

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

**The Boeing Company:** Docket No. FAA-2011-0221; Directorate Identifier 2010-NM-120-AD.

#### Comments Due Date

(a) We must receive comments by April 29, 2011.

#### Affected ADs

(b) This AD affects certain requirements of AD 2008-25-05, Amendment 39-15763.

#### Applicability

(c) This AD applies to all The Boeing Company Model DC-8-11, DC-8-12, DC-8-21, DC-8-31, DC-8-32, DC-8-33, DC-8-41, DC-8-42, DC-8-43, DC-8-51, DC-8-52, DC-8-53, DC-8-55, DC-8F-54, DC-8F-55, DC-8-61, DC-8-62, DC-8-63, DC-8-61F, DC-8-62F, DC-8-63F, DC-8-71, DC-8-72, DC-8-73, DC-8-71F, DC-8-72F, and DC-8-73F airplanes, certificated in any category.

#### Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

#### Unsafe Condition

(e) This AD results from reports that cracks in the center spar lower cap and, in some cases, the web of the spar, have been found at stations Xrs=168.00, Xrs=251.00, and Xrs=358.00. The Federal Aviation Administration is issuing this AD to detect and correct cracks in the area around certain fasteners of the access opening doubler on

the left and right wing center spar lower cap, which could compromise the structural integrity of the wing structure.

#### Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Inspection

(g) Before the accumulation of 20,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, do a high frequency eddy current (HFEC) or low frequency eddy current (LFEC) inspection for cracks on the area around certain fasteners of the access opening doubler on the left and right wing center spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC8-57A103, dated May 5, 2010. If no crack is found, repeat the inspection thereafter at the applicable interval specified in paragraph 1.E., "Compliance" of Boeing Alert Service Bulletin DC8-57A103, dated May 5, 2010.

#### Repair

(h) If any crack is found during any inspection required by paragraph (g) of this AD, do paragraphs (h)(1), (h)(2), and (h)(3) of this AD.

(1) Before further flight, repair the crack in accordance with Boeing Alert Service Bulletin DC8-57A103, dated May 5, 2010.

(2) Within 6,000 flight cycles after doing the most recent HFEC inspection, or within 1,750 flight cycles after doing the most recent LFEC inspection; as applicable; do the inspection specified in paragraph (g) of this AD of the non-repaired area, and repeat the inspection of the non-repaired area thereafter at the applicable time in paragraph 1.E. "Compliance," of Boeing Alert Service Bulletin DC8-57A103, dated May 5, 2010.

(3) Within the applicable times specified in paragraph 1.E. "Compliance," of Boeing Alert Service Bulletin DC8-57A103, dated May 5, 2010, do the inspections of the repaired area, using the inspection defined in Method 101 of Section 57-10-06, or Method 101 or 104 of Section 57-10-16, of the McDonnell Douglas DC-8 Supplemental Inspection Document (SID), Report L26-011, Volume II, Revision 8, dated January 2005, as applicable. Repeat the inspection thereafter at the applicable intervals specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin DC8-57A103, dated May 5, 2010. If any crack is found, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) The inspections required by paragraph (h)(3) of this AD constitute compliance with paragraph (j) of AD 2008-25-05, Amendment 39-15763, for the repaired area. All requirements of AD 2008-25-05 that are not specifically referenced in this paragraph remain fully applicable and require compliance.

#### Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the

authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

#### Related Information

(k) For more information about this AD, contact Dara Albouyeh, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5222; fax (562) 627-5210; e-mail: [dara.albouyeh@faa.gov](mailto:dara.albouyeh@faa.gov).

Issued in Renton, Washington, on March 7, 2011.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**BILLING CODE 4910-13-P**

## DEPARTMENT OF STATE

### 22 CFR Parts 123 and 126

[Public Notice 7258]

RIN 1400-AC70

#### Amendment to the International Traffic in Arms Regulations: Replacement Parts/Components and Incorporated Articles

**AGENCY:** Department of State.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update policies regarding replacement parts/components and incorporated articles. **DATES:** The Department of State will accept comments on this proposed rule until April 14, 2011.

**ADDRESSES:** Interested parties may submit comments within 30 days of the

date of publication by any of the following methods:

- *E-mail:*

*DDTCResponseTeam@state.gov* with an appropriate subject line.

- *Mail:* PM/DDTC, SA-1, 12th Floor, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, Attn: Regulatory Changes—Replacement Parts/Components and Incorporated Articles, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522-0112.

- Persons with access to the Internet may also view this notice by searching for its RIN on the U.S. Government regulations Web site at <http://regulations.gov/index.cfm>.

**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](mailto:memosni@state.gov). Attn: Regulatory Changes—Replacement Parts/Components and Incorporated Articles.

**SUPPLEMENTARY INFORMATION:** As a part of the President's Export Control Reform effort, the Department of State proposes to amend Parts 123 and 126 of the ITAR to reflect new policies regarding coverage of replacement parts/components and incorporated articles.

The Department's review of current ITAR treatment of *replacement parts/components* led to the proposed change to streamline the flow of parts and components and to eliminate redundancy in licensing. The current rule regarding parts and components imposes burdensome requirements for additional licenses for licensed end-users and end-uses for systems and components already vetted in earlier licenses. The proposed rule adds a new section (§ 123.28) that facilitates the expeditious repair of U.S. supplied end-items abroad, enabling more timely response to coalition forces, as well as other allies and friends, by eliminating the requirement for a license for parts and components for systems approved in a previous license. This proposed exemption applies only to exporters specifically identified in a previously approved authorization to export the end-item in question. It would not apply to upgrades of capabilities of the original end-item. The type, amount, and frequency of parts and components could not exceed the type, amount, and frequency consistent with normal logistical repair/replacement operations. Nor can the value of the purchase order exceed an amount that would require Congressional notification. The exporter must have in its possession a copy of the purchase order from the foreign

government end-user and cite in its Automated Export System (AES) filing the license number for the original export. The exporter must use the U.S. Postal Service, freight forwarders registered with the Directorate of Defense Trade Controls (DDTC) and eligible, or licensed customs brokers that are subject to background investigation and have passed a comprehensive examination administered by U.S. Customs and Border Protection. Finally, this exemption does not apply to exporters who are otherwise ineligible.

The Department's review of current ITAR treatment of *incorporated articles* led to the proposed change with a view to limit ITAR coverage to where diversion of the embedded defense article is a realistic and practical concern. To this end, the proposed new § 126.19 sets out conditions under which a DDTC license is not required for the export or re-export of defense articles incorporated into an end-item that is "subject to the Export Administration Regulations (EAR)." Those conditions include where the end-item would be "rendered inoperable" by the removal of the defense article, where no technical data for development or production are transferred with the defense article, and where the incorporation of the defense article does not provide (or is not related to) a military application. Additionally, no license is required for the export or re-export of a defense article when that article would be rendered inoperable by removal from the end-item. A license would be required for the export of defense articles that are spare or replacement parts when they are embedded into a larger assembly such that they can be removed without destroying the defense articles. The proposed new § 126.19 would not go into effect until the Department of Commerce amends its regulations such that the ITAR and CCL provide complimentary coverage of the articles in question.

The proposed rules were presented to the Defense Trade Advisory Group (DTAG), a Department of State advisory committee, for purposes of comment and evaluation. The DTAG commented favorably on most aspects of the proposed rules, but also recommended certain changes. Having thoroughly reviewed and evaluated the comments and the recommended changes, the Department has determined that it will proceed with the proposed rules per the Department's evaluation of the written comments and recommendations, as noted in the following paragraphs:

The DTAG commented favorably on the addition of a new § 123.28 (*replacement parts/components*), with some recommended edits. We note that in the interim we changed the title of the section by removing the word "special" before exemption, removing the word "spare" before "parts/components" and replacing it with the word "replacement," to make clear that this exemption applies to the replacement of components for systems already authorized for export. The DTAG recommended elimination of the limitation that the exporter must be the manufacturer of the end-item. We concurred with the change and eliminated that condition.

The DTAG also recommended expanding the wording that defines who is qualified to use the exemption from "original exporter of the end-item" to "applicant of a previously approved authorization." We concurred with that change with minor edits.

The DTAG further suggested modifying the limitation regarding upgrades in capabilities to ensure that it does not preclude "replacement parts or components that would result in enhancements or improvements only in the reliability or maintainability \* \* \*" We concurred with that change in the form of a note.

The DTAG suggested adding a requirement that the exporter use the U.S. Postal Service, registered freight forwarders, and licensed brokers. We concurred with that change.

The DTAG recommended expanding the exemption to apply to a "second exporter" if they met the conditions of (a) and (b). We did not accept that change as the unclear terminology could potentially open up the exemption for unlimited sources. We are willing to explore the possibility of expansion of the exemption to include major subcontractor component suppliers, but the proposed "second exporter" language is too broad.

The DTAG recommended adding a condition that the foreign government end-user is not subject to restrictions under § 126.1. We concurred with that change.

The DTAG commented favorably on the addition of a new § 126.19 (*incorporated articles*), with some recommended edits. The DTAG recommended changing the proposed rule to cover defense articles embedded into "a higher level assembly that is not an end item. \* \* \*" We did not accept that recommendation. The recommendation would remove the assurance contained in the proposed rule that the ultimate end-item would be an article subject to the EAR. It is our

intent to avoid creating a means by which integrated defense articles could find their way into higher level militarily relevant assemblies.

The DTAG proposed alternate models that added defense article exports “solely for integration into and inclusion as an integral part of a higher level assembly \* \* \*” We did not accept that change because it effectively would allow for the export of non-embedded defense articles without a license and would pose too great a risk of diversion. The proposed rule requires that defense articles be pre-embedded or pre-incorporated, which provides a measure of security.

### Regulatory Analysis and Notices

#### *Administrative Procedure Act*

These proposed amendments involve a foreign affairs function of the United States and, therefore, are not subject to the procedures contained in 5 U.S.C. 553 and 554. The Department of State has nevertheless determined that the public interest would be served by publishing this proposed rule and soliciting public comment.

#### *Regulatory Flexibility Act*

Since these proposed amendments are not subject to 5 U.S.C. 553, they do not require analysis under the Regulatory Flexibility Act.

#### *Unfunded Mandates Reform Act of 1995*

These proposed amendments do 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*

These proposed amendments have 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*

These proposed amendments 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 these proposed amendments do 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 these amendments.

#### *Executive Order 12866*

These proposed amendments are exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

#### *Executive Order 12988*

The Department of State has reviewed the proposed amendments 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.

#### *Executive Order 13175*

The Department of State 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 requirement of Section 5 of Executive Order 13175 does not apply to this rule.

#### *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 Parts 123 and 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 123 and 126 are proposed to be 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, 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. Part 123 is amended by adding § 123.28 to read as follows:

#### **§ 123.28 Exemption for the export of replacement parts or components in support of end-items previously exported from the U.S.**

(a) Port Directors of U.S. Customs and Border Protection shall permit the export without a license of parts or

components of U.S.-origin end-items, as defined in § 121.8(a), held in the inventory of a foreign government when all of the following conditions are met:

(1) The exporter is not subject to policy of denial (*see* §§ 126.7 and 127.7 of this subchapter), is not otherwise ineligible (*see* § 120.1(c) of this subchapter), and the authority to claim the exemption has not been revoked in accordance with paragraph (c) of this section; and

(2) The exporter was the applicant of a previously approved authorization to export the U.S.-origin end-item as defined in § 121.8(a); and

(3) The replacement parts or components being exported do not upgrade the capability of the end item as originally exported. (**Note:** This does not preclude the export of replacement parts or components that would result in enhancements or improvements only in the reliability or maintainability of the U.S.-origin end-item, such as an increased mean time between failure (MTBF) when a part identical to that originally exported is not available); and

(4) The type, amount, and frequency of the exports are consistent with repair and replacement in accordance with normal logistical support requirements for the number of end-items in the end-user inventory; and

(5) The value of the purchase order or contract for the export does not exceed the requirements for congressional notification set forth in § 123.15; and

(6) The consignee of the shipment is the foreign government approved under the original export authorization; and

(7) The foreign government end-user is not subject to restrictions under § 126.1 of this subchapter; and

(8) The replacement parts or components being exported meet all the restrictions, limitations, and provisos (including those on the handling or control of the replacement parts or components) in the original export authorization for the end-item; and

(9) The replacement parts or components being exported are consistent with the U.S. Government authorized maintenance activities.

(b) In order to claim the exemption, the exporter must:

(1) Be in possession of a purchase order from the foreign government end-user; and

(2) Cite in its Automated Export System (AES) filing at the time of export the license number authorizing the previously approved export of the U.S.-origin defense article as required under paragraph (a)(2) of this section; and

(3) Provide, upon request of the Port Director, a copy of the license cited in paragraph (b)(2) of this section and a

copy of a purchase order required by paragraph (b)(1) of this section; and

(4) If the replacement parts or components are shipped, the exporter must use the U. S. Postal Service, or only those freight forwarders registered with the Directorate of Defense Trade Controls and eligible, or licensed customs brokers that are subject to background investigation and have passed a comprehensive examination administered by U.S. Customs and Border Protection. If export is by hand carry, the exporter must ensure that the AES filing is completed at the time of export; and

(5) Maintain records, to be provided on request to the Directorate of Defense Trade Controls, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and other authorized U.S. law enforcement agencies, that support the exporter's authority to use the exemption in accordance with the requirements of paragraphs (a)(1) through (9) and (b)(1) and (2) of this section.

(c) The authority to use this exemption may be revoked at any time by the Managing Director, Directorate of Defense Trade Controls, if the exporter is found to be not in compliance with the requirements listed in this section.

## PART 126—GENERAL POLICIES AND PROVISIONS

3. The authority citation for part 126 continues 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.

4. Part 126 is amended by adding and reserving §§ 126.16–126.18 to read as follows:

**§ 126.16 [Reserved]**

**§ 126.17 [Reserved]**

**§ 126.18 [Reserved]**

5. Add § 126.19 to read as follows:

### **§ 126.19 Policy on the export and re-export of defense articles incorporated into commodities "subject to the EAR."**

(a) A license or other approval from the Department of State is not required for the export or re-export of a defense article(s) that has/have been incorporated into an end-item subject to the Export Administration Regulations (EAR) (see 15 CFR 734.3), when all of the following conditions are met:

(1) The end-item would be rendered inoperable, for purposes of intended applications or enhanced capabilities

for which the defense article was incorporated into the end-item, by the removal of the defense article(s); and

(2) "Technology" subject to the EAR for the "production," "development," or "use" (as defined in 15 CFR 772.1) of the end-item does not include any technical data (as defined by § 120.10) or "technical assistance" (as defined in 15 CFR 772.1) qualifying as defense services (as defined by § 120.9) about the defense article(s) incorporated into the end-item; and

(3) Incorporation of the defense article(s) does/do not provide, nor is it related to, a military application or "military end-use" (as defined in 15 CFR 744.21), or does not result in a "military commodity" (as defined in 15 CFR § 772.1); and

(4) The value of the defense articles is less than 1% of the value of the end-item.

(b) A license or other approval from the Department of State is not required for the export or re-export of a defense article(s) that has/have been incorporated into a component (as defined in ITAR § 121.8(b)) subject to the EAR or an end-item subject to the EAR, when all the following conditions are met:

(1) The defense article would be destroyed (i.e., rendered useless beyond the possibility of restoration) by its removal from the component, major assembly or end-item;

(2) "Technology" subject to the EAR for the "production," "development," or "use" (as defined in 15 CFR 772.1) of the component, or major assembly does not include any technical data (as defined by § 120.10) or "technical assistance" (as defined in 15 CFR 772.1) qualifying as defense services (as defined by § 120.9) about the defense article incorporated into the component or major assembly; and

(3) Incorporation of the defense article does not provide, nor is it related to, a military application or "military end-use" (as defined in 15 CFR 744.21), or does not result in a "military commodity" (as defined in 15 CFR 772.1).

(c) A license or other approval from the Department of State is required for the export or re-export of the defense article when exported or re-exported as a replacement part or component for a component, major assembly, or end-item subject to the EAR.

Dated: March 4, 2011.

**Ellen O. Tauscher,**

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

[FR Doc. 2011-5821 Filed 3-14-11; 8:45 am]

**BILLING CODE 4710-25-P**

## DEPARTMENT OF STATE

### 22 CFR Chapter I

### 28 CFR Chapter XI

[Public Notice: 7351]

### Department of State Retrospective Review under E.O. 13563

**AGENCY:** Department of State.

**ACTION:** Request for information and comment.

**SUMMARY:** As part of its implementation of Executive Order 13563, "Improving Regulation and Regulatory Review," issued by the President on January 18, 2011, the Department of State (DOS) is seeking comments and information from interested parties to assist DOS in reviewing its existing regulations to determine if any of them should be modified or repealed. The purpose of this review is to make DOS's regulatory program more effective and less burdensome in achieving its regulatory objectives.

**DATES:** Written comments and information are requested on or before March 31, 2011.

**ADDRESSES:** Interested persons are encouraged to submit comments, identified by "Regulatory Review," by any of the following methods:

*Docket:* For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at <http://www.regulations.gov> and search on docket number DOS-2011-0047.

*Mail:* U.S. Department of State, A/GIS/DIR, SA-22, Washington, DC 20522-2201.

*E-Mail:* [RegulatoryReview@State.gov](mailto:RegulatoryReview@State.gov). Include "Regulatory Review" in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Thelma Furlong, 202-216-9600.

**SUPPLEMENTARY INFORMATION:** On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review," to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. The Executive Order can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

To implement the Executive Order, the Department is taking two immediate steps to launch its retrospective review of existing regulatory and reporting requirements. *First*, the Department issues this Request for Information (RFI) seeking public comment on how best to