

§ 120.21

brokering activities or retransfer authorizations), or the use of an exemption to the license requirements as described in this subchapter.

[79 FR 8084, Feb. 11, 2014]

§ 120.21 Manufacturing license agreement.

An agreement (e.g., contract) whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates:

(a) The export of technical data (as defined in §120.10) or defense articles or the performance of a defense service; or

(b) The use by the foreign person of technical data or defense articles previously exported by the U.S. person. (See part 124 of this subchapter).

§ 120.22 Technical assistance agreement.

An agreement (e.g., contract) for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included under this section, provided production rights or manufacturing know-how are not conveyed. Should such rights be transferred, §120.21 is applicable. (See part 124 of this subchapter).

§ 120.23 Distribution agreement.

An agreement (e.g., a contract) to establish a warehouse or distribution point abroad for defense articles exported from the United States for subsequent distribution to entities in an approved sales territory (see part 124 of this subchapter).

§ 120.24 Port Directors.

Port Directors of U.S. Customs and Border Protection means the U.S. Customs and Border Protection Port Directors at the U.S. Customs and Border Protection Ports of Entry (other than the port of New York, New York where their title is the Area Directors).

[70 FR 50959, Aug. 29, 2005]

§ 120.25 Empowered Official.

(a) *Empowered Official* means a U.S. person who:

22 CFR Ch. I (4–1–14 Edition)

(1) Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and

(2) Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and

(3) Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and

(4) Has the independent authority to:

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

(ii) Verify the legality of the transaction and the accuracy of the information to be submitted; and

(iii) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

(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.

[58 FR 39283, July 22, 1993, as amended at 78 FR 52685, Aug. 26, 2013]

§ 120.26 Presiding Official.

Presiding Official means a person authorized by the U.S. Government to conduct hearings in administrative proceedings.

§ 120.27 U.S. criminal statutes.

(a) For purposes of this subchapter, the phrase *U.S. criminal statutes* means:

(1) Section 38 of the Arms Export Control Act (22 U.S.C. 2778);

(2) Section 11 of the Export Administration Act of 1979 (50 U.S.C. app. 2410);

(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

Department of State

§ 120.28

support to terrorists or terrorist organizations, financing of terrorism, or receiving military-type training from a foreign terrorist organization);

(4) Section 16 of the Trading with the Enemy Act (50 U.S.C. app. 16);

(5) Section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. 1705);

(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);

(7) Chapter 105 of title 18, United States Code (relating to sabotage);

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

(9) Sections 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276);

(10) Section 601 of the National Security Act of 1947 (relating to intelligence identities protection; 50 U.S.C. 421);

(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, Public Law 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.

(b) [Reserved]

[58 FR 39283, July 22, 1993, as amended at 71 FR 20537, Apr. 21, 2006; 78 FR 52685, Aug. 26, 2013]

§ 120.28 Listing of forms referred to in this subchapter.

The forms referred to in this subchapter are available from the following government agencies:

(a) Department of State, Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, Washington, DC 20522-0112.

(1) Application/License for permanent export of unclassified defense articles and related technical data (Form DSP-5).

(2) Statement of Registration (Form DS-2032).

(3) Application/License for temporary import of unclassified defense articles (Form DSP-61).

(4) Application/License for temporary export of unclassified defense articles (Form DSP-73).

(5) Non-transfer and use certificate (Form DSP-83).

(6) Application/License for permanent/temporary export or temporary import of classified defense articles and related classified technical data (Form DSP-85).