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DEPARTMENT OF STATE

22 CFR Part 126

RIN 1400-AD08

Public Notice: 7810

Amendment to the International Traffic in Arms Regulations: Haiti

AGENCY: Department of State.

ACTION: Final Rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations to clarify that the Coast Guard of Haiti is an eligible end-user. This change makes it clear that the existing exceptions allow for exports to the Coast Guard of Haiti.

EFFECTIVE DATE: This rule is effective [insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Acting Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663-2792, or e-mail DDTCResponseTeam@state.gov. ATTN: Regulatory Change, Part 126, Haiti.

SUPPLEMENTARY INFORMATION: This rule implements section 7045(c) of Public Law 112-74 by amending ITAR §126.1(j) to clarify that U.S. policy on arms exports to the Government of Haiti includes the Coast Guard as an eligible end-user. Therefore, “to include the Coast Guard” is added to §126.1(j)(1). In addition, in paragraph (j)(2), the word “exemptions” is replaced with “exceptions,” as it more accurately describes the listing in paragraph (j)(1).

REGULATORY ANALYSIS AND NOTICES

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from §553 (Rulemaking) and §554 (Adjudications) of the Administrative Procedure Act. Since the Department is of the opinion that this rule is exempt from 5 U.S.C. 553, it is the view of the Department of State that the provisions of §553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication. The Department also finds that, given the national security issues surrounding U.S. policy towards the Government of Haiti, notice and public procedure on this rule would be impracticable, unnecessary, or contrary to the public interest; for the same reason, the rule will be effective immediately. *See* 5 U.S.C. 808(2).

Regulatory Flexibility Act

Since this amendment is not subject to 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.

Executive Order 12866

The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Order 12988

The Department of State has reviewed the amendment 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.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

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 in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is amended as follows:

PART 126 – GENERAL POLICIES AND PROVISIONS

1. The authority citation for part 126 is revised to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p.899; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117; Sec. 7045, Pub. L. 112-74.

2. Section 126.1 is amended by revising paragraphs (j)(1)(i) and (j)(2) to read as follows:

§126.1 Prohibited exports, imports, and sales to or from certain countries.

* * * * *

(j) *Haiti*. (1) * * *

(i) Defense articles and defense services intended solely for the support of or use by security units that operate under the command of the Government of Haiti, to include the Coast Guard;

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(2) All shipments of arms and related materials consistent with the above exceptions shall only be made to Haitian security units as designated by the Government of Haiti, in coordination with the U.S. Government.

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February 21, 2012

(Date)

Rose E. Gottemoeller,
Acting Under Secretary,
Arms Control and International Security,
Department of State.

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