

Department of State

§ 120.22

(AECA) and/or the International Traffic in Arms Regulations in this subchapter and the sanctions that may be imposed for such violations.

(b) The Department strongly encourages the disclosure of information to the Directorate of Defense Trade Controls by persons that believe they may have violated any export control provision of the AECA, or any regulation in this subchapter, order, license, or other authorization issued under the authority of the AECA.

§ 120.20 Administrative procedures.

The Arms Export Control Act (AECA) authorizes the President to control the import and export of defense articles and services in furtherance of world peace and the security and foreign policy of the United States. Pursuant to delegated authorities, the Secretary of State is authorized to make decisions on whether license applications or other written requests for approval shall be granted, or whether exemptions may be used. The Secretary of State is also authorized to revoke, suspend, or amend licenses or other written approvals whenever such action is deemed to be advisable. The administration of the AECA is a foreign affairs function encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act and is thereby expressly exempt from various provisions of that Act. Because the exercising of the foreign affairs function, including the decisions required to implement the AECA, is highly discretionary, it is excluded from review under the Administrative Procedure Act.

§ 120.21 Disclosure of information.

(a) *Freedom of information.* Subchapter R of this title contains regulations on the availability to the public of information and records of the Department of State. The provisions of subchapter R apply to such disclosures by the Directorate of Defense Trade Controls.

(b) *Determinations required by law.* Section 38(e) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(e)) provides that information obtained for the purpose of consideration of, or con-

cerning, license applications shall be withheld from public disclosure unless the release of such information is determined by the Secretary of State to be in the national interest. Section 38(e) of the AECA further provides that the names of countries and types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless certain determinations are made that the release of such information would be contrary to the national interest. Such determinations required by section 38(e) shall be made by the Assistant Secretary of State for Political-Military Affairs.

(c) *Information required under part 130 of this subchapter.* Part 130 contains specific provisions on the disclosure of information described in that part.

(d) *National interest determinations.* In accordance with section 38(e) of the AECA, the Secretary of State has determined that the following disclosures are in the national interest of the United States:

(1) Furnishing information to foreign governments for law enforcement or regulatory purposes; and

(2) Furnishing information to foreign governments and other agencies of the U.S. Government in the context of multilateral or bilateral export regimes (e.g., the Missile Technology Control Regime, the Australia Group, and Wassenaar Arrangement).

§ 120.22 Advisory opinions and related authorizations.

(a) *Preliminary authorization determinations.* A person may request information from the Directorate of Defense Trade Controls (DDTC) as to whether it would likely grant a license or other approval for a particular defense article or defense service to a particular country. Such information from DDTC is issued on a case-by-case basis and applies only to the particular matters presented to DDTC. These opinions are not binding on the Department of State and may not be used in future matters before the Department. A request for an advisory opinion must be made in writing and must outline in