PART 902—NOAA INFORMATION
COLLECTION REQUIREMENTS UNDER
THE PAPERWORK REDUCTION ACT:
OMB CONTROL NUMBERS

1. The authority citation for part 902
continues to read as follows:
Authority: 44 U.S.C. 3501 et seq.

§ 123.22(c) to institute changes in the
requirements for the return of licenses.

2. In § 902.1, the table in paragraph
(b), under 50 CFR, is amended by
revising the OMB control numbers for
§§ 622.5, 622.8, and 622.18, to read as
follows:
§ 902.1 OMB control numbers assigned
pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

<table>
<thead>
<tr>
<th>CFR part or section where the information collection</th>
<th>Current OMB control number (all numbers begin with 0648–)</th>
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<tbody>
<tr>
<td>50 CFR</td>
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<tr>
<td>622.5</td>
<td>–0013, –0016, –0392, and –0593.</td>
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<td>622.8</td>
<td>–0205 and –0593.</td>
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<td>622.18</td>
<td>–0205 and –0593.</td>
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With this change, applicants with DSP–5 licenses that have been issued electronically by the Directorate of Defense Trade Controls (DDTC) and decremented electronically by the U.S. Customs and Border Protection (CBP) through the Automated Export System (AES) are no longer required to return them to DDTC when they expire, to include when the total authorized value or quantity has been shipped. The return of these licenses is redundant and unnecessary as all of the export information has been captured and saved electronically. If a DSP–5 license issued electronically is decremented physically in one or more instance the license must be returned to the Department of State.

All other DSP–5 licenses that do not meet the criteria described above, and all DSP–61, DSP–73, and DSP–85 licenses, and DSP–94 authorizations, must be returned by the applicant, or the government agency with which the license or authorization was filed, to DDTC, as these licenses and authorizations are not decremented electronically, even if an Electronic Export Information is filed via AES.

Section 123.21(b) is amended to conform to the changes to § 123.22(c).

This rule was first presented as a proposed rule for public comment on July 14, 2011. That comment period ended August 29, 2011. Three comments were received. The Department’s evaluation of the written comments and recommendations are as follows.

One commenting party recommended the Department revise the provision regarding the return of the DSP–85, as the issued license is not held by the applicant, but by an officer of the Defense Security Service. The Department accepted this recommendation, and has revised § 123.22(c)(2) to provide that “the government agency with which the license or authorization was filed” may also return an expired license or authorization to the Department.

One commenting party recommended revising the sentence in § 123.22(c)(1) addressing the maintenance of records. The commenting party correctly pointed out that, as drafted in the proposed rule, the requirement to maintain records of an electronically issued and decremented DSP–5 pertained only when the license was fully decremented or expired, when in fact the requirement, per ITAR § 122.5, is for record maintenance on an ongoing basis. Section (c)(1) is revised accordingly.

One commenting party recommended revising a section of the ITAR not the subject of this rule. The Department,
though, takes this opportunity to address the recommendation. The comment

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 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


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

tergovernmental 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 123

Arms and munitions. Exports.

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

PART 123—LICENSES FOR THE
EXPORT OF DEFENSE ARTICLES

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

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

2. Section 123.21 is amended by

revising the section heading and

paragraph (b) to read as follows:

§ 123.21 Duration, renewal, and

disposition of licenses.

* * * * *

(b) Unused, expired, suspended, or

reverted licenses must be handled in

accordance with § 123.21 of

this subchapter.

3. Section 123.22 is amended by

revising paragraph (c) to read as follows:

§ 123.22 Filing, retention, and return of
export licenses and filing of export
information.

* * * * *

(c) Return of licenses. Per § 123.21 of
this subchapter, all DSP licenses issued
by the Directorate of Defense Trade

Controls (DDTC) must be disposed of in

accordance with the following:

(1) A DSP–5 license issued electronically by DDTC and decremented electronically by the U.S. Customs and Border Protection through the Automated Export System (AES) is not required to be returned to DDTC. If a DSP–5 license issued electronically is decremented physically in one or more instance the license must be returned DDTC. A copy of the DSP–5 license must be maintained by the applicant in accordance with § 122.5 of this subchapter.

(2) DSP–5, DSP–61, DSP–73, and DSP–85 licenses issued by DDTC but not decremented electronically by the U.S. Customs and Border Protection through AES (e.g., oral or visual technical data releases or temporary import and export licenses retained in accordance with paragraph (a)(2) of this section), must be returned by the applicant, or the government agency with which the license was filed, to DDTC upon expiration, to include when the total authorized value or quantity has been shipped. A copy of the license must be maintained by the applicant in accordance with § 122.5 of this subchapter. AES does not decrement the DSP–61, DSP–73, and DSP–85 licenses. Submitting the Electronic Export Information is not considered to be decremented electronically for these licenses.

(3) A DSP–94 authorization filed with the U.S. Customs and Border Protection must be returned by the applicant, or the government agency with which the authorization was filed, to DDTC upon expiration, to include when the total authorized value or quantity has been shipped, or when all shipments against the Letter of Offer and Acceptance have been completed. AES does not decrement the DSP–94 authorization. Submitting the Electronic Export Information is not considered to be decremented electronically for the DSP–94. A copy of the DSP–94 must be maintained by the applicant in accordance with § 122.5 of this subchapter.

(4) A license issued by DDTC but not used by the applicant does not need to be returned to DDTC, even when expired.

(5) A license revoked by DDTC is considered expired and must be handled in accordance with paragraphs (c)(1) and (c)(2) of this section.

Dated: October 27, 2011.

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

DEPARTMENT OF STATE
22 CFR Part 126
[Public Notice: 7675] RIN 1400–AC97 Amendment to the International Traffic in Arms Regulations: Libya and UNSCR 2009

AGENCY: Department of State. ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update the policy regarding Libya to reflect the additional modifications to the United Nations Security Council arms embargo of Libya adopted in September 2011.

DATES: Effective Date: This rule is effective November 4, 2011.

FOR FURTHER INFORMATION CONTACT: Charles B. Shotwell, Director, Office of Defense Trade Controls Policy, Department of State, by telephone: (202) 663–2792; fax: (202) 261–8199; or email: DDTCResponseTeam@state.gov. ATTN: Part 126, Libya.

SUPPLEMENTARY INFORMATION: On September 16, 2011, the United Nations Security Council adopted resolution 2009, which modifies the arms embargo against Libya put in place by the adoption in February and March of resolutions 1970 and 1973, respectively.

Resolutions 1970 and 1973, and the May 2011 ITAR Amendment Regarding Libya

On February 26, 2011, the United Nations Security Council adopted Resolution 1970, paragraph 9 of which provides that UN member states shall immediately take the necessary measures to prevent the sale, supply, or transfer of arms and related material of all types to the Libyan Arab Jamahiriya, with certain exceptions. On March 17, 2011, the UN Security Council adopted Resolution 1973, paragraph 4 of which authorizes member states to take all necessary measures, notwithstanding the arms embargo established by paragraph 9 of Resolution 1970, to protect civilians and civilian populated areas under threat of attack in Libya. On May 24, 2011, the Department amended the ITAR to implement the Security Council’s actions by adding Libya to § 126.1(c), which identifies countries subject to UN Security Council arms embargoes. See 76 FR 30001. The Department also revised the previous policy on Libya contained in § 126.1(k) to announce a policy of denial for all requests for licenses or other approvals to export or otherwise transfer defense articles and services to Libya, except where not prohibited under UNSC embargo and determined to be in the interests of the national security and foreign policy of the United States.

Resolution 2009

To the existing exceptions to the arms embargo, delineated in resolutions 1970 and 1973, resolution 2009 adds the supply, sale, or transfer to Libya of arms and related material, including technical assistance, intended solely for security or disarmament assistance to the Libyan authorities, and small arms, light weapons, and related material for the sole use of UN personnel, representatives of the media, and humanitarian and development workers and associated personnel. License applications submitted pursuant to these exceptions are notified in advance to the Committee of the Security Council concerning Libya, and are eligible for approval in the absence of a negative decision by the Committee within five working days of such a notification.

Accordingly, the ITAR is amended to reflect these exceptions.

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 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 Libya, that notice and public procedure on this rule would be impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 806(2).

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...