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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)(11) 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 of a defense article or defense service, irrespective of its origin For example, this in-

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cludes, 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

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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.* The Department of State Form DS-2032 (Statement of Registration) and a transmittal letter meeting the requirements of § 122.2(b) of this subchapter must be submitted by an intended registrant with a payment by check or money order payable to the Department of State of one of the fees prescribed in § 122.3(a) of this subchapter. The Statement of Registration and transmittal letter must be signed by a senior officer who has been empowered by the intended registrant to sign such documents. The intended registrant shall also submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The requirement to submit a Department of State Form DS-2032 and to submit documentation demonstrating incorporation or authorization to do business in the United States is not meant to exclude foreign persons from the requirement to register. Foreign persons who are required to register shall provide information that is substantially similar in content as that which a US person would provide under this provision (e.g., foreign business license or similar authorization to do business).

(b) A person required to register under this part who is already registered as a manufacturer or exporter in accordance with part 122 of this subchapter must also provide notification

of this additional activity by submitting to the Directorate of Defense Trade Controls by registered mail a transmittal letter meeting the requirements of § 122.2(b) and citing the existing registration, and must pay an additional fee according to the schedule prescribed in § 122.3(a). Any person who registers coincidentally as a broker as defined in § 129.2 of this subchapter and as a manufacturer or exporter must submit a Statement of Registration that reflects the brokering activities, the § 122.2(b) transmittal letter, as well as the additional fee for registration as a broker.

(c) Other provisions of part 122, in particular, § 122.4 concerning notification of changes in information furnished by registrants and § 122.5 concerning maintenance of records by registrants, apply equally to registration under this part (part 129).

[62 FR 67276, Dec. 24, 1997, as amended at 69 FR 70889, Dec. 8, 2004, 71 FR 20553, Apr. 21, 2006]

§ 129.5 Policy on embargoes and other proscriptions.

(a) The policy and procedures set forth in this subparagraph apply to brokering activities defined in § 129.2 of this subchapter, regardless of whether the persons involved in such activities have registered or are required to register under § 129.3 of this subchapter.

(b) No brokering activities or brokering proposals involving any country referred to in § 126.1 of this subchapter may be carried out by any person without first obtaining the written approval of the Directorate of Defense Trade Controls.

(c) No brokering activities or proposal to engage in brokering activities may be carried out or pursued by any person without the prior written approval of the Directorate of Defense Trade Controls in the case of other countries or persons identified from time to time by the Department of State through notice in the FEDERAL REGISTER, with respect to which certain limitations on defense articles or