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DEPARTMENT OF STATE

22 CFR Part 126

RIN 1400-AD41

[Public Notice 8409]

Amendment to the International Traffic in Arms Regulations: Libya and UNSCR 2095

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update the defense trade policy regarding Libya to reflect resolution 2095 adopted by the United Nations Security Council.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Sarah J. Heidema, Acting Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663-2809, or e-mail

DDTCResponseTeam@state.gov. ATTN: Regulatory Change, Libya.

SUPPLEMENTARY INFORMATION: On March 14, 2013, the United Nations Security Council adopted resolution 2095 (“UNSCR 2095”), which further modified the arms embargo against Libya put in place by the adoption in February and March of 2011 of resolutions 1970 and 1973, respectively, and modified by resolutions 2009 and 2016, adopted in September and October of 2011, respectively (for previous ITAR amendments regarding Libya defense trade policy, *see* “Amendment to the International Traffic in Arms Regulations: Libya,” RIN 1400-AC83, 76 FR

30001, and “Amendment to the International Traffic in Arms Regulations: Libya and UNSCR 2009,” RIN 1400-AC97, 76 FR 68313).

UNSCR 2095 removed the requirement for member states to notify the Committee of the Security Council concerning Libya (“the Committee”) of exports of non-lethal military equipment, and the provision of any technical assistance or training, intended solely for security or disarmament assistance to the Libyan government. It also removed the requirement to seek the approval of the Committee for exports of non-lethal military equipment, and related technical assistance or training, for humanitarian and protective use. The Department of State is amending ITAR §126.1(k) accordingly.

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 sections 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 that the provisions of section 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 Libya, notice and public procedure on this rule would be impracticable or unnecessary; for this reason also, this rule is effective upon publication.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking 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 rulemaking 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 rulemaking 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 rulemaking 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 rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to

select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed this rulemaking 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 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do 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 continues 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); 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; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

2. Section 126.1 is amended by revising paragraph (k) to read as follows:

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

* * * * *

(k) *Libya*. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Libya, except that a license or other approval may be issued, on a case-by-case basis, for:

- (1) Arms and related materiel intended solely for security or disarmament assistance to the Libyan government, notified to the Committee of the Security Council concerning Libya in advance and in the absence of a negative decision by the Committee within five working days of such a notification;
- (2) Non-lethal military equipment when intended solely for security or disarmament assistance to the Libyan government;
- (3) The provision of any technical assistance or training when intended solely for security or disarmament assistance to the Libyan government;
- (4) Small arms, light weapons, and related materiel temporarily exported to Libya for the sole use of United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, notified to the Committee of the Security Council concerning

Libya in advance and in the absence of a negative decision by the Committee within five working days of such a notification;

(5) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training; or

(6) Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee of the Security Council concerning Libya.

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

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