Department of State in accordance with the International Traffic in Arms Regulations (22 CFR parts 120–130) and Section 38 of the Arms Export Control Act. Those of the public who manufacture or export defense articles, defense services, and related technical data, or the brokering thereof, must register with the Department of State. Persons desiring to engage in brokering activities must submit an application or written request to conduct the transaction to the Department to obtain a decision whether it is in the interests of U.S. foreign policy and national security to approve the transaction. Also, registered brokers must submit annual reports regarding all brokering activity that was transacted, and registered manufacturers and exporters must maintain records of defense trade activities for five years.

METHODOLOGY: These forms/information collections may be sent to the Directorate of Defense Trade Controls via e-mail, regular mail, or personal delivery.

SUMMARY OF PROPOSED CHANGES TO THE INFORMATION

COLLECTIONS: The proposed changes to the DS-2032, Statement of Registration, follow the changes to ITAR parts 122 and 129. One change would allow manufacturers/exporters to register as brokers on the same form, with one registration fee. In addition, the form asks for more information regarding company structure, specifically for information on intermediary and ultimate parents of the registering party, if applicable. Finally, the form requests further clarification when the registrant is foreign (non-U.S.) owned or controlled.

As a result of the changes to the brokering regulations, the Department estimates there will be time burden and cost reductions to the public with regard to the Statement of Registration collection. The Department estimates that approximately 1,300 of the currently-registered brokers will not need to maintain registration following implementation of this rule, and that approximately 300 brokers will be eligible to consolidate into their manufacturer/exporter registration and no longer be required to pay a broker registration fee. This estimate is based on Department data on the number of foreign person brokers who are now registered but will not need to be so after implementation of the revised brokering regulation in the first instance, and the number of registered exporters who are also registered as brokers in the second instance. The submission of 1,600 fewer brokering-only registration applications would result in an annual time burden reduction of 3,200 hours for the public, based on the revised burden of two hours to complete a Statement of Registration. In addition, this would result in the elimination of approximately \$3,600,000 in registration fees that otherwise would have been collected by the Department.

The revised regulations provide that the Annual Brokering Report collection be submitted with the DS-2032, as an attachment. New information that is required on the report includes the following: brokering registration code; signature and certification of the report by an empowered official; identification of all parties involved in the brokering transaction (formerly, the regulations required only the identification of purchasers and recipients); and identification of the source of any consideration paid for the brokering transaction.

As a result of the changes to the brokering regulations, the Department estimates there will be time burden reductions to the public with regard to the Annual Brokering Report collection. The Department estimates that the reduction in the number of responses and the annual time burden for this collection will reflect the reduction in the number of brokers who need to register: 1,300 fewer responses, with a burden reduction of 2,600 hours annually. Those who would no longer need to register as brokers as a result of the changes to the brokering regulation will no longer be required to submit a brokering report.

Clarification of the requirements for obtaining Brokering Prior Approval result in the applicant providing additional information, to include the following: categorization of the types of defense articles and services to be brokered, including whether the defense articles are significant military equipment; identification of the type of sale that is to be brokered (commercial or under the Foreign Military Sales program); listing of any consideration expected to be received; and signature of an empowered official certifying the information provided is complete and accurate. The Department does not anticipate any time burden changes or change in number of responses for this information collection at this time.

List of Subjects**22 CFR Part 120**

Arms and munitions, Classified information, Exports.

22 CFR Part 122

Arms and munitions, Exports, Reporting and recordkeeping requirements.

22 CFR Part 126

Arms and munitions, Exports.

22 CFR Part 127

Arms and munitions, Crime, Exports, Penalties, Seizures and forfeitures.

22 CFR Part 128

Administrative practice and procedure, Arms and munitions, Exports.

22 CFR Part 129

Arms and munitions, Brokers, Exports, Technical assistance.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 122, 126, 127, 128, and 129 are amended as follows:

PART 120 – PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Sections 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111–266; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.

2. Section 120.1 is revised to read as follows:

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

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778), as amended, 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 is delegated to the Secretary of State by Executive Order 13637. 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 Controls and the Managing Director of 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 Controls 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 Controls and a Managing Director for the Directorate of Defense Trade Controls. The Deputy Assistant Secretary of State for Defense Trade Controls 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 Controls 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)(ii) through (b)(2)(iv) of this section.

(i) The Managing Director will 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.

(ii) The Office of Defense Trade Controls Licensing and the Director, Office of Defense Trade Controls Licensing, which have responsibilities related to licensing or other authorization of defense trade, including references under parts 120, 123, 124, 125, 126, 129, and 130 of this subchapter.

(iii) The Office of Defense Trade Controls Compliance and the Director, Office of Defense Trade Controls Compliance, which have responsibilities related to violations of law or regulation and compliance therewith, including references contained in parts 122, 126, 127, 128, and 130 of this subchapter, and that portion under part 129 of this subchapter pertaining to registration.

(iv) The Office of Defense Trade Controls Policy and the Director, Office of Defense Trade Controls Policy, which have responsibilities related to the general policies of defense trade, including references under this part 120 and part 126 of this subchapter, and the commodity jurisdiction procedure under this subchapter, including under this part 120.

(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.

A request for a license or other approval by a U.S. person or by a person referred to in paragraphs (c)(1)(i) and (c)(1)(iii) 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 enumerated in §120.27, 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 criminal information in lieu of indictment) with violating the U.S. criminal statutes enumerated in §120.27, 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, 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.

3. Section 120.20 is revised to read as follows:

§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.

4. Section 120.25 is amended by revising paragraph (a)(4)(i) and adding paragraph (b), to read as follows:

§120.25 Empowered official.

(a) * * *

(4) * * *

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

* * * * *

(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.

5. Section 120.27 is amended by revising paragraphs (a)(3), (a)(6), (a)(8), (a)(12), and (a)(13), removing and reserving paragraph (a)(11), and adding paragraphs (a)(14) through (a)(18), to read as follows:

§120.27 U.S. criminal statutes.

(a) * * *

(3) Section 793, 794, or 798 of title 18, United States Code (relating to espionage involving defense or classified information) or section 2332d, 2339A, 2339B, 2339C, or 2339D of such title (relating to financial transactions with the government of a country designated as a country supporting international terrorism, providing material support to terrorists or terrorist organizations, financing of terrorism, or receiving military-type training from a foreign terrorist organization);

* * * * *

(6) Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd-2 or 78dd-3);

* * * * *

(8) Section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(a));

* * * * *

(11) [Reserved]

(12) Section 371 of title 18, United States Code (when it involves conspiracy to violate any of the statutes listed in this section);

(13) Sections 3, 4, 5, and 6 of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458 sections 6903-6906, relating to missile systems designed to destroy aircraft (18 U.S.C. 2332g), prohibitions governing atomic weapons (42 U.S.C. 2122), radiological dispersal services (18 U.S.C. 2332h), and variola virus (18 U.S.C. 175c);

(14) Sections 2779 and 2780 of title 22, United States Code (relating to fees of military sales agents and other payments, and transactions with countries supporting acts of international terrorism);

(15) Section 542 of title 18, United States Code (relating to the entry of goods by means of false statements), where the underlying offense involves a defense article, including technical data, or violations related to the Arms Export Control Act or International Traffic in Arms Regulations;

(16) Section 545 of title 18, United States Code (relating to smuggling goods into the United States), where the underlying offense involves a defense article, including technical data, or violations related to the Arms Export Control Act or International Traffic in Arms Regulations;

(17) Section 554 of title 18, United States Code (relating to smuggling goods from the United States), where the underlying offense involves a defense article, including technical data, or violations related to the Arms Export Control Act or International Traffic in Arms Regulations; and

(18) Section 1001 of title 18, United States Code (relating to false statements or entries generally), Section 1831 of title 18, United States Code (relating to economic espionage), and Section 1832 of title 18, United States Code (relating to theft of trade secrets) where the underlying offense involves a defense article, including technical data, or violations related to the Arms Export Control Act or International Traffic in Arms Regulations.

* * * * *

6. Section 120.40 is added to read as follows:

§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 to §120.40: For purposes of this section, “control” means having the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Control is rebuttably presumed to exist where there

is ownership of 25 percent or more of the outstanding voting securities if no other person controls an equal or larger percentage.

7. Section 120.43 is added and reserved, as follows:

§120.43 [Reserved]

8. Section 120.44 is added to read as follows:

§120.44 Foreign defense article or defense service.

Foreign defense article or defense service means any article or service described on the U.S. Munitions List of non-U.S. origin. Unless otherwise provided in this subchapter, 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 or defense service is determined exclusively in accordance with the Arms Export Control Act and this subchapter, regardless of any designation (either affirming or contrary) that may be attributed to the same article or service by any foreign government or international organization.

PART 122 – REGISTRATION OF MANUFACTURERS AND EXPORTERS

9. The authority citation for part 122 is revised to read as follows:

Authority: Sections 2 and 38, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.

10. Section 122.1 is revised to read as follows:

§122.1 Registration requirements.

(a) Any person who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles, or furnishing defense services, is required to register with the Directorate of Defense Trade Controls under §122.2. For the purpose of this subchapter, engaging in such a business requires only one occasion of manufacturing or

exporting or temporarily importing 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) Persons who engage in the fabrication of articles solely for experimental or scientific purposes, including research and development.

Note to paragraph (b): 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 and defense services and may not receive an export license or approval unless registered under §122.2.

(c) *Purpose.* Registration is primarily a means to provide the U.S. Government with necessary information on who is involved in certain manufacturing and exporting activities. Registration does not confer any export rights or privileges. It is generally a precondition to the issuance of any license or other approval under this subchapter, unless an exception is granted by the Directorate of Defense Trade Controls.

11. Section 122.2 is amended by revising paragraphs (a), (b)(1), and (b)(2), to read as follows:

§122.2 Submission of registration statement.

(a) *General.* An intended registrant must submit a Statement of Registration (Department of State form DS–2032) to the Office of Defense Trade Controls Compliance by following the submission guidelines available on the Directorate of Defense Trade Controls website at *www.pmdtdc.state.gov*. The Statement of Registration must be signed by a U.S. person 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 Statement of Registration may include subsidiaries and affiliates when more than 50 percent of the voting securities are owned by the registrant or the subsidiaries and affiliates are otherwise controlled by the registrant (*see* §120.40 of this subchapter). The intended registrant also shall submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the U.S. The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration 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) * * *

(1) Whether the intended registrant or its parent, subsidiary, or other affiliate listed in the Statement of Registration, or any of its chief executive officers, presidents, vice presidents, secretaries, partners, members, 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 listed in the Statement of Registration:

(i) Has ever been indicted or otherwise charged (*e.g.*, charged by criminal information in lieu of indictment) for or has been convicted of violating any

U.S. criminal statutes enumerated in §120.27 of this subchapter or violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than 1 year; 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. Government; and

(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.

12. Section 122.3 is amended by revising paragraph (a) to read as follows:

§122.3 Registration fees.

(a) *Frequency of registration and fee.* A person who is required to register must do so on an annual basis by submitting a completed Statement of Registration (form DS-2032) and payment of a fee following the payment guidelines available on the Directorate of Defense Trade Controls website at www.pmdt.state.gov. For those renewing a registration, notice of the fee due for the next year's registration will be sent to the registrant of record at least 60 days prior to its expiration date.

* * * * *

13. Section 122.4 is amended by revising paragraph (a), and adding notes to paragraph (a), to read as follows:

§122.4 Notification of changes in information furnished by registrants.

(a) A registrant must, within five days of the event, provide to 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) is indicted or otherwise charged (*e.g.*, by criminal information in lieu of indictment) for or convicted of violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter or violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than 1 year, or becomes 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

(vi) Board of directors, senior officers, partners, or owners.

Note 1 to paragraph (a): All other changes in the Statement of Registration must be provided as part of annual registration renewal.

Note 2 to paragraph (a): For one year from the effective date of the rule, “Amendment to the International Traffic in Arms Regulations: Registration and Licensing of Brokers, Brokering Activities, and Related Provisions,” RIN 1400-AC37, the following changes must be provided as part of the annual registration renewal: pursuant to §129.3(d) of this subchapter, changes to combine an existing broker registration with an existing manufacturer/exporter registration; and pursuant to §122.2(a) of this subchapter, changes to an existing registration to remove partially owned and not otherwise controlled subsidiaries or affiliates, which are not the subject of an internal reorganization, merger, acquisition, or divestiture.

* * * * *

PART 126 – GENERAL POLICIES AND PROVISIONS

14. 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, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

15. Section 126.1 is amended by revising paragraphs (a), (b), and (e), and adding a note to paragraph (e), to read as follows:

§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 Department of State notice published in the *Federal Register*. The exemptions provided in this subchapter, except §§123.17, 126.4, and 126.6 of this subchapter or when the recipient is a U.S. Government department or agency, do not apply with respect to defense articles or defense services originating in or for export to any proscribed countries, areas, or persons identified in this section or to brokering activities involving such countries, areas, or persons. (*See* §129.7 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)(1) *Proposed and final sales*. No sale, export, transfer, reexport, or retransfer of, and no proposal or presentation 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.

(2) *Duty to notify.* Any person who knows or has reason to know of a proposed, final, or actual sale, export, transfer, reexport, or retransfer of articles, services, or data as described in paragraph (e)(1) of this section 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.

Note to paragraph (e): “Proposal” and “presentation” mean the communication of information in sufficient detail that it would permit an intended purchaser to decide to acquire the article in question or to enter into an agreement as described in part 124 of this subchapter. For example, communicating information on the equipment’s performance characteristics, price, and probable availability for delivery would be a proposal or presentation requiring a license or other approval.

* * * * *

16. Section 126.13 is amended by revising paragraphs (a)(1) through (a)(4), (b), and (c), to read as follows:

§126.13 Required information.

(a) * * *

(1) The applicant or the 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 is the subject of an indictment or has been otherwise charged (*e.g.*, by criminal information in lieu of indictment) for, or has been convicted of,

violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter;

(2) The applicant or the 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 is ineligible to contract with, or to receive a license or other approval to temporarily import or export defense articles or defense services from any agency of the U.S. Government;

(3) To the best of the applicant's knowledge, any party to the export as defined in §126.7(e) 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 temporarily import or export defense articles or defense services from any agency of the U.S. government; and

(4) The natural person signing the application, notification, or other request for approval (including the statement required by this subchapter) is a citizen or national of the United States, has been lawfully admitted to the United States for permanent residence (and maintains such lawful permanent residence status) under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(20), 66 Stat. 163), or is an official of a foreign government entity in the United States, or is a foreign person making a request pursuant to §123.9 of this subchapter.

(b) In addition, all applications for licenses must include the complete names and addresses of all U.S. consignors and freight forwarders, and all foreign consignees and foreign intermediate consignees involved in the transaction. Port Directors of U.S. Customs and Border Protection and Department of Defense transmittal authorities will permit only those U.S. consignors or

freight forwarders listed on the license to make shipments under the license, and only to those foreign consignees and foreign intermediate consignees listed on the license. Applicants should list all freight forwarders who may be involved with shipments under the license to ensure that the list is complete and to avoid the need for amendments after the license has been approved. If there are unusual or extraordinary circumstances that preclude the specific identification of all the U.S. consignors and freight forwarders and all foreign consignees and foreign intermediate consignees, the applicant must provide a letter of explanation with each application.

(c) In cases when natural foreign persons are employed at or assigned to security-cleared facilities, provision by the applicant of a technology control plan will facilitate processing.

PART 127 –VIOLATIONS AND PENALTIES

17. The authority citation for part 127 is revised to read as follows:

Authority: Sections 2, 38, and 42, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129.

18. Section 127.1 is amended by adding paragraph (a)(5), and revising paragraphs (a)(3), (a)(4), (c), (d), and (e), to read as follows:

§127.1 Violations.

(a) * * *

(3) To import or attempt to import any defense article whenever a license is required by this subchapter;

(4) To conspire to export, import, reexport, retransfer, furnish or cause to be exported, imported, reexported, retransferred or furnished, any defense article, technical data, or defense service for which a license or written approval is required by this subchapter; or

(5) To possess or attempt to possess any defense article with intent to export or transfer such defense article in violation of 22 U.S.C. 2778 and 2779, or any regulation, license, approval, or order issued thereunder.

* * * * *

(c) 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, which includes technical data, has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article 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 regardless 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.

(d) 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) of this subchapter, 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) 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, which includes technical data, defense services, or brokering activities subject to this subchapter,

where such ineligible person may obtain any benefit therefrom 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.

19. Section 127.2 is amended by revising paragraph (b)(13) to read as follows:

§127.2 Misrepresentation and omission of facts.

* * * * *

(b) * * *

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

* * * * *

20. Section 127.7 is revised to read as follows:

§127.7 Debarment.

(a) *Administrative debarment.* In implementing section 38 of the Arms Export Control Act, the Assistant Secretary of State for Political-Military Affairs may debar and thereby prohibit any person from participating directly or indirectly in any activities that are subject to this subchapter for any of the reasons listed below. Any such prohibition is referred to as an administrative debarment for purposes of this subchapter. The Assistant Secretary of State for Political-Military Affairs shall determine the appropriate period of time for administrative debarment, which generally shall 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

activities subject to this subchapter. (*See* part 128 of this subchapter for administrative procedures.)

(b) *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 statutorily 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*. Statutory 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.

(c) *Grounds.* (1) The basis for statutory debarment, as described in paragraph (b) of this section, is any conviction for violating the Arms Export Control Act (*see* §127.3) or any conspiracy to violate the Arms Export Control Act.

(2) The basis for administrative debarment, as described in paragraph (a) of this section and in part 128 of this subchapter, is any violation of 22 U.S.C. 2778 or any rule or regulation issued thereunder when such a violation is of such a character as to provide a reasonable basis for the Directorate of

Defense Trade Controls to believe that the violator cannot be relied upon to comply with the statute or these rules or regulations in the future, and when such violation is established in accordance with part 128 of this subchapter.

(d) *Appeals*. Any person who is ineligible pursuant to paragraph (b) of this section may appeal to the Under Secretary of State for Arms Control and International Security for reconsideration of the ineligibility determination. The procedures specified in §128.13 of this subchapter will be used in submitting a reconsideration appeal.

21. Section 127.8 is removed and reserved, as follows:

§127.8 [Reserved]

22. Section 127.9 is revised to read as follows:

§127.9 Applicability of orders.

For the purpose of preventing evasion, orders of the Assistant Secretary of State for Political-Military Affairs debaring a person under §127.7 may be made applicable to any other person who may then or thereafter (during the term of the order) be related to the debarred person by affiliation, ownership, control, position of responsibility, or other commercial connection.

Appropriate notice and opportunity to respond to the basis for the suspension will be given.

PART 128 – ADMINISTRATIVE PROCEDURES

23. The authority citation for part 128 is revised to read as follows:

Authority: Sections. 2, 38, 40, 42, and 71, Arms Export Control Act. 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; E.O. 12291, 46 FR 1981; E.O. 13637, 78 FR 16129.

24. Section 128.2 is revised to read as follows:

§128.2 Administrative Law Judge.

The Administrative Law Judge referred to in this part is an Administrative Law Judge appointed by the Department of State. The Administrative Law Judge is authorized to exercise the powers and perform the duties provided for in §§127.7 and 128.3 through 128.16 of this subchapter.

25. Section 128.3 is amended by revising paragraph (a) to read as follows:

§128.3 Institution of Administrative Proceedings.

(a) *Charging letters.* The Deputy Assistant Secretary of State for Defense Trade Controls or the Director, Office of Defense Trade Controls Compliance, with the concurrence of the Office of the Legal Adviser, Department of State, may initiate proceedings to impose debarment or civil penalties in accordance with §127.7 or §127.10 of this subchapter, respectively. Administrative proceedings shall be initiated by means of a charging letter. The charging letter will state the essential facts constituting the alleged violation and refer to the regulatory or other provision involved. It will give notice to the respondent to answer the charges within 30 days, as provided in §128.5(a), and indicate that a failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he or she is entitled to an oral hearing if a written demand for one is filed with the answer or within seven days after service of the answer. The respondent will also be informed that he or she may, if so desired, be represented by counsel of his or her choosing. Charging letters may be amended from time to time, upon reasonable notice.

26. Section 128.15 is amended by revising paragraph (a) to read as follows:

§128.15 Orders containing probationary periods.

(a) *Revocation of probationary periods.* A debarment order may set a probationary period during which the order may be held in abeyance for all or part of the debarment period, subject to the conditions stated therein. The Managing Director, Directorate of Defense Trade Controls, may apply, without notice to any person to be affected thereby, to the Administrative Law Judge for a recommendation on the appropriateness of revoking probation when it appears that the conditions of the probation have been breached. The facts in support of the application will be presented to the Administrative Law Judge, who will report thereon and make a recommendation to the Assistant Secretary of State for Political-Military Affairs. The latter will make a determination whether to revoke probation and will issue an appropriate order. The party affected by this action may request the Assistant Secretary of State for Political-Military Affairs to reconsider the decision by submitting a request within 10 days of the date of the order.

* * * * *

27. Section 128.17 is revised to read as follows:

§128.17 Availability of orders.

All charging letters, debarment orders, and orders imposing civil penalties and probationary periods are available for public inspection in the Public Reading Room of the Department of State.

PART 129 -- REGISTRATION AND LICENSING OF BROKERS

28. The authority citation for part 129 is revised to read as follows:

Authority: Section 38, Pub. L. 104-164, 110 Stat. 1437, (22 U.S.C. 2778); E.O. 13637, 78 FR 16129.

29. The table of contents for part 129 is revised to read as follows:

Sec.

129.1 Purpose.

129.2 Definitions.

129.3 Requirement to register.

129.4 Requirement for approval.

129.5 Exemption from requirement for approval.

129.6 Procedures for obtaining approval.

129.7 Policy on embargoes and other proscriptions.

129.8 Submission of Statement of Registration, registration fees, and notification of changes in information furnished by registrants.

129.9 Guidance.

129.10 Reports.

129.11 Maintenance of brokering records by registrants.

30. Section 129.1 is revised to read as follows:

§129.1 Purpose.

(a) 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.

(b) The brokering activities identified in this subchapter apply to those defense articles and defense services controlled for purposes of export on the U.S. Munitions List (*see* part 121 of this subchapter) or for purposes of permanent import on the U.S. Munitions Import List (*see* 27 CFR part 447).

31. Section 129.2 is revised to read as follows:

§129.2 Definitions.

As used in this part:

(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 (*see* §120.15 of this subchapter) wherever located;

(2) Any foreign person (*see* §120.16 of this subchapter) located in the United States; or

(3) Any foreign person located outside the United States where the foreign person is owned or controlled by a U.S. person.

Note to paragraph (a)(3): For purposes of this paragraph, “owned by a U.S. person” means more than 50 percent of the outstanding voting securities of the firm are owned by a U.S. person, and “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 rebuttably 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, permanent import, transfer, reexport, or retransfer of a U.S. or foreign defense article or defense service, regardless 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 by regular employees (*see* §120.39 of this subchapter) acting on behalf of their employer, including those regular employees who are dual nationals or third-country nationals that satisfy the requirements of §126.18 of this subchapter;

Note to paragraph (b)(2)(iii): The exclusion does not apply to persons subject to U.S. jurisdiction with respect to activities involving a defense article or defense service originating in or destined for any proscribed country, area, or person identified in §126.1 of this subchapter.

- (iv) 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, collecting product and pricing information to prepare a response to Request for Proposal, generally promoting company goodwill at trade shows, or activities by an attorney that do not extend beyond the provision of legal advice to clients;
- (v) Activities performed by an affiliate, as defined in §120.40 of this subchapter, on behalf of another affiliate; or
- (vi) Activities by persons, including their regular employees (*see* §120.39 of this subchapter), that 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.

(c) For the purposes of this subchapter, engaging in the business of brokering activities requires only one occasion of brokering as described in paragraph (b) of this section.

32. Section 129.3 is revised to read as follows:

§129.3 Requirement to register.

(a) Except as provided in paragraph (b) of this section, any person who engages in brokering activities (*see* §129.2) 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 this part 129 or the use of exemptions.

(b) *Exemptions.* Registration, approval, recordkeeping, and reporting under this section are not required for:

(1) Foreign governments or international organizations, including their employees, acting in an official capacity; or

(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. Examples include air carriers or freight forwarders that merely transport or arrange transportation for licensed 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. 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. In such circumstances, the banks,

firms, or other persons providing financing for defense articles or defense services are not exempt.

(c) Persons exempt from registration, approval, recordkeeping, and reporting as provided in §129.3(b) are subject to the policy on embargoes and other proscriptions as outlined in §129.7.

(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 listed on their Statement of Registration who are required to register under this part, are not required to submit a separate broker registration or pay a separate broker registration fee when more than 50 percent of the voting securities are owned by the registrant or such subsidiaries and affiliates are otherwise controlled by the registrant (*see* §120.40 of this subchapter), and they are listed and identified as brokers within their manufacturer or exporter Statement of Registration. All other requirements of this part apply to such brokers and their brokering activities.

(e) Registration under this section is a precondition for the issuance of approval for brokering activities required under this section or the use of exemptions, unless an exception is granted by the Directorate of Defense Trade Controls.

33. Sections 129.6, 129.7, 129.8, 129.5, 129.4, 129.10, and 129.9 are redesignated as §§ 129.4, 129.5, 129.6, 129.7, 129.8, 129.9, and 129.10 respectively.

34. Newly redesignated §129.4 is revised to read as follows:

§129.4 Requirement for approval.

(a) Except as provided in §129.5, 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 pursuant to §129.2(b) without first obtaining the

approval of the Directorate of Defense Trade Controls for the brokering of any of the following:

- (1) Any foreign defense article or defense service (*see* §120.44 of this subchapter, and §129.5 for exemptions); 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 § 121.1 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 § 121.1 of this subchapter (including man-portable air-defense systems);
 - (iii) Vessels of war described by Category VI of § 121.1 of this subchapter;
 - (iv) Tanks and military vehicles described by Category VII of § 121.1 of this subchapter;
 - (v) Aircraft and unmanned aerial vehicles described by Category VIII of § 121.1 of this subchapter;
 - (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 § 121.1 of this subchapter;
 - (vii) Chemical agents and precursors described by Category XIV(a), (c), and (e) of § 121.1 of this subchapter, biological agents and biologically derived substances described by Category XIV(b) of § 121.1 of this subchapter, and equipment described by Category XIV(f) of § 121.1 of this subchapter for dissemination of the chemical agents and biological agents described by Category XIV(a), (b), and (e) of § 121.1 of this subchapter;

(viii) Submersible vessels described by Category XX of § 121.1 of this subchapter; and

(ix) Miscellaneous articles of a nature described by Category XXI of § 121.1 of this subchapter.

35. Newly redesignated §129.5 is revised to read as follows:

§129.5 Exemption from requirement for approval.

(a) Unless paragraph (c) of this section applies, 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 this subchapter; or

(ii) The Directorate of Defense Trade Controls provides written concurrence in advance that the condition is met.

(b) Unless paragraph (c) of this section applies, brokering activities regarding a foreign defense article or defense service (*see* §120.44 of this subchapter) are exempt from the requirement for approval when arranged wholly within and destined exclusively for the North Atlantic Treaty

Organization, any member country of that organization, Australia, Israel, Japan, New Zealand, or the Republic of Korea, except in the case of the defense articles or defense services specified in §129.4(a)(2), for which approval is required.

(c) Brokers engaging in brokering activities described in paragraph (a) or (b) of this section 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;

(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 person referred to in §126.1 of this subchapter is involved in the brokering activities or such activities are otherwise subject to §129.7.

(d) Brokers who use the exemptions in this section must comply with all other provisions of this part 129.

36. Newly redesignated §129.6 is revised to read as follows:

§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 or the 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 is the subject of an indictment or has been otherwise charged (*e.g.*,

by criminal information in lieu of indictment) for, or has been convicted of, violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter;

(ii) The applicant or the 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 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 is the subject of an indictment or has been otherwise charged (*e.g.*, charged by criminal information in lieu 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 for each article;
- (ii) The name or military nomenclature of each defense article;
- (iii) Whether the defense article is significant military equipment;
- (iv) Estimated quantity of each defense article;
- (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 to approve the request.

(e) The period of validity for an approval may not exceed four years.

37. Newly redesignated §129.7 is revised to read as follows:

§129.7 Policy on embargoes and other proscriptions.

(a) This section applies to brokering activities defined in §129.2, regardless of whether the person involved in such activities has registered or is exempt from registration under §129.3. The exemptions in §129.5 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 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 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 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 persons must immediately inform the Directorate of Defense Trade Controls.

38. Section 129.4 is redesignated as §129.8 revised to read as follows:

§129.8 Submission of Statement of Registration, 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) to the Office of Defense Trade Controls Compliance by following the submission guidelines available on the Directorate of Defense Trade Controls website at www.pmdtdc.state.gov.

The Statement of Registration must be signed by a U.S. person 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, with the exception that a foreign senior officer may sign the Statement of Registration if the intended registrant seeks only to register as a foreign broker. The Statement of Registration may include subsidiaries and affiliates when more than 50 percent of the voting securities are owned by the registrant or the subsidiaries and affiliates are otherwise controlled by the registrant (*see* §120.40 of this subchapter). 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.

(b)(1) *Frequency of registration and fee.* A person who is required to register must do so on an annual basis by submitting a completed Statement of Registration (form DS-2032) and a fee following the fee guidelines available on the Directorate of Defense Trade Controls website at www.pmdtdc.state.gov. Registrants are not required to submit a separate statement of registration and pay an additional fee when provisions in §129.3(d) are met.

(2) *Expiration of registration.* A registrant must submit its request for registration renewal at least 30 days, but no earlier than 60 days, prior to the expiration date.

(3) *Lapse in registration.* A registrant who fails to renew a registration 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 defense articles or defense services.

(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 or its parent, subsidiary, or other affiliate listed in the Statement of Registration, or any of its chief executive officers, presidents, vice presidents, secretaries, partners, members, 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 listed in the Statement of Registration:

(i) Has ever been indicted or otherwise charged (*e.g.*, charged by criminal information in lieu of indictment) for or has been convicted of violating any U.S. criminal statutes enumerated in §120.27 of this subchapter or violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than 1 year; 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. Government; and

(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 to 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) is indicted or otherwise charged (*e.g.*, charged by criminal information in lieu of indictment) for or convicted of violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter or violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than 1 year; or becomes 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;

(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 in registrant's Statement of Registration; or

(vi) Board of directors, senior officers, partners and owners.

Note 1 to paragraph (d): All other changes in the Statement of Registration must be provided as part of annual registration renewal.

Note 2 to paragraph (d): For one year from [insert date 60 days from date of publication in the *Federal Register*], “Amendment to the International Traffic in Arms Regulations: Registration and Licensing of Brokers, Brokering Activities, and Related Provisions,” RIN 1400-AC37, the following changes must be provided as part of the annual registration renewal: pursuant to §129.3(d), changes to combine an existing broker registration with an existing manufacturer/exporter registration, and pursuant to §129.8(a), changes to an existing registration to remove partially owned and not otherwise controlled subsidiaries or affiliates, which are not the subject of an internal reorganization, merger, acquisition, or divestiture.

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

(3) The numbers of all approvals for brokering activities under the continuing 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.

39. Newly redesignated §129.9 is revised to read as follows:

§129.9 Guidance.

(a) Any person desiring guidance on whether an activity constitutes a brokering activity within the scope of this part 129 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 for each article;

(ii) The name or military nomenclature of each defense article;

(iii) Whether the defense article is significant military equipment;

(iv) Estimated quantity of each defense article;

(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 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.

(c) Persons desiring guidance on other aspects of this part 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.

40. Newly redesignated §129.10 is revised to read as follows:

§129.10 Reports.

(a) Any person required to register under this part (including those registered in accordance with §129.3(d)) 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 assigned by the Directorate of Defense Trade Controls to 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.

41. Section 129.11 is added to read as follows:

§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)) must maintain records concerning brokering activities in accordance with §122.5 of this subchapter.

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