

**May 10, 2013**

## **Direct Commercial Sales of Defense Articles and Services to Libya**

The United States supports efforts of the Libyan government to responsibly increase the capability of its military and security services to provide security for its citizens and meet its international obligations. This must be done in accordance with the United Nations Security Council (UNSC) arms embargo for Libya, as identified in §126.1(k) of the International Traffic in Arms Regulations (ITAR). On March 14, the UNSC adopted resolution 2095, which modified the UNSC notification requirements for some types of exports. The embargo has a number of exceptions which allows for some types of defense sales to the Government of Libya for the purpose of security or disarmament assistance, as well as other sales outlined below. U.S. companies wishing to engage in defense trade with Libya must do so within the parameters of the embargo. This web notice provides an update to the exporting community of the exceptions allowed under the UNSC arms embargo for Libya.

The UNSC determined the arms embargo will not apply to the sale, supply, or transfer to Libya of:

- (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.

License applications submitted pursuant to these exceptions must provide specific justification on how the proposed export meets the UNSC exception criteria.

Applicants are advised to provide detail on the intended end-users, especially in the case of lethal equipment and training for ground forces. License applications with insufficient supporting documentation may be returned without action. Only exports of hardware or defense services require UNSC notification. For approved sales that require UNSC notification, the U.S. Government will notify the proposed sale on behalf of the exporter using the justification provided in the license application. Applicants are reminded of the requirements in ITAR §126.1(e), which includes obtaining the prior written approval of the Directorate of Defense Trade Controls before any proposals or presentations for the sale of defense articles or provision of defense services may be made to Libya. This may be satisfied by a general correspondence/letter request or DSP-5 marketing license.

License applications notified to the UNSC are eligible for approval in the absence of a negative decision by the Committee of the Security Council concerning Libya within five working days of such a notification. This process may take longer than applications that do not require UNSC notification. The exporter should plan accordingly.

**Arms Embargo History:** On February 26, 2011, the UNSC 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 materiel of all types to the Libyan Arab Jamahiriya, with certain exceptions. On March 17, 2011, the UNSC 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 UNSC's actions by adding Libya to ITAR §126.1(c), which identifies countries subject to UNSC arms embargoes. *See* 76 FR 30001. The Department also revised the previous policy on Libya contained in ITAR §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. On September 16, 2011, the UNSC adopted Resolution 2009, which modified the arms embargo on Libya put in place by the adoption of resolutions 1970 and 1973. On November 4, 2011, the Department amended the ITAR to reflect the arms embargo policy of Resolution 2009. On March 14, 2013, the UNSC adopted Resolution 2095, which further modified the arms embargo as described in previous resolutions (1970, 1973, and 2009), easing some of the prior notification requirements.