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**DEPARTMENT OF JUSTICE**

**Bureau of Alcohol, Tobacco, Firearms, and Explosives**

**27 CFR Part 447**

[Docket No. ATF-25F; AG Order No. 3531-2015]

**RIN 1140-AA45**

**Importation of Arms, Ammunition and Defense Articles--Removal of Certain Defense Articles Currently on the U.S. Munitions Import List That No Longer Warrant Import Control Under the Arms Export Control Act (2011R-25P)**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice is finalizing without change an amendment to the Bureau of Alcohol, Tobacco, Firearms, and Explosives regulations to remove those defense articles currently on the United States Munitions Import List that ATF by delegation has determined no longer warrant import control under the Arms Export Control Act.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER 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, N.E., Washington, DC, 20226; telephone: (202) 648-7070.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 38 of the Arms Export Control Act of 1976 (AECA), 22 U.S.C. 2778, as amended, authorizes the President, in furtherance of world peace and the security and foreign policy of the United States, to control the import and the export of defense articles and defense services. 22 U.S.C. 2778(a)(1). The AECA also authorizes the President to designate those items that shall be considered defense articles and defense services for the purposes of section 38, and to promulgate regulations for the import and export of such articles and services. *Id.*

Through Executive Order 13637 of March 8, 2013, the President delegated his AECA authority to the Secretary of State with respect to the export and temporary import of defense articles and defense services. 78 FR 16129. The International Traffic in Arms Regulations (ITAR), 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, re-export, and temporary import by the Secretary of State. The items so designated constitute the State Department's regulatory United States Munitions List (USML) of the ITAR.

Also through Executive Order 13637, the President 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.” *Id.* at 1(n)(ii). Controlling the import of defense articles and defense services furthers United States foreign policy and national security interests and is a foreign affairs function of the U.S. Government. That 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 control. *Id.*

To distinguish the regulatory list of defense articles and defense services controlled by the Attorney General for permanent import from the regulatory list of defense articles and defense services controlled by the Secretary of State for export and temporary import, the list of defense articles and defense services controlled by the Attorney General for permanent import is designated as the United States Munitions Import List (USMIL). The regulations governing this list appear at 27 CFR part 447.

The Attorney General delegated administration of the import provisions of the AECA to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), subject to the direction of the Attorney General and the Deputy Attorney General. 28 CFR 0.130(a). ATF promulgated regulations that implement the provisions of section 38 of the AECA in 27 CFR part 447. With guidance from the Department of State and concurrence from the Departments of State and Defense pursuant to Executive Order

13637, ATF administers the list of items subject to import control under the USMIL, at 27 CFR 447.21.

## **II. The President's Export Control Reform Initiative**

In August 2009, the President directed a broad-based interagency review of the United States export control system in part to identify additional ways to enhance national security, better focus resources on protecting items for export that need to be protected, and provide clarity to make it easier for exporters to comply with regulations and for the United States Government to administer and enforce the regulations. As the result of a comprehensive review of export controls, it was determined that certain defense articles and defense services listed on the USML no longer warrant control for export purposes by the Secretary of State pursuant to the AECA. Those defense articles are being transferred to the Department of Commerce's Commerce Control List for export control under the authority of the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*

In effecting the President's export control reform initiative, the export control reform interagency task force determined that removing unnecessary items from the USMIL would improve the United States import control system and enhance national security by focusing resources on imports that need to be protected. Accordingly, the task force requested ATF to identify those defense articles that no longer warrant control on the USMIL.

## **III. Interim Final Rule and Comment**

On March 27, 2014, ATF published an interim final rule with a request for comments (79 FR 17024-17029) entitled "Importation of Arms, Ammunition and

Defense Articles—Removal of Certain Defense Articles Currently on the U.S. Munitions Import List That No Longer Warrant Import Control Under the Arms Export Control Act.”

In developing this interim final rule, ATF reviewed the USMIL in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” and the export control reform interagency task force request. The interim final rule removed from the USMIL those defense articles that ATF by delegation determined no longer warrant import control under the AECA.

The comment period for the interim final rule closed on June 25, 2014. ATF received one comment in response to the interim final rule. The commenter states that the rule creates additional legal requirements without providing measures to prevent crime. The Department believes that the rule in fact has the opposite effect, decreasing legal requirements by removing defense articles from the USMIL while enhancing national security by focusing resources on imports that need to be protected.

#### **IV. Final Rule**

Upon review, the Department is issuing this final rule to implement the amendments to the regulations at 27 CFR 447.21 that were provided in the interim final rule published on March 27, 2014 (79 FR 17024-17029).

Pursuant to Executive Order 13637, the Department of State and the Department of Defense have concurred on this final rule amending the USMIL.

#### **V. Statutory and Executive Order Review**

##### *A. Executive Order 12866*

Because the amendments to 27 CFR part 447 involve a foreign affairs function of the United States, Executive Order 12866, “Regulatory Planning and Review,” does not apply.

*B. Executive Order 13132*

This regulation will not have substantial direct effects on the States, on the relationship between the Federal 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, “Federalism,” 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 subsections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform.”

*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. *See* 5 U.S.C. 553(a)(1). 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. The Department of Justice nevertheless provided the public with an opportunity to participate in the regulatory process and to provide feedback pursuant to Executive Order 13563, “Improving Regulation and Regulatory Review.” Only one comment was received as a result of this outreach. The commenter generally believes that the rule

creates additional legal requirements without providing measures to prevent crime. The Department believes that the rule in fact has the opposite effect, decreasing legal requirements by removing defense articles from the USMIL while enhancing national security by focusing resources on imports that need to be protected.

*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 final rule because the Department was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. *See* 5 U.S.C. 601 *et seq.*

*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 is not likely to 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.

*See* 2 U.S.C. 1501 *et seq.*

*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.

### **Disclosure**

Copies of the interim final rule and the comment received are available for public inspection through the Federal e-Government portal, <http://www.regulations.gov>, or by appointment during normal business hours at the ATF Reading Room, Room 1E-062, 99 New York Avenue, NE., Washington, DC 20226; telephone: (202) 648-8740.

### **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 and munitions, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

### **PART 447--IMPORTATION OF ARMS, AMMUNITION AND DEFENSE**

#### **ARTICLES**

Accordingly, for the reasons discussed in the preamble, the interim final rule amending part 447 of title 27 of the Code of Federal Regulations, which was published at 79 FR 17024 on March 27, 2014, is adopted as a final rule, without change.



Dated: May 21, 2015.

Loretta E. Lynch,  
Attorney General.

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