

(d) *Effect of appeals.* The taking of an appeal will not stay the operation of any order.

(e) *Preparation of appeals*—(1) *General requirements.* An appeal shall be in letter form. The appeal and accompanying material should be filed in duplicate, unless otherwise indicated, and a copy simultaneously mailed to the Deputy Assistant Secretary of State for Defense Trade Controls, SA–1, Room 1200, Department of State, Washington, DC 20522–0112 or delivered to 2401 E Street NW., Washington, DC addressed to the Deputy Assistant Secretary of State for Defense Trade Controls, SA–1, Room 1200, Department of State, Washington, DC 20037.

(2) *Oral presentation.* The Under Secretary of State for Arms Control and International Security may grant the appellant an opportunity for oral argument and will set the time and place for oral argument and will notify the parties, ordinarily at least 10 days before the date set.

(f) *Decisions.* All appeals will be considered and decided within a reasonable time after they are filed. An appeal may be granted or denied in whole or in part, or dismissed at the request of the appellant. The decision of the Under Secretary of State for Arms Control and International Security will be final.

[58 FR 39320, July 22, 1993, as amended at 61 FR 48833, Sept. 17, 1996; 71 FR 20552, Apr. 21, 2006; 79 FR 8089, Feb. 11, 2014]

§ 128.14 Confidentiality of proceedings.

Proceedings under this part are confidential. The documents referred to in § 128.17 are not, however, deemed to be confidential. Reports of the Administrative Law Judge and copies of transcripts or recordings of hearings will be available to parties and, to the extent of their own testimony, to witnesses. All records are available to any U.S. Government agency showing a proper interest therein.

[61 FR 48834, Sept. 17, 1996]

§ 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 Deputy Assistant Secretary of State for 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.

(b) *Hearings*—(1) *Objections upon notice.* Any person affected by an application upon notice to revoke probation, within the time specified in the notice, may file objections with the Administrative Law Judge.

(2) *Objections to order without notice.* Any person adversely affected by an order revoking probation, without notice may request that the order be set aside by filing his objections thereto with the Administrative Law Judge. The request will not stay the effective date of the order or revocation.

(3) *Requirements for filing objections.* Objections filed with the Administrative Law Judge must be submitted in writing and in duplicate. A copy must be simultaneously submitted to the Directorate of Defense Trade Controls. Denials and admissions, as well as any mitigating circumstances, which the person affected intends to present must be set forth in or accompany the letter of objection and must be supported by evidence. A request for an oral hearing may be made at the time of filing objections.

(4) *Determination.* The application and objections thereto will be referred to the Administrative Law Judge. An oral hearing if requested, will be conducted at an early convenient date, unless the

Department of State

§ 129.2

objections filed raise no issues of material fact to be determined. The Administrative Law Judge will report the facts and make a recommendation to the Assistant Secretary for Political-Military Affairs, who will determine whether the application should be 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; 78 FR 52689, Aug. 26, 2013; 79 FR 8089, Feb. 11, 2014]

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

[78 FR 52690, Aug. 26, 2013]

PART 129—REGISTRATION AND LICENSING OF BROKERS

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 prescriptions.
- 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.

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

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

§ 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).

[78 FR 52690, Aug. 26, 2013]

§ 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