

PRECAUTION: The [test name] should not be used without an independent clinical/radiological evaluation and is **not** intended to be a screening test or to determine whether a patient should proceed to surgery. Incorrect use of the [test name] carries the risk of unnecessary testing, surgery, and/or delayed diagnosis.

Dated: March 16, 2011.

Leslie Kux,
Acting Assistant Commissioner for Policy.
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DEPARTMENT OF STATE

22 CFR Part 123

[Public Notice: 7384]

RIN 1400-AC71

International Traffic in Arms Regulations: Exemption for Temporary Export of Chemical Agent Protective Gear

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State is proposing to amend the International Traffic in Arms Regulations (ITAR) to add an exemption for the temporary export of chemical agent protective gear for exclusive personal use to destinations not subject to restrictions and to Afghanistan and Iraq under specified conditions. Additionally, an exemption for firearms and ammunition is clarified by removing certain extraneous language that does not change the meaning of the exemption.

DATES: The Department of State will accept comments on this proposed rule until May 23, 2011.

ADDRESSES: Interested parties may submit comments within 60 days of the date of the publication by any of the following methods:

- *E-mail:*
DDTCResponseTeam@state.gov, with the subject line, "Regulatory Change—Section 123.17."
- *Mail:* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change—Section 123.17, SA-1, 12th Floor, Washington, DC 20522-0112.

• *Internet:* View this notice by going to the regulations.gov Web site at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Nicholas Memos, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663-2804, or Fax (202) 261-8199; e-mail *memosni@state.gov*. ATTN: Regulatory Change, Sec. 123.17.

SUPPLEMENTARY INFORMATION: U.S. individuals are traveling to hazardous areas in foreign countries where they need to wear body armor or chemical agent protective gear for personal safety. In August 2009, the ITAR was amended to provide an exemption for the temporary export of body armor covered by 22 CFR 121.1, Category X(a)(1). Now, the Department of State is proposing to amend the ITAR at §§ 123.17(f) and (g) to add an exemption for the temporary export of chemical agent protective gear covered by 22 CFR 121.1, Category XIV(f)(4). The proposed exemption will be available for temporary exports to countries not subject to restrictions under ITAR § 126.1 and to Afghanistan and Iraq under specified conditions. In order to use the exemption, the chemical agent protective gear must be for the individual's exclusive use and must be returned to the United States. The individual may not re-export the protective gear to a foreign person or otherwise transfer ownership. The protective gear may not be exported to any country where the importation would be in violation of that country's laws.

In the event the chemical agent protective gear is lost, stolen or otherwise not returned to the United States with the individual that temporarily exported the gear, a detailed report about the incident must be submitted to the Office of Defense Trade Controls Compliance. If the chemical agent protective gear is lost, the report should describe all attempts to locate the gear and explain the circumstances leading to its loss. In the event the chemical agent protective gear is used

and disposed according to HAZMAT guidelines, the report should provide a disposal date and location details for the approved HAZMAT facility used, along with a receipt for disposal services. If a HAZMAT facility is not available, the report should describe the date, location and method used to dispose of the protective gear.

The proposed change removes at (g)(2) the requirement that assistance to the government of Iraq be "humanitarian" to more accurately match the language of United Nations Security Council restrictions, which do not limit assistance to humanitarian assistance.

Section (c)(3) is to be revised to remove what is in practice extraneous language. Subject to the requirements of (c)(1)–(3), the exemption applies to all eligible individuals (with the noted exceptions). Thus, while the text is revised, the meaning of (c)(3) is not changed.

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 section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 60-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since this proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 12988

The Department of State has reviewed the proposed 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 proposed 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 123

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 123 is proposed to be amended as follows:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

1. The authority citation for part 123 will continue to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p.79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107–228.

2. Section 123.17 is to be amended to revise the heading, paragraphs (c)(3), (f), (g) introductory text, (g)(2), and to add paragraph (g)(3), to read as follows:

§ 123.17 Exports of firearms, ammunition, and protective gear.

* * * * *

(c) * * *

(3) They must be for that person's exclusive use and not for reexport or other transfer of ownership. The individual must declare the firearm(s) to a U.S. Customs and Border Protection officer upon each departure from the United States, present the Internal Transaction Number (ITN) from submission of the Electronic Export Information in the Automated Export System per § 123.22(b), and declare that it is his or her intention to return the article(s) on each return to the United States. The foregoing exemption is not applicable to the personnel referred to in § 123.18.

* * * * *

(f) Except as provided in § 126.1 of this subchapter, Port Directors of U.S. Customs and Border Protection (CBP) shall permit U.S. persons to export temporarily from the United States without a license one set of body armor covered by Category X(a)(1) and one set of chemical agent protective gear covered by Category XIV(f)(4) of this subchapter provided that:

(1) A declaration by the U.S. person via the Automated Export System (AES) and an inspection by a U.S. CBP officer are made, per § 123.22(b);

(2) The body armor or chemical agent protective gear to be exported is with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed);

(3) The body armor or chemical agent protective gear to be exported is for that person's exclusive use and not for reexport or other transfer of ownership. The individual must declare the body armor or chemical agent protective gear

to be exported to a U.S. CBP officer via the AES upon each departure from the United States and declare that it is his or her intention to return the article(s) on each return to the United States; and

(4) If the body armor or chemical agent protective gear exported under this exemption are lost or otherwise not returned to the United States, a detailed report must be submitted to the Office of Defense Trade Controls Compliance in accordance with the requirements of § 127.12(c)(2).

(g) The license exemption set forth in paragraph (f) of this section is also available for the temporary export of body armor and/or chemical agent protective gear for personal use to Afghanistan and to Iraq provided that:

(1) * * *

(2) For temporary exports to Iraq the U.S. person utilizing the license exemption is either a person affiliated with the U.S. Government traveling on official business or is a person not affiliated with the U.S. Government but traveling to Iraq under a direct authorization by the Government of Iraq and engaging in activities for, on behalf of, or at the request of the Government of Iraq.

(3) The exporter claiming this license exemption shall present to a U.S. Customs and Border Protection officer prior to each export a copy of the direct authorization from the Government of Iraq, including an English translation, or a copy of the documentation showing that the travel is on official business for the U.S. government, along with the Internal Transaction Number (ITN) for the AES submission.

Dated: March 14, 2011.

Ellen O. Tauscher,

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

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DEPARTMENT OF VETERANS AFFAIRS**38 CFR Parts 17 and 51**

RIN 2900–AN63

Per Diem Payments for the Care Provided to Eligible Veterans Evacuated From a State Home as a Result of an Emergency

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations concerning per diem payments to States to permit