§ 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.

[78 FR 52694, Aug. 26, 2013]

§ 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.

[78 FR 52694, Aug. 26, 2013]
§ 130.2 Applicant.

Applicant means any person who applies to the Directorate of Defense Trade Controls for any license or approval required under this subchapter for the export of defense articles or defense services valued in an amount of $500,000 or more which are being sold commercially to or for the use of the armed forces of a foreign country or international organization. This term also includes a person to whom the required license or approval has been given.

[71 FR 20554, Apr. 21, 2006]

§ 130.3 Armed forces.

Armed forces means the army, navy, marine, air force, or coast guard, as well as the national guard and national police, of a foreign country. This term also includes any military unit or military personnel organized under or assigned to an international organization.

§ 130.4 Defense articles and defense services.

Defense articles and defense services have the meaning given those terms in paragraphs (3), (4) and (7) of section 47 of the Arms Export Control Act (22 U.S.C. 2794). When used with reference to commercial sales, the definitions in §§120.6 and 120.9 of this subchapter apply.

§ 130.5 Fee or commission.

(a) Fee or commission means, except as provided in paragraph (b) of this section, any loan, gift, donation or other payment of $1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:

(1) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with an applicant, a supplier or a vendor; and

(2) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization.

(b) The term fee or commission does not include:

(1) A political contribution or a payment excluded by §130.6 from the definition of political contribution;

(2) A normal salary (excluding contingent compensation) established at an annual rate and paid to a regular employee of an applicant, supplier or vendor;

(3) General advertising or promotional expenses not directed to any particular sale or purchaser; or

(4) Payments made, or offered or agreed to be made, solely for the purchase by an applicant, supplier or vendor of specific goods or technical, operational or advisory services, which payments are not disproportionate in amount with the value of the specific goods or services actually furnished.

[58 FR 39323, July 22, 1993, as amended at 71 FR 20554, Apr. 21, 2006]

§ 130.6 Political contribution.

Political contribution means any loan, gift, donation or other payment of $1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:

(a) To or for the benefit of, or at the direction of, any foreign candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; and

(b) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.

§ 130.7 Supplier.

Supplier means any person who enters into a contract with the Department of Defense for the sale of defense articles or defense services valued in an amount of $500,000 or more under section 22 of the Arms Export Control Act (22 U.S.C. 2762).
§ 130.8 Vendor.

(a) Vendor means any distributor or manufacturer who, directly or indirectly, furnishes to an applicant or supplier defense articles valued in an amount of $500,000 or more which are end-items or major components as defined in §121.8 of this subchapter. It also means any person who, directly or indirectly, furnishes to an applicant or supplier defense articles or services valued in an amount of $500,000 or more when such articles or services are to be delivered (or incorporated in defense articles or defense services to be delivered) to or for the use of the armed forces of a foreign country or international organization under:

(1) A sale requiring a license or approval from the Directorate of Defense Trade Controls under this subchapter; or

(2) A sale pursuant to a contract with the Department of Defense under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

(b) [Reserved]

§ 130.9 Obligation to furnish information to the Directorate of Defense Trade Controls.

(a)(1) Each applicant must inform the Directorate of Defense Trade Controls as to whether the applicant or its vendors have paid, or offered or agreed to pay, in respect of any sale for which a license or approval is requested:

(i) Political contributions in an aggregate amount of $5,000 or more, or

(ii) Fees or commissions in an aggregate amount of $100,000 or more. If so, the applicant must furnish to the Directorate of Defense Trade Controls the information specified in §130.10. The furnishing of such information or an explanation satisfactory to the Director of the Office of Defense Trade Controls Licensing as to why all the information cannot be furnished at that time is a condition precedent to the granting of the relevant license or approval.

(2) The requirements of this paragraph do not apply in the case of an applicant with respect to a sale for which all the information specified in §130.10 which is required by this section to be reported shall already have been furnished.

(b) Each supplier must inform the Directorate of Defense Trade Controls as to whether the supplier or its vendors have paid, or offered or agreed to pay, in respect of any sale:

(1) Political contributions in an aggregate amount of $5,000 or more, or

(2) Fees or commissions in an aggregate amount of $100,000 or more. If so, the supplier must furnish to the Directorate of Defense Trade Controls the information specified in §130.10. The information required to be furnished pursuant to this paragraph must be so furnished no later than 30 days after the contract award to such supplier, or such earlier date as may be specified by the Department of Defense. For purposes of this paragraph, a contract award includes a purchase order, exercise of an option, or other procurement action requiring a supplier to furnish defense articles or defense services to the Department of Defense for the purposes of §22 of the Arms Export Control Act (22 U.S.C. 2762).

(c) In determining whether an applicant or its vendors, or a supplier or its vendors, as the case may be, have paid, or offered or agreed to pay, political contributions in an aggregate amount of $5,000 or more in respect of any sale so as to require a report under this section, there must be included in the computation of such aggregate amount any political contributions in respect of the sale which are paid by or on behalf of, or at the direction of, any person to whom the applicant, supplier or vendor has paid, or offered or agreed to pay, a fee or commission in respect of the sale. Any such political contributions are deemed for purposes of this part to be political contributions by the applicant, supplier or vendor who paid or offered or agreed to pay the fee or commission.

(d) Any applicant or supplier which has informed the Directorate of Defense Trade Controls under this section that neither it nor its vendors have paid, or offered or agreed to pay, political contributions or fees or commissions in an aggregate amount requiring the information specified in §130.10 to be furnished, must subsequently furnish such information within 30 days.
§ 130.11 Supplementary reports.

(a) Every applicant or supplier who is required under § 130.9 to furnish the information specified in § 130.10 must submit a supplementary report in connection with each sale in respect of which applicant or supplier has previously been required to furnish information if:

(v) The aggregate amounts of political contributions and of fees or commission, respectively, which shall have been reported.

(b) In responding to paragraph (a)(4) of this section, the statement must:

(1) With respect to each payment reported, state whether such payment was in cash or in kind. If in kind, it must include a description and valuation thereof. Where precise amounts are not available because a payment has not yet been made, an estimate of the amount offered or agreed to be paid must be provided;

(2) With respect to each recipient, state:

(i) Its name;

(ii) Its nationality;

(iii) Its address and principal place of business;

(iv) Its employer and title; and

(v) Its relationship, if any, to applicant, supplier, or vendor, and to any foreign purchaser or end-user.

(c) In submitting a report required by § 130.9, the detailed information specified in paragraph (a)(4) and (b) of this section need not be included if the payments do not exceed:

(1) $2,500 in the case of political contributions; and

(2) $50,000 in the case of fees or commissions.

In lieu of reporting detailed information with respect to such payments, the aggregate amount thereof must be reported, identified as miscellaneous political contributions or miscellaneous fees or commissions, as the case may be.

(d) Every person required to furnish the information specified in paragraphs (a) and (b) of this section must respond fully to each subdivision of those paragraphs and, where the correct response is "none" or "not applicable," must so state.

[58 FR 39323, July 22, 1993, as amended at 71 FR 20554, Apr. 21, 2006]
§ 130.12 Information to be furnished by vendor to applicant or supplier.

(a) In order to determine whether it is obliged under §130.9 to furnish the information specified in §130.10 with respect to a sale, every applicant or supplier must obtain from each vendor, from or through whom the applicant acquired defense articles or defense services forming the whole or a part of the sale, a full disclosure by the vendor of all political contributions or fees or commission paid, by vendor with respect to such sale. Such disclosure must include responses to all the information pertaining to vendor required to enable applicant or supplier, as the case may be, to comply fully with §§130.9 and 130.10. If so required, the vendor in providing the information specified.

(b) Any vendor which has been requested by an applicant or supplier to furnish an initial statement under paragraph (a) of this section must, except as provided in paragraph (c) of this section, furnish such statement in a timely manner and not later than 20 days after receipt of such request.

(c) If the vendor believes that furnishing information to an applicant or supplier in a requested statement would unreasonably risk injury to the vendor’s commercial interests, the vendor may furnish in lieu of the statement an abbreviated statement disclosing only the aggregate amount of all political contributions and the aggregate amount of all fees or commissions which have been paid, or offered or agreed to be paid, or offered or agreed to be paid, by the vendor with respect to the sale. Any abbreviated statement furnished to an applicant or supplier under this paragraph must be accompanied by a certification that the requested information has been reported by the vendor directly to the Directorate of Defense Trade Controls. The vendor must simultaneously report fully to the Directorate of Defense Trade Controls all information which the vendor would otherwise have been required to report to the applicant or supplier under this section. Each such report must clearly identify the sale with respect to which the reported information pertains.

(d)(1) If upon the 25th day after the date of its request to vendor, an applicant or supplier has not received from the vendor the initial statement required by paragraph (a) of this section, the applicant or supplier must submit to the Directorate of Defense Trade Controls a signed statement attesting to:

(i) The manner and extent of applicant’s or supplier’s attempt to obtain from the vendor the initial statement required by paragraph (a) of this section;

(ii) Vendor’s failure to comply with this section; and

(iii) The amount of time which has elapsed between the date of applicant’s or supplier’s request and the date of the signed statement;
§ 130.17  Utilization of and access to reports and records.

(a) All information reported and records maintained under this part will be made available, upon request for utilization by standing committees of the Congress and subcommittees thereof, and by United States Government agencies, in accordance with §39(d) of the Arms Export Control Act (22 U.S.C. 2779(d)) and reports based upon such information will be submitted to Congress in accordance with sections 36(a)(7) and 36(b)(1) of that Act (22 U.S.C. 2776(a)(7) and (b)(1)) or any other applicable law.

(b) All confidential business information provided pursuant to this part
§ 130.17

shall be protected against disclosure to
the extent provided by law.

(c) Nothing in this section shall pre-
clude the furnishing of information to
foreign governments for law enforce-
ment or regulatory purposes under
international arrangements between
the United States and any foreign gov-
ernment.

[58 FR 39223, July 22, 1993, as amended at 71
FR 20555, Apr. 21, 2006]