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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 447

[Docket No. ATF-50F; AG Order No.3383-2013]

RIN 1140-AA46

Importation of Defense Articles and Defense Services--U.S. Munitions Import List (2011R-20P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regulations to remove the cross reference to the regulatory United States Munitions List (USML) of the International Traffic in Arms Regulations (ITAR) that appears at 27 CFR 447.21; to clarify that the Attorney General exercises delegated authority pursuant to the Arms Export Control Act (AECA) and Executive Order 13637 to designate defense articles and defense services as part of the statutory USML for purposes of permanent import controls, regardless of whether the Secretary of State controls such defense articles or defense services for purposes of export and temporary import; and to clarify that defense articles and defense services controlled pursuant to the Attorney General's delegated AECA authority are part of the statutory USML (along with those that are controlled for export and temporary import by the Secretary of State), but that the list of defense articles and defense services controlled by the Attorney

General is labeled the USMIL to distinguish it from the list of defense articles and defense services in the ITAR that are controlled by the Secretary of State.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: George M. Fodor, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue, NE, Washington, DC 20226, telephone (202) 648-7994.

SUPPLEMENTARY INFORMATION:

I. Background

Section 38 of the AECA, 22 U.S.C. 2778(a), authorizes the President, in furtherance of world peace and the security and foreign policy of the United States, to control the import and export of defense articles and defense services. The AECA also authorizes the President to designate those defense articles and defense services. *Id.* The items so designated constitute the United States Munitions List (USML). *Id.* The AECA generally requires a license prior to exporting or importing any defense articles and defense services so designated by the President. *See id.* 2778(b)(2).

Through Executive Order 13637, the President has delegated his AECA authority to the Secretary of State with respect to the export and temporary import of defense articles and defense services. The International Traffic in Arms Regulations, 22 CFR Part 120 *et seq.*, implement the Secretary of State's delegated authority and list the defense articles and defense services regulated for export and temporary import by the Secretary. Through Executive Order

13637, the President has delegated to the Attorney General the authority under the AECA to control the permanent import of defense articles and defense services. In exercising that authority, the Attorney General “shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States.” The executive order also requires that the Attorney General obtain the concurrence of the Secretary of State and the Secretary of Defense and provide notice to the Secretary of Commerce for designations, including changes in designations, of defense articles and defense services subject to permanent import controls.

Pursuant to section 38(a) of the AECA, all defense articles and defense services, whether controlled for import or export, are part of the USML. But to distinguish the list of defense articles and defense services controlled by the Attorney General for permanent import purposes from the defense articles and defense services controlled by the Secretary of State for purposes of export and temporary import, the list of defense articles and defense services controlled by the Attorney General has been labeled the United States Munitions Import List (USMIL). The regulations governing this list appear at 27 CFR Part 447. To date, these regulations have described the USMIL as a subset of the list of defense articles and defense services controlled by the Secretary of State that appears in the ITAR. *See* 27 CFR 447.21.

As the result of a comprehensive review of export controls ordered by the President, it has been determined that certain defense articles and defense services listed on the USML will no longer warrant control for export purposes by the Secretary of State pursuant to AECA. As part of the Administration’s ongoing Export Control Reform Initiative, the Departments of State and Commerce are publishing a series of proposed rules that will remove ITAR export controls on certain defense articles and defense services and subject those items instead to export controls

through the Commerce Control List (CCL), which is administered by the Department of Commerce as part of its Export Administration Regulations (EAR). *See, e.g.*, 76 FR 41958 (July 15, 2011). Export controls are imposed under both the ITAR and EAR for foreign policy and national security reasons. Accordingly, items on the CCL will continue to be regulated by the Federal Government consistent with the national security and foreign policy interests of the United States.

The Secretary of Commerce administers the EAR pursuant to authority granted by the President in Executive Order 13222 of August 17, 2001, which was issued pursuant to, *inter alia*, sections 202 and 203 of the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701-02. That executive order granted such authority to the Secretary of Commerce following the expiration of the Export Administration Act based on the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the unrestricted access of foreign parties to U.S. goods and technology and the existence of certain boycott practices of foreign nations.

II. Final Rule

Because the Department of Justice regulations at 27 CFR Part 447 listing the defense articles and defense services controlled by the Attorney General for purposes of permanent import currently adopt, with some exceptions, the list of defense articles and defense services controlled by the Secretary of State, and because certain defense articles and defense services on the Department of State export control list that appears in the ITAR, 22 CFR 121.1, will, in the future, be removed from that list and controlled for export and temporary import by the Secretary

of Commerce, the Department of Justice is clarifying its regulations by amending 27 CFR 447.21, to do the following:

- (i) Remove the language adopting the State Department export control list maintained in the ITAR;
- (ii) Clarify that the Attorney General exercises delegated authority to designate defense articles and defense services for inclusion on the USML for purposes of permanent import controls, regardless of whether such items are controlled by the Secretary of State for purposes of export or temporary import; and
- (iii) Clarify that the defense articles and defense services regulated for purposes of permanent import pursuant to the AECA authority delegated to the Attorney General appear in the permanent import control list labeled the USMIL, set out at 27 CFR Part 447, and that the USMIL is a subset of the USML pursuant to the AECA.

Accordingly, this final rule amends sections of 27 CFR Part 447 to implement such changes. This rule does not change the content of the USMIL. Revisions to the content of the USMIL, if any, will be addressed by the Attorney General in a separate rulemaking. As required by Executive Order 13637, in designating defense articles and defense services subject to permanent import control under section 38 of the AECA, 22 U.S.C. 2778(a), the Attorney General shall be guided by the views of the Secretary of State on matters affecting world peace and the external security and foreign policy of the United States, and must obtain the concurrence of the Secretary of State and Secretary of Defense and provide notice to the Secretary of Commerce regarding designations, including changes in designations, of defense articles and defense services.

How This Document Complies with the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

Because the amendments to 27 CFR Part 447 involve a foreign affairs function of the United States, Executive Order 12866 does not apply.

B. Executive Order 13132

This regulation 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 section 6 of Executive Order 13132, the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

D. Administrative Procedure Act

As reflected in 27 CFR 447.54, amendments made to 27 CFR Part 447 are exempt from the rulemaking provisions of 5 U.S.C. 553 because this part involves a foreign affairs function of the United States. Accordingly, it is not necessary to issue this rule using the notice and public procedure set forth in 5 U.S.C. 553(b), and the requirement of a delayed effective date in 5 U.S.C. 553(d) does not apply.

E. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a “major rule” as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

G. Unfunded Mandates Reform Act of 1995

This rule will not 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 one 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.

H. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this rule because there are no reporting or recordkeeping requirements.

Drafting Information

The author of this document is George M. Fodor, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 447

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegation, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR Part 447 is amended as follows:

PART 447--IMPORTATION OF DEFENSE ARTICLES

1. The authority citation for 27 CFR Part 447 is revised to read as follows:

Authority: 22 U.S.C. 2778; E.O. 13637, 78 FR 16129 (Mar. 8, 2013).

2. Revise § 447.1 to read as follows:

§ 447.1 General.

The regulations in this part relate to that portion of section 38 of the Arms Export Control Act of 1976, as amended, authorizing the President to designate defense articles and defense services as part of the United States Munitions List (USML) for purposes of import and export controls. To distinguish the list of defense articles and defense services controlled in this part for purposes of permanent import from the list of defense articles and defense services controlled by the Secretary of State for purposes of export and temporary import, this part shall refer to the defense articles and defense services controlled for purposes of permanent import as the U.S. Munitions Import List (USMIL) and shall refer to the export and temporary import control list set out by the Department of State in its International Traffic in Arms Regulations as the USML. Part 447 contains the USMIL and includes procedural and administrative requirements relating to registration of importers, permits, articles in transit, import certification, delivery verification,

import restrictions applicable to certain countries, exemptions, U.S. military firearms and ammunition, penalties, seizures, and forfeitures. The President’s delegation of permanent import control authorities to the Attorney General provides the Attorney General the authority to assess whether controls are justified, but in designating the defense articles and defense services set out in the USMIL the Attorney General shall be guided by the views of the Secretary of State on matters affecting world peace and the external security and foreign policy of the United States. All designations and changes in designations of defense articles and defense services subject to permanent import control under this part must have the concurrence of the Secretary of State and the Secretary of Defense, with notice given to the Secretary of Commerce.

3. Amend § 447.11 by revising the definition of the term “Article” to read as follows:

§ 447.11 Meaning of terms.

* * * * *

Article. Any of the defense articles enumerated in the U.S. Munitions Import List (USMIL).

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4. Amend § 447.21 as follows:

- a. Revise the introductory text.
- b. Remove the second “Note” in Category IV.
- c. Add and reserve after Category IV a heading “Category V”.
- d. In Category VII, remove the “Note” after paragraph (c) and add and reserve paragraphs (d) and (e).
- e. In Category VIII, revise the title and remove the first “Note” after paragraph (a) and in its place add and reserve paragraph (b).

- f. Add and reserve after Category VIII a heading “Categories IX through XIII”.
- g. Remove the “Note” after paragraph (b) in Category XVI.
- h. Add and reserve after Category XVI a heading “Categories XVII through XIX”.
- i. Revise Category XXI.

These amendments to § 447.21 read as follows:

§ 447.21 The U.S. Munitions Import List.

The following defense articles and defense services, designated pursuant to section 38(a) of the Arms Export Control Act, 22 U.S.C. 2778(a), and E.O. 13637 are subject to controls under this part. For purposes of this part, the list shall be known as the U.S. Munitions Import List (USMIL):

THE U.S. MUNITIONS IMPORT LIST (USMIL)

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CATEGORY V [Reserved]

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CATEGORY VII – TANKS AND MILITARY VEHICLES

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(d) [Reserved]

(e) [Reserved]

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CATEGORY VIII – AIRCRAFT AND ASSOCIATED EQUIPMENT

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(b) [Reserved]

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CATEGORIES IX - XIII [Reserved]

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CATEGORIES XVII - XIX [Reserved]

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CATEGORY XXI – MISCELLANEOUS ARTICLES

Any defense article or defense service not specifically enumerated in the other categories of the USMIL that has substantial military applicability and that has been specifically designed or modified for military purposes. The decision as to whether any article may be included in this category shall be made by the Attorney General with the concurrence of the Secretary of State and the Secretary of Defense.

April 17, 2013
Date

Eric H. Holder, Jr.
Attorney General

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