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DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 7552]

RIN 1400-AC81

Amendment to the International Traffic in Arms Regulations: Updates to Country Policies, and Other Changes

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update country policies regarding Afghanistan, Côte d'Ivoire, Cyprus, the Democratic Republic of the Congo, Eritrea, Fiji, Iraq, Lebanon, Liberia, North Korea, Sierra Leone, Somalia, Sri Lanka, Yemen, and Zimbabwe, and to correct administrative and typographical errors.

DATES: *Effective Date:* This rule is effective August 8, 2011.

FOR FURTHER INFORMATION CONTACT: Nicholas Memos, Office of Defense Trade Controls Policy, Department of State, by *telephone:* (202) 663-2804; *fax:* (202) 261-8199; or *e-mail:* memosni@state.gov. *Attn:* Part 126, Country Policies.

SUPPLEMENTARY INFORMATION: A number of country policy updates and corrections are made in § 126.1, described as follows.

Afghanistan: Section 126.1(g) is amended to delete reference to the "Afghan Interim Authority." The Islamic Republic of Afghanistan has replaced the Afghan Interim Authority as the Government of Afghanistan.

The Security Council committees established pursuant to United Nations Security Council (UNSC) resolutions 1267 (1999) and 1988 (2011), concerning Al-Qaida and the Taliban and associated individuals and entities, oversee the implementation by U.N. member states of sanctions measures (including arms embargoes) imposed by the Security Council on Al-Qaida and the Taliban, and those individuals, groups, undertakings, and entities associated with them. The committees maintain lists of individuals, groups, undertakings, and entities subject to the sanctions. By UNSC resolutions 1267 (1999), 1333 (2000), 1390 (2002), as reiterated in resolutions 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008) and 1904 (2009), and reiterated and modified by resolutions

1988 and 1989 (2011), the Security Council has obliged all member countries to prevent the direct or indirect supply, sale, or transfer of arms and related materiel to the individuals, groups, undertakings, and entities placed on these lists. Section 126.1(g) is amended accordingly.

Côte d'Ivoire: On November 15, 2004, the United Nations Security Council adopted resolution 1572, which provided for an arms embargo with certain exceptions. Resolution 1946 of October 15, 2010, reaffirmed the embargo, and added to the exceptions provided in resolution 1572. Resolution 1980 of April 28, 2011, renewed the terms of the modified arms embargo. Section 126.1(q) is added to reflect the arms embargo and exceptions thereto.

Cyprus: Section 126.1(r) is added to reflect the U.S. policy on arms exports to Cyprus, first published by the Department of State on December 18, 1992 (57 FR 60265).

Democratic Republic of the Congo: On March 31, 2008, the United Nations Security Council adopted resolution 1807, which modified the existing Democratic Republic of the Congo arms embargo. Subsequent resolutions (1857, adopted on December 22, 2008; 1896, adopted on November 30, 2009; and 1952, adopted on November 29, 2010) renewed the terms of the modified arms embargo in resolution 1807. Section 126.1(i) is amended to reflect the prohibitions contained in resolution 1807.

Eritrea: On December 23, 2009, the United Nations Security Council adopted resolution 1907, which prohibits the sale, supply or transfer of arms and related materiel to Eritrea, or the sale, supply or transfer of arms and related materiel from Eritrea. Consequently, Eritrea is added to the list of countries subject to a UNSC arms embargo contained in § 126.1(c). Since October 3, 2008, and as identified in § 126.1(a), it has been the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in Eritrea.

Fiji: As a result of a military coup in Fiji, as of December 2006, the United States suspended all sales and deliveries of defense articles and defense services to Fiji. Such sales in support of peacekeeping activities are excepted, and will be reviewed on a case-by-case basis. Section 126.1(p) is added to reflect the policy and exceptions thereto.

Iraq: Section 126.1(f) is amended to remove reference to lapsed statutory authority and requirements.

Lebanon: On August 11, 2006, the United Nations Security Council adopted resolution 1701, establishing an arms embargo, with the exception that it would not apply to arms and related materiel for the United Nations Interim Force in Lebanon or as authorized by the Government of Lebanon. Most recently, resolution 1937 (adopted on August 30, 2010) emphasized the importance of full compliance with the terms of the arms embargo. Section 126.1(t) is added to reflect the arms embargo and exceptions thereto.

Liberia: On December 17, 2009, the United Nations Security Council adopted resolution 1903, which modified the existing Liberia arms embargo set forth in resolution 1521 (2003) and modified by resolutions 1683 and 1731 (2006). Subsequently, resolution 1961 (adopted on December 17, 2010) renewed the terms of the modified arms embargo. Section 126.1(o) is added to reflect the arms embargo and exceptions thereto. In addition, § 126.1(a) is revised to remove Liberia as an example of a country with which the United States maintains an arms embargo.

North Korea: On October 24, 2008, the Secretary of State rescinded the determination of January 20, 1988, that North Korea repeatedly provided support for acts of international terrorism. The rescission satisfied the provisions of section 620(c) of the Foreign Assistance Act of 1961, Public Law 87-195, as amended (22 U.S.C. 2371(c)), and section 40(f) of the Arms Export Control Act, Public Law 90-629, as amended (22 U.S.C. 2780(f)). Consequently, § 126.1(d) is amended to remove mention of North Korea. However, North Korea is subject to an arms embargo according to the United Nations Security Council resolutions 1718 (2006) and 1874 (2009). Consequently, North Korea remains subject to the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in North Korea (§ 126.1(a)).

Sierra Leone: On September 29, 2010, the United Nations Security Council adopted resolution 1940, which terminated the prohibition of the sale or supply of arms and related materiel to non-governmental forces in Sierra Leone adopted in UNSC resolution 1171 of June 5, 1998. Resolution 1171, in turn, had modified the provision of UNSC resolution 1132, adopted October 8, 1997, which prohibited the sale or supply of arms and related materiel to Sierra Leone. The United States, which had maintained the complete prohibition as provided in resolution

1132, now lifts the prohibition, in accordance with UNSC resolution 1940. Consequently, Sierra Leone is removed from the list of countries subject to a U.N. arms embargo at § 126.1(c) and is no longer considered a proscribed country under the ITAR.

Somalia: Title IV of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, the Child Soldiers Prevention Act of 2008, provides in Section 404 that no licenses for direct commercial sales of military equipment may be issued to the government of a country that is clearly identified as having governmental armed forces or government-supported armed groups that recruit and use child soldiers. Somalia has been so identified by the U.S. government in the “Trafficking in Persons Report,” dated June 2010. Therefore, § 126.1(m) is amended to reflect the statutory bar on issuance of licenses for defense articles for the purpose of developing security sector institutions in Somalia.

Sri Lanka: In accordance with Section 7089 of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117), the Department of State is amending § 126.1(n) to update the policy toward Sri Lanka. It is the policy of the United States to deny licenses and other approvals to export or otherwise transfer defense articles and defense services to Sri Lanka except, on a case-by-case basis, for humanitarian demining.

Yemen: Section 126.1(u) is added to set out the U.S. policy on arms exports to Yemen, first published by the Department of State on December 16, 1992 (57 FR 59852).

Zimbabwe: Section 126.1(s) is added to set out U.S. policy on arms exports to Zimbabwe, first published by the Department of State on April 17, 2002 (67 FR 18978), and modified in a notice published on July 23, 2002 (67 FR 48242).

Additionally, § 126.1(j) is amended to standardize usage and structure, §§ 126.1(l) and (m) are amended to correct the spelling of “United States,” and the title of § 126.14 is amended to add the country “Sweden.”

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. These rules directly

reflect foreign policy decisions of the President, which are not subject to the notice and comment procedures of the Administrative Procedure Act. Since 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.

Regulatory Flexibility Act

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

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.

Executive Order 13175

The Department has determined that this rule 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 rule.

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 of State does not consider this rule to be a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review. 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.

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 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.

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.

■ 2. Section 126.1 is amended by revising the section heading and paragraphs (a), (c), (d), (f), (g), (i), (j), (l) introductory text, (m), and (n), and by adding paragraphs (o) through (u), to read as follows:

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

(a) *General.* It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services destined for or originating in certain countries. This policy applies to Belarus, Cuba, Eritrea, Iran, North

Korea, Syria, and Venezuela. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g., Burma, China, and the Republic of the Sudan) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a State Department notice published in the **Federal Register**. The exemptions provided in the regulations in this subchapter, except § 123.17 of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries, areas, or persons in this § 126.1.

* * * * *

(c) *Exports and sales prohibited by United Nations Security Council embargoes.* Whenever the United Nations Security Council mandates an arms embargo, all transactions that are prohibited by the embargo and that involve U.S. persons (see § 120.15 of this subchapter) anywhere, or any person in the United States, and defense articles or services of a type enumerated on the United States Munitions List (22 CFR part 121), irrespective of origin, are prohibited under the ITAR for the duration of the embargo, unless the Department of State publishes a notice in the **Federal Register** specifying different measures. This would include, but is not limited to, transactions involving trade by U.S. persons who are located inside or outside of the United States in defense articles or services of U.S. or foreign origin that are located inside or outside of the United States. United Nations Security Council arms embargoes include, but are not necessarily limited to, the following countries:

- (1) Cote d'Ivoire (see also paragraph (q) of this section).
- (2) Democratic Republic of Congo (see also paragraph (i) of this section).
- (3) Eritrea.
- (4) Iraq (see also paragraph (f) of this section).
- (5) Iran.
- (6) Lebanon (see also paragraph (t) of this section).
- (7) Liberia (see also paragraph (o) of this section).
- (8) Libya (see also paragraph (k) of this section).
- (9) North Korea.
- (10) Somalia (see also paragraph (m) of this section).
- (11) Sudan.
- (d) *Terrorism.* Exports to countries which the Secretary of State has

determined to have repeatedly provided support for acts of international terrorism are contrary to the foreign policy of the United States and are thus subject to the policy specified in paragraph (a) of this section and the requirements of section 40 of the Arms Export Control Act (22 U.S.C. 2780) and the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986 (22 U.S.C. 4801, note). The countries in this category are: Cuba, Iran, Sudan, and Syria.

* * * * *

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

(1) Non-lethal military equipment; and

(2) Lethal military equipment required by the Government of Iraq or coalition forces.

(g) *Afghanistan.* It is the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services, destined for or originating in Afghanistan, except that a license or other approval may be issued, on a case-by-case basis, for the Government of Afghanistan or coalition forces. In addition, the names of individuals, groups, undertakings, and entities subject to broad prohibitions, including arms embargoes, due to their affiliation with the Taliban, Al-Qaida, or those associated with them, are published in lists maintained by the Security Council committees established pursuant to United Nations Security Council resolutions 1267 and 1988.

* * * * *

(i) *Democratic Republic of the Congo.* 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 the Democratic Republic of the Congo, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services for the Government of the Democratic Republic of the Congo as notified in advance to the Committee of the Security Council concerning the Democratic Republic of the Congo;

(2) Defense articles and defense services intended solely for the support of or use by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC);

(3) Personal protective gear temporarily exported to the Democratic

Republic of the Congo by United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only; and

(4) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as notified in advance to the Committee of the Security Council concerning the Democratic Republic of the Congo.

(j) *Haiti.* (1) 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 Haiti, except that a license or other approval may be issued, on a case-by-case basis, for:

(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;

(ii) Defense articles and defense services intended solely for the support of or use by the United Nations or a United Nations-authorized mission; and

(iii) Personal protective gear for use by personnel from the United Nations and other international organizations, representatives of the media, and development workers and associated personnel.

(2) All shipments of arms and related materials consistent with such exemptions 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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(l) *Vietnam.* 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 Vietnam, except that a license or other approval may be issued, on a case-by-case basis, for:

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(m) *Somalia.* 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 Somalia, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services intended solely for support for the African Union Mission to Somalia (AMISOM); and

(2) Defense services for the purpose of helping develop security sector institutions in Somalia that further the objectives of peace, stability and

reconciliation in Somalia, after advance notification of the proposed export by the United States Government to the UNSC Somalia Sanctions Committee and the absence of a negative decision by that committee.

Exemptions from the licensing requirement may not be used with respect to any export to Somalia unless specifically authorized in writing by the Directorate of Defense Trade Controls.

(n) *Sri Lanka*. 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 Sri Lanka, except that a license or other approval may be issued, on a case-by-case basis, for humanitarian demining.

(o) *Liberia*. 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 Liberia, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services for the Government of Liberia as notified in advance to the Committee of the Security Council concerning Liberia;

(2) Defense articles and defense services intended solely for support of or use by the United Nations Mission in Liberia (UNMIL);

(3) Personal protective gear temporarily exported to Liberia by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only; and

(4) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as notified in advance to the Committee of the Security Council concerning Liberia.

(p) *Fiji*. 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 Fiji, except that a license or other approval may be issued, on a case-by-case basis, for defense articles and defense services intended solely in support of peacekeeping activities.

(q) *Côte d'Ivoire*. 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 Côte d'Ivoire, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Defense articles and defense services intended solely for support of

or use by the United Nations Operations in Côte d'Ivoire (UNOCI) and the French forces that support them;

(2) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as approved in advance to the Committee of the Security Council concerning Côte d'Ivoire;

(3) Personal protective gear temporarily exported to Côte d'Ivoire by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only;

(4) Supplies temporarily exported to Côte d'Ivoire to the forces of a State which is taking action, in accordance with international law, solely and directly to facilitate the evacuation of its nationals and those for whom it has consular responsibility in Côte d'Ivoire, as notified in advance to the Committee of the Security Council concerning Côte d'Ivoire; and

(5) Non-lethal equipment intended solely to enable the Ivorian security forces to use only appropriate and proportionate force while maintaining public order, as approved in advance by the Sanctions Committee.

(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.

(s) *Zimbabwe*. 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 Zimbabwe, except that a license or other approval may be issued, on a case-by-case basis, for the temporary export of firearms and ammunition for personal use by individuals (not for resale or retransfer, including to the Government of Zimbabwe). Such exports may meet the licensing exemptions of § 123.17 of this subchapter.

(t) *Lebanon*. 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 Lebanon, except that a license or other approval may be issued, on a case-by-case basis, for the United Nations Interim Force in Lebanon (UNIFIL) and as authorized by the Government of Lebanon.

(u) *Yemen*. 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 Yemen, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Non-lethal defense articles and defense services; and

(2) Non-lethal, safety-of-use defense articles (e.g., cartridge actuated devices, propellant actuated devices and technical manuals for military aircraft for purposes of enhancing the safety of the aircraft crew) for lethal end-items.

■ 3. Section 126.14 is amended by revising the section heading to read as follows:

§ 126.14 Special comprehensive export authorizations for NATO, Australia, Japan, and Sweden.

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Dated: August 1, 2011.

Ellen O. Tauscher,

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0695]

RIN 1625–AA00

Safety Zone; Allegheny River; Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Allegheny River from mile marker 5.7 to mile marker 5.9 (the parking area on either side of the 13th Street boat ramp), extending 300 feet from the right descending bank. The safety zone is needed to protect the public from the hazards associated with the Guyasuta Days Festival fireworks display. Entry into, movement within, and departure from this temporary safety zone, while it is activated and enforced, is prohibited, unless authorized by the Captain of the Port or a designated representative.

DATES: This rule is effective from 9:30 p.m. August 6, 2011 through 11 p.m. August 7, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0695 and are available online by going