

**§ 128.16**

granted or denied and will issue an appropriate order. A copy of the order and of the Administrative Law Judge’s report will be furnished to any person affected thereby.

(5) *Effect of revocation on other actions.* The revocation of a probationary period will not preclude any other action concerning a further violation, even where revocation is based on the further violation.

[61 FR 48834, Sept. 17, 1996, as amended at 71 FR 20552, Apr. 21, 2006]

**§ 128.16 Extension of time.**

The Administrative Law Judge, for good cause shown, may extend the time within which to prepare and submit an answer to a charging letter or to perform any other act required by this part.

[61 FR 48834, Sept. 17, 1996]

**§ 128.17 Availability of orders.**

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

**PART 129—REGISTRATION AND LICENSING OF BROKERS**

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AUTHORITY: Sec. 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778).

SOURCE: 62 FR 67276, Dec. 24, 1997, unless otherwise noted.

**§ 129.1 Purpose.**

Section 38(b)(1)(A)(ii) of the Arms Export Control Act (22 U.S.C. 2778) provides that persons engaged in the business of brokering activities shall register and pay a registration fee as prescribed in regulations, and that no person may engage in the business of

brokering activities without a license issued in accordance with the Act.

**§ 129.2 Definitions.**

(a) *Broker* means any person who acts as an agent for others in negotiating or arranging contracts, purchases, sales or transfers of defense articles or defense services in return for a fee, commission, or other consideration.

(b) *Brokering activities* means acting as a broker as defined in § 129.2(a), and includes the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import or a defense article or defense service, irrespective of its origin. For example, this includes, but is not limited to, activities by U.S. persons who are located inside or outside of the United States or foreign persons subject to U.S. jurisdiction involving defense articles or defense services of U.S. or foreign origin which are located inside or outside of the United States. But, this does not include activities by U.S. persons that are limited exclusively to U.S. domestic sales or transfers (e.g., not for export or re-transfer in the United States or to a foreign person). For the purposes of this subchapter, engaging in the business of brokering activities requires only one action as described above.

(c) The term “foreign defense article or defense service” includes any non-United States defense article or defense service of a nature described on the United States Munitions List regardless of whether such article or service is of United States origin or whether such article or service contains United States origin components.

[62 FR 67276, Dec. 24, 1997, as amended at 71 FR 20553, Apr. 21, 2006]

**§ 129.3 Requirement to register.**

(a) Any U.S. person, wherever located, and any foreign person located in the United States or otherwise subject to the jurisdiction of the United States (notwithstanding § 120.1(c)), who engages in the business of brokering activities (as defined in this part) with respect to the manufacture, export, import, or transfer of any defense article or defense service subject to the controls of this subchapter (see part 121) or

any “foreign defense article or defense service” (as defined in §129.2) is required to register with the Directorate of Defense Trade Controls.

(b) *Exemptions.* Registration under this section is not required for:

(1) Employees of the United States Government acting in official capacity.

(2) Employees of foreign governments or international organizations acting in official capacity.

(3) *Persons exclusively in the business of financing, transporting, or freight forwarding, whose business activities do not also include brokering defense articles or defense services.* For example, air carriers and freight forwarders who merely transport or arrange transportation for licensed United States Munitions List items are not required to register, nor are banks or credit companies who merely provide commercially available lines or letters of credit to persons registered in accordance with part 122 of this subchapter required to register. However, banks, firms, or other persons providing financing for defense articles or defense services would be required to register under certain circumstances, such as where the bank or its employees are directly involved in arranging arms deals as defined in §129.2(a) or hold title to defense articles, even when no physical custody of defense articles is involved.

[62 FR 67276, Dec. 24, 1997, as amended at 71 FR 20553, Apr. 21, 2006]

#### **§ 129.4 Registration statement and fees.**

(a) *General.* An intended registrant must submit a Department of State Form DS-2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by registered or overnight mail delivery, and must submit an electronic payment via Automated Clearing House (ACH), Federal Reserve Wire Network (FedWire), or Society for Worldwide Interbank Financial Telecommunications (SWIFT), payable to the Department of State of the fees prescribed in §122.3(a) of this subchapter. Automated Clearing House and FedWire are electronic networks used to process financial transactions originating from within the United States and SWIFT is the messaging service used by financial institutions

worldwide to issue international transfers for foreign accounts. Payment methods (*i.e.*, ACH, FedWire, and SWIFT) are dependent on the source of the funds (U.S. or foreign bank) drawn from the applicant’s account. The originating account must be the registrant’s account and not a third party’s account. Intended registrants should access the Directorate of Defense Trade Control’s Web site at <http://www.pmdtcc.state.gov> for detailed guidelines on submitting ACH, FedWire, and SWIFT electronic payments. Payments, including from foreign brokers, must be in U.S. currency, payable through a U.S. financial institution. Cash, checks, foreign currency, or money orders will not be accepted. The Statement of Registration must be signed by a senior officer (e.g., Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant, whether a U.S. or foreign person, shall submit documentation that demonstrates it is incorporated or otherwise authorized to do business in its respective country. Foreign persons who are required to register shall provide information that is substantially similar in content to that which a U.S. person would provide under this provision (e.g., foreign business license or similar authorization to do business). The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

(b) A person registering as a broker who is already registered as a manufacturer or exporter in accordance with part 122 of this subchapter must cite their existing manufacturer or exporter registration, and must pay an additional fee according to the schedule prescribed in §122.3(a) of this subchapter for registration as a broker.