



Billing Code: 4710-25

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice: 11212]

RIN 1400-AF14

International Traffic in Arms Regulations: Temporary Update to Republic of Cyprus (Cyprus) Country Policy

AGENCY: Department of State.

ACTION: Temporary final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update defense trade policy toward the Republic of Cyprus (Cyprus) by temporarily removing prohibitions on exports, reexports, retransfers, and temporary imports of non-lethal defense articles and defense services destined for or originating in Cyprus. On June 2, 2020 the Secretary of State, exercising authority under section 1250A(d) of the National Defense Authorization Act for Fiscal Year 2020 and section 205(d) of the Eastern Mediterranean Security and Energy Act as delegated from the President, determined that it was essential to the national security interest of the United States to waive the limitations on non-lethal defense articles and defense services destined for or originating in Cyprus. The waiver is effective for one fiscal year. This amendment reflects that waiver.

DATES: This temporary rule is effective on October 1, 2020, and expires on September 30, 2021, unless subsequently extended.

FOR FURTHER INFORMATION CONTACT: Sarah Heidema, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2809, or e-mail *deccspmdtc@midatl.service-now.com*. ATTN: Regulatory Change, ITAR Section 126.1 Cyprus Country Policy Update.

SUPPLEMENTARY INFORMATION: Section 1250A(d) of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92) and section 205(d) of the Eastern Mediterranean Security and Energy Act (Div. J., Pub. L. 116-94) provide that the policy of denial for exports, reexports, or transfers of defense articles on the United States Munitions List (USML) to Cyprus shall remain in place unless the President determines and certifies to the appropriate congressional committees not less than annually that: (A) Cyprus is continuing to cooperate with the U.S. Government in anti-money laundering reforms; and (B) Cyprus has taken the steps necessary to deny Russian military vessels access to ports for refueling and servicing. These provisions further provide that the President may waive these limitations for one fiscal year if the President determines that it is essential to the national security interests of the United States to do so. On April 14, 2020, the President delegated to the Secretary of State the functions and authorities vested by section 1250A(d) of the National Defense authorization Act for Fiscal Year 2020 (Pub. L. 116-92) and section 205(d) of the Eastern Mediterranean Security and Energy Partnership Act of 2019 (Div. J., Pub. L. 116-94) (85 FR 35797). On June 2, 2020, utilizing these delegated functions and authorities, the Secretary of State determined that it is essential to the national security interest of the United States to temporarily remove restrictions on the export, reexport, retransfer, and temporary import of non-lethal defense articles and defense services destined for or originating in Cyprus.

This determination requires the Department to update ITAR section 126.1(r) to specify the circumstances provided in section 1250A(d) of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92) and section 205(d) of the Eastern Mediterranean Security and Energy Act (Div. J., Pub. L. 116-94) in which the policy of denial for exports, reexports, retransfers, and temporary import of non-lethal defense articles and defense services destined for or originating in the Republic of Cyprus will not apply.

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 military or 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 this temporary rule is exempt from 5 U.S.C. 553, the provisions of section 553(d) do not apply to this rulemaking. Therefore, this temporary rule is effective upon publication.

Regulatory Flexibility Act

Since this temporary 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

The Department does not believe this rulemaking is a major rule within the definition of 5 U.S.C. 804.

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, the Department has 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. Because the scope of this temporary rule implements a governmental policy increasing defense trade with a country, and does not impose additional regulatory requirements or obligations on the public, the Department

believes costs associated with this temporary rule will be minimal. The Department also finds that any costs of this rulemaking are outweighed by the national security benefits, as described in the preamble.

Executive Order 12988

The Department of State reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State 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, the requirements of Executive Order 13175 do not apply to this rulemaking.

Executive Order 13771

This temporary rule is exempt from the provisions of E.O. 13771, since it relates to a military or foreign affairs function of the United States.

Paperwork Reduction Act

This temporary 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: 22 U.S.C. 2752, 2778, 2780, 2791, and 2797; 22 U.S.C. 2651a; 22 U.S.C. 287c; 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 (r) to read as follows:

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

* * * * *

(r) *Cyprus*. 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 Cyprus, except that a license or other approval may be issued, on a case-by-case basis, for the United Nations Forces in Cyprus (UNFICYP) or for civilian end-users. This policy of denial does not apply to exports, reexports, retransfers, and temporary imports of non-lethal defense articles and defense services destined for or originating in Cyprus if:

(1) The request is made by or on behalf of the Government of the Republic of Cyprus;

(2) The end-user of such defense articles or defense services is the Government of the Republic of Cyprus; and

(3) There are no credible human rights concerns.

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Zachary Parker,

Director.