

**DEPARTMENT OF STATE****22 CFR Parts 122 and 129**

[Public Notice 6370]

RIN 1400-AC50

**Amendment to the International Traffic in Arms Regulations: Registration Fee Change**

AGENCY: Department of State.

ACTION: Final rule.

**SUMMARY:** The Department of State is amending the text of the International Traffic in Arms Regulations (ITAR) to increase the registration fees, change the registration renewal period, and make other minor administrative changes.

**DATES:** *Effective Date:* This rule is effective September 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** Patricia Slygh, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663-2830 or FAX (202) 261-8199; e-mail [DDTCResponseTeam@state.gov](mailto:DDTCResponseTeam@state.gov), ATTN: Regulatory Change, ITAR Parts 122 and 129.

**SUPPLEMENTARY INFORMATION:** On July 28, 2008, the Department published a Notice of Proposed Rulemaking (NPRM) to increase the registration fees, change the registration renewal period, and make other minor administrative changes to Parts 122 and 129 of the ITAR. Further background is provided within the NPRM at 73 FR 43653.

This rule increases the fee charged to those persons required to register with the Directorate of Defense Trade Controls (DDTC) in accordance with Section 38 of the Arms Export Control Act (AECA) (22 U.S.C. 2778). ITAR registration fees are set forth at 22 CFR 122.3 and were last adjusted in 2004.

To align registration fees with the cost of licensing, compliance and other related activities, the Department is adopting a three-tier registration fee schedule. The first tier will be a set fee of \$2,250 per year for registrants who are renewing a registration, required to register by law, and for whom DDTC has not reviewed, adjudicated or issued a response to any applications during the twelve-month period ending 90 days prior to the expiration of their current registration. This tier includes those registering with the Department for the first time.

The second tier is for registrants for whom DDTC has reviewed, adjudicated or issued a response to between one and ten applications during the twelve-month period ending 90 days prior to the expiration of their current

registration. For this tier, registrants will pay a set fee of \$2,750 per year.

The third tier is for registrants for whom DDTC has reviewed, adjudicated or issued a response to more than ten applications during the twelve month period ending 90 days prior to the expiration of their current registration. For this tier, registrants will pay a fee of \$2,750 plus an additional fee that is based on the number of applications for which DDTC has reviewed, adjudicated or issued a response during the twelve months ending 90 days prior to the expiration of their current registration. The additional fee will be determined by multiplying \$250 times the number of applications for which DDTC has reviewed, adjudicated or issued a response during the twelve-month period ending 90 days prior to the expiration of the current registration.

Fees for registrants whose total registration fee is greater than 3% of the total value of applications for which DDTC has reviewed, adjudicated or issued a response during the 12-month period ending 90 days prior to expiration of the current registration will be reduced to 3% of such total application value or \$2,750, whichever is greater. Fees for registrants, including universities, who are exempt from income taxation pursuant to 26 U.S.C. 501(c)(3) may be reduced to the first-tier registration fee provided proof of such status (i.e., IRS certification) is submitted with their registration package.

In addition, 22 CFR 129.4(a) and 22 CFR 129.4(b) are revised to reflect the new registration fee schedule.

**Comment Analysis**

The Department received comments from twenty-seven (27) individuals and companies. Seventeen (17) commenting parties voiced their opposition either to DDTC raising registration fees or to the collection of registration fees at all. Registration fees are collected and utilized in accordance with the AECA. The President has directed the Department of State to implement a series of improvements to its export licensing system to make it more timely, predictable, and transparent. To support that effort, the President has required that the U.S. Department of State initiate a self-financing mechanism so that the DDTC's mission will eventually be at least 75% self-financed. Six (6) commenting parties offered actions that could be taken by DDTC to reduce its licensing workload. These comments were not considered at this time as they are outside the scope of this rule. However, the Department remains committed to continuing to reform the

export control process. As DDTC continues to reform the export control process, the budgetary requirements will be reviewed on a regular basis, which may result in a revision to the registration fee schedule.

Ten (10) commenting parties suggested alternate funding schedules for registration fees. Nine of these alternates were not adopted as they would not have generated the funds required by DDTC or appeared to be unfair to small businesses that, while required to register with DDTC, utilize only limited Department resources. The tenth proposal recommended several flat tiers based on licensing activity. While this proposal would provide the necessary funds for DDTC, imposing a minimal administrative burden upon the Department, it was not adopted primarily since the incremental cost of submitting one more license under this proposal could be significant as the total cost is recomputed in light of the higher fee at the next tier.

Six (6) commenting parties raised concerns that the proposed fee schedule would be an administrative burden on the Department as well as on industry. Four (4) comments regarding reinstatement of multi-year registrations were received. DDTC has attempted to adopt a fee schedule that will result in minimal burden to applicants, recognizing that any change to the current one fee for all registrants will impose some additional burden. The multi-year registrations have been discontinued in order to provide DDTC with a revenue stream that reflects its costs. The Department will contemplate reconsidering multi-year registrations after the Department has experience with a single-year fee structure.

Two (2) commenting parties recommended reconsideration of 22 CFR 122.2(a) and 22 CFR 129.4(a) regarding Department policy for returning incomplete registration packages. Discretion will continue to be used when determining if it is necessary to return an incomplete registration package; only those registration packages materially incomplete will be returned.

Four (4) commenting parties recommended that license amendments not be counted when determining the registration fee. Since license amendments have a material impact on the authorized activity and require DDTC to review, adjudicate and respond to the applicant, they will be counted. Activities under 22 CFR parts 123 through 126 not requiring the Department to respond to the applicant will not be counted as part of the registration fee; examples include

annual submission of sales reports, prior notifications, provision of documents required by proviso, and submission of purchase orders to support offshore procurement. Other activities outside of 22 CFR parts 123 through 126 that require DDTTC to respond to the applicant will not be counted in determining registration fees; examples of these actions include commodity jurisdictions and disclosures. Eight (8) commenting parties recommended that those license applications "returned without action" not be counted when determining the level of licensing activity. DDTTC has adopted this recommendation and 22 CFR 122.3(a)(7) has been revised accordingly. Additionally, the Department will not consider denied licenses when determining registration fees.

### Regulatory Analysis and Notices

*Administrative Procedure Act:* This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures contained in 5 U.S.C. 553 and 554. However, as noted in the **SUPPLEMENTARY INFORMATION**, notice of the rule was provided and comments were solicited and received on this amendment.

*Regulatory Flexibility Act:* Because this rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth in sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604).

*Unfunded Mandates Reform Act of 1995:* This amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996:* This amendment is not a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

*Executive Orders 12372 and 13132:* This amendment will not have substantial effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment

does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. Executive Order 12372, regarding intergovernmental consultation on Federal programs and activities, does not apply to this amendment.

*Executive Order 12866:* This amendment is exempt from the review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

*Executive Order 12988:* The Department of State has reviewed the proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Paperwork Reduction Act:* This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

### List of Subjects

#### 22 CFR Part 122

Arms and munitions, Exports, Reporting and recordkeeping requirements.

#### 22 CFR Part 129

Arms and munitions, Exports, Technical assistance.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 122 and 129 are amended as follows:

### PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

■ 1. The authority citation for part 122 continues to read as follows:

**Authority:** Secs. 2 and 38, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 1977 Comp. p. 79, 22 U.S.C. 2651a.

■ 2. Section 122.2 is amended by revising paragraph (a) to read as follows:

#### § 122.2 Submission of registration statement.

(a) *General.* The Department of State Form DS–2032 (Statement of Registration) and the transmittal letter required by paragraph (b) of this section must be submitted by an intended registrant with a payment by check drawn against the registrant's account, payable to the Department of State of the fee prescribed in § 122.3(a) of this subchapter. Checks must be in U.S. currency, and must be payable through a U.S. financial institution. In addition, the Statement of Registration and

transmittal letter 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 also shall submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. 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.

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■ 3. Section 122.3 is amended by revising paragraph (a) to read as follows:

#### § 122.3 Registration fees.

(a) A person who is required to register must do so on an annual basis upon submission of a completed Form DS–2032, transmittal letter, and payment of a fee as follows:

(1) Tier 1: A set fee of \$2,250 per year is required for new registrants or registrants for whom the Directorate of Defense Trade Controls has not reviewed, adjudicated or issued a response to any applications during a 12-month period ending 90 days prior to expiration of the current registration.

(2) Tier 2: A set fee of \$2,750 per year is required for registrants for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response to between one and ten applications during a 12-month period ending 90 days prior to expiration of the current registration.

(3) Tier 3: The third tier is for registrants for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response to more than ten applications during a 12-month period ending 90 days prior to expiration of the current registration. For this tier, registrants will pay a fee of \$2,750 plus an additional fee based on the number of applications for which the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response. The additional fee will be determined by multiplying \$250 times the number of applications over ten for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response during a 12-month period ending 90 days prior to expiration of the current registration.

(4) For registrants, including universities, exempt from income

taxation pursuant to 26 U.S.C. 501(c)(3), their fee may be reduced to the Tier 1 registration fee provided a copy of their certification letter from the Internal Revenue Service is submitted with their registration package. To be eligible, the registrant and all of its subsidiaries/affiliates must be exempt from income taxation pursuant to 26 U.S.C. 501(c)(3).

(5) The fee for registrants whose total registration fee is greater than 3% of the total value of applications for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response during the 12-month period ending 90 days prior to expiration of the current registration will be reduced to 3% of such total application value or \$2,750, whichever is greater.

(6) For those renewing a registration, notice of the fee due for the next year's registration will be sent to the registrant of record at least 60 days prior to its expiration date.

(7) For purposes of this subsection, "applications" refers to the actions enumerated within parts 123 through 126 of this subchapter that require the Directorate of Defense Trade Controls to review, adjudicate and issue responses. Only those applications that the Department has taken final action on and provided response to will be counted in determining the annual registration fee. Those applications that are "returned without action" or "denied" will not be counted.

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

■ 4. The authority citation for part 129 continues to read as follows:

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

■ 5. Section 129.4 is amended by revising paragraph (a) to read as follows:

**§ 129.4 Registration statement and fees.**

(a) *General.* The Department of State Form DS–2032 (Statement of Registration) and the transmittal letter meeting the requirements of § 122.2(b) of this subchapter must be submitted by an intended registrant with a payment by check, payable to the Department of State, of the fees prescribed in Section 122.3(a) of this subchapter. Foreign brokers must submit a check in U.S. dollars payable through a U.S. financial institution that includes the registrant's legal name and address on the check. The Statement of Registration and transmittal letter 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 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 does not 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 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 with payment. Registrants may not establish new entities for the purpose of reducing registration fees.

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Dated: September 19, 2008.

**John C. Rood,**

*Acting Under Secretary for Arms Control and International Security, Department of State.*

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**DEPARTMENT OF STATE**

**22 CFR Part 126**

**[Public Notice: 6368]**

**Amendment to the International Arms Traffic in Arms Regulations: Rwanda**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is removing Rwanda from its regulations on prohibited exports and sales to certain countries as a result of United Nations Security Council (UNSC) Resolution 1823, which terminated remaining arms sanctions against Rwanda.

**DATES:** This rule is effective September 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memos, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2804 or Fax (202) 261–8199; e-mail *DDTCResponseTeam@state.gov*.

**SUPPLEMENTARY INFORMATION:** On July 10, 2008, the UNSC adopted Resolution

1823, which terminated remaining prohibitions of defense exports to non-governmental entities and persons in Rwanda, and to such entities and persons in states neighboring Rwanda if such sale was intended for use within Rwanda, and which also terminated the prohibition of the resale or retransfer of defense items from the Government of Rwanda to any state neighboring Rwanda, or persons not in the service of the Government of Rwanda.

**Regulatory Analysis and Notices**

*Administrative Procedure Act*

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures contained in 5 U.S.C. 553 and 554.

*Regulatory Flexibility Act*

Since this amendment is not subject to the procedures in 5 U.S.C 553, it does not require analysis under the Regulatory Flexibility Act.

*Unfunded Mandates Act of 1995*

This amendment does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

*Executive Orders 12372 and 13132*

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.