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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 447

[Docket No. ATF-25I; AG Order No. 3423-2014]

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: Interim final rule with request for comments.

SUMMARY: The Department of Justice is amending Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regulations to remove those defense articles currently on the U.S. Munitions Import List that ATF by delegation has determined no longer warrant import control under the Arms Export Control Act.

DATES: *Effective date:* This interim final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comment date: Written comments must be postmarked and electronic comments must be submitted on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Commenters should be aware that

the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: You may submit comments, identified by docket number (ATF 25I), by any of the following methods—

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (202) 648-9741.
- Mail: George M. Fodor, Mailstop 6N-602, 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; *ATTN: ATF 25I*.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to the Federal eRulemaking portal, <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

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) 648-7070.

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. E.O. 13637, 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. E.O. 13637, 78 FR 16129. 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 sec. 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 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. Pursuant to section 38(f) of the Arms Export Control Act, those defense articles are being transferred to the Department of Commerce's Commerce Control List (CCL) 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 identified a way to improve the United States import control system to enhance national security and focus resources on protecting items for import 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

ATF reviewed the USMIL in accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," and the export control reform interagency task force request. Those defense articles on the USMIL that ATF (acting through authority delegated from the President to the Attorney General, and in turn delegated by the Attorney General to ATF) has determined no longer warrant import control under the AECA are being removed from the USMIL. Controlling the permanent import of defense articles furthers United States foreign policy and national security interests and is a foreign affairs function of the U.S. Government. This interim final rule amends the

regulations at 27 CFR 447.21 by removing those defense articles currently on the USMIL determined to no longer warrant import control under the AECA.

The Department is removing from the USMIL Category I—Firearms, paragraph (e), “Riflescopes manufactured to military specifications and specifically designed or modified components therefor.” The defense articles currently covered by Category I, paragraph (e) are readily available through diverse domestic commercial sources and they do not present a significant concern for trafficking or diversion into illicit channels. The defense articles currently covered by Category I, paragraph (e) do not warrant import control under the AECA. The Department reserves this paragraph.

In Category III—Ammunition, the Department is removing and then reserving paragraphs (c), “Ammunition belting and linking machines,” and (d), “Ammunition manufacturing machines and ammunition loading machines (except handloading ones).” These defense articles are costly, difficult to maintain, too heavy for easy transport, and readily available from domestic vendors in the United States. These defense articles do not pose a trafficking and diversion threat warranting import control under the AECA.

In addition, in Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines, the Department is removing and reserving paragraph (f), “Ablative materials fabricated or semi-fabricated from advanced composites (*e.g.*, silica, graphite, carbon, carbon/carbon, and boron filaments) for the articles in this category that are derived directly from or specifically developed or modified for defense articles.” Such materials are a low threat to domestic security and are readily available in the domestic market.

In Category VI—Vessels of War and Special Naval Equipment, the Department is clarifying paragraph (a) to read: “Vessels of War, if they are armed and equipped with offensive or defensive weapons systems, including but not limited to amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels, service craft, experimental types of naval ships, and any vessels specifically designed or modified for military purposes or other surface vessels equipped with offensive or defensive military systems.” The new text focuses precisely on defense articles that might threaten domestic security or enable terrorist activities.

Further in Category VI—Vessels of War and Special Naval Equipment, the Department is revising paragraph (b) to read: “Turrets and gun mounts, special weapons systems, protective systems, and other components, parts, attachments, and accessories specifically designed or modified for such articles on combatant vessels.” The new language focuses on defense articles that might threaten domestic security or enable terrorist activities. Also in Category VI, the Department is removing and reserving paragraphs (c) and (d). Mine sweeping equipment, harbor entrance detection devices, and related components and controls have numerous domestic suppliers and are low threats to domestic security. Additionally, the Department is revising the note in Category VI to clarify that the examples of vessels of war provided in Category VI must be armed and equipped with offensive or defensive weapon systems to be considered a defense article on the USMIL.

The Department is updating Category VII—Tanks and Military Vehicles by removing and reserving paragraph (g), “Engines specifically designed or modified for the vehicles in paragraphs (a), (b), (c), and (f) of this category.” The defense articles listed in

Category VII, paragraph (g) are substantially the same as those commercially available in the domestic market and not likely to be diverted for criminal use. The Department is revising paragraph (h) and including two explanatory notes. The Department is also adding a new paragraph (i), with a corresponding new note to Category VII to clarify that this category includes within its scope other ground vehicles that meet four technical parameters in the Wassenaar Arrangement's Munitions List Category 6.

In Category XIV—Toxicological Agents and Equipment and Radiological Equipment, the Department is removing and reserving paragraph (b) (biological agents) and revising paragraph (c) to limit regulation to all specifically designed or modified equipment, including components, parts, accessories, and attachments, for disseminating the articles in paragraph (a) of this category. The U.S. Department of Health and Human Services and the U.S. Department of Agriculture regulate the import and use of biological agents under such acts as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, and the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law 107-188. Therefore, continued inclusion of these items on the USMIL is unnecessary to ensure domestic security. Further, by removing and reserving paragraph (d) (nuclear radiation detection and measuring devices manufactured to military specification) and paragraph (e) (components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category), the Department recognizes the domestic availability of these articles and the associated low threat to domestic security.

Finally, the Department is updating policies related to Category XVI—Nuclear Weapons Design and Test Equipment, to the extent that imports of these defense articles are under the control of the Department of Energy pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-proliferation Act of 1978, as amended, or are government transfers authorized pursuant to these Acts. The Department is removing and reserving paragraph (a), (any article, material, equipment, or device, which is specifically designed or modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices), revising paragraph (b) to include modeling or simulation tools that model or simulate the environments generated by nuclear detonations or the effects of these environments on systems, subsystems, components, structures, or humans, and adding an explanatory note after paragraph (b) to indicate that Category XVI does not include equipment, technical data, or services controlled by the Department of Energy pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as amended, or are government transfers authorized pursuant to these Acts.

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

IV. 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 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 wishes to provide the public with an opportunity to participate in the regulatory process and provide feedback pursuant to Executive Order 13563, “Improving Regulation and Regulatory Review.” Accordingly, the Department is publishing this rule as an interim final rule with a 90-day provision for public comment and without prejudice to its determination that controlling the import of defense articles is a foreign affairs function of the United States Government.

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 interim final rule because the Department is not publishing the rule as 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.

Public Participation

A. Comments Sought

The Department is requesting comments on the interim final rule from all interested persons. The Department is also specifically requesting comments on the clarity of this interim final rule and how it may be made easier to understand.

All comments must reference this document docket number (ATF 25I), be legible, and include your name and mailing address. The Department will treat all comments as originals and will not acknowledge receipt of comments.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

B. Confidentiality

Comments, whether submitted electronically or on paper, will be made available for public viewing at ATF, and on the Internet as part of the eRulemaking initiative, and are subject to the Freedom of Information Act. Commenters who do not want their name or other personal identifying information posted on the Internet should submit their comment by mail or facsimile, along with a separate cover sheet that contains their personal identifying information. Both the cover sheet and comment must reference this docket number. Information contained in the cover sheet will not be posted on the Internet. Any personal identifying information that appears within the comment will be posted on the Internet and will not be redacted by ATF.

Any material that the commenter considers to be inappropriate for disclosure to the public should not be included in the comment. Any person submitting a comment shall specifically designate that portion (if any) of the comment that contains material that is

confidential under law (e.g., trade secrets, processes, etc.). Any portion of a comment that is confidential under law shall be set forth on pages separate from the balance of the comment and shall be prominently marked “confidential” at the top of each page. Confidential information will be included in the rulemaking record but will not be disclosed to the public. Any comments containing material that is not confidential under law may be disclosed to the public. In any event, the name of the person submitting a comment is not exempt from disclosure.

C. Submitting Comments

Comments may be submitted in any of three ways:

- *Mail:* Send written comments to the address listed in the **ADDRESSES** section of this document. Written comments must appear in minimum 12 point font size (.17 inches), include your mailing address, and be signed, and may be of any length.

- *Facsimile:* You may submit comments by facsimile transmission to (202) 648-9741. Faxed comments must:

- (1) Be legible and appear in minimum 12 point font size (.17 inches);

- (2) Be on 8½” x 11” paper;

- (3) Contain a legible, written signature; and

- (4) Be no more than five pages long. ATF will not accept faxed comments that exceed five pages.

- *Federal eRulemaking Portal:* To submit comments to ATF via the federal eRulemaking portal, visit <http://www.regulations.gov> and follow the instructions for submitting comments.

Disclosure

Copies of this interim rule and the comments received will be available for public inspection online at www.regulations.gov and by appointment during normal business hours at: 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 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, part 447 of title 27 of the Code of Federal Regulations is amended as follows:

PART 447--IMPORTATION OF ARMS, AMMUNITION AND DEFENSE

ARTICLES

1. The authority citation for 27 CFR part 447 continues to read as follows:

Authority: 22 U.S.C. 2778.

2. Amend § 447.21 as follows:

a. In Category I, remove and reserve paragraph (e).

b. In Category III, remove and reserve paragraphs (c) and (d).

c. In Category IV, remove and reserve paragraph (f).

d. In Category VI:

(1) Revise paragraph (a);

(2) Revise paragraph (b);

(3) Remove and reserve paragraphs (c) and (d); and

(4) Revise the introductory text of the “Note” after paragraph (e).

e. In Category VII:

(1) Remove and reserve paragraph (g);

(2) Revise paragraph (h);

(3) Add a new paragraph (i) after paragraph (h);

(4) Revise the “Note” that now appears after the newly inserted paragraph (i);

and

(5) Add a second “Note” and a third “Note” after the newly inserted paragraph

(i).

f. In Category XIV:

(1) Remove and reserve paragraph (b);

(2) Revise paragraph (c); and

(3) Remove and reserve paragraphs (d) and (e).

g. In Category XVI:

(1) Remove and reserve paragraph (a);

- (2) Revise paragraph (b); and
- (3) Add a “Note” after paragraph (b).

These amendments to § 447.21 read as follows:

§ 447.21 The U.S. Munitions Import List.

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CATEGORY I—FIREARMS

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(e) [Reserved]

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CATEGORY III—AMMUNITION

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(c) [Reserved]

(d) [Reserved]

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CATEGORY IV—LAUNCH VEHICLES, GUIDED MISSILES, BALLISTIC MISSILES, ROCKETS, TORPEDOES, BOMBS AND MINES

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(f) [Reserved]

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CATEGORY VI—VESSELS OF WAR AND SPECIAL NAVAL EQUIPMENT

(a) Vessels of War, if they are armed and equipped with offensive or defensive weapon systems, including but not limited to amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels, service craft, experimental types

of naval ships, and any vessels specifically designed or modified for military purposes or other surface vessels equipped with offensive or defensive military systems.

(b) Turrets and gun mounts, special weapons systems, protective systems, and other components, parts, attachments, and accessories specifically designed or modified for such articles on combatant vessels.

(c) [Reserved]

(d) [Reserved]

(e) * * *

NOTE: The term “vessels of war” includes, but is not limited to, the following, if armed and equipped with offensive or defensive weapons systems:”.

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CATEGORY VII—TANKS AND MILITARY VEHICLES

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(g) [Reserved]

(h) Tank and military vehicle parts, components, accessories, attachments, and associated equipment for offensive or defensive systems for the articles in this category, as follows:

(1) Armored hulls, armored turrets and turret support rings;

(2) Active protection systems (i.e., defensive systems that actively detect and track incoming threats and launch a ballistic, explosive, energy or electromagnetic countermeasure(s) to neutralize the threat prior to contact with a vehicle);

(3) Composite armor parts and components;

(4) Spaced armor components and parts, including slat armor parts and components;

(5) Reactive armor and components;

(6) Electromagnetic armor parts and components, including pulsed power;

(7) Gun mount, stabilization, turret drive, and automatic elevating systems;

(8) Kits specifically designed to convert a vehicle in this category into either an unmanned or a driver-optional vehicle. For a kit to be controlled by this paragraph it must include all of the following:

- (i) Remote or autonomous steering;
- (ii) Acceleration and braking; and
- (iii) A control system;

(9) Fire control computers, stored management systems, armaments control processors, vehicle weapon interface units and computers;

- (10) Electro-optical sighting systems; and
- (11) Laser rangefinder or target designating devices.

(i) Other ground vehicles having all of the following:

- (1) Manufactured or fitted with materials or components to provide ballistic protection to level III (NIJ 0108.01, September 1985) or better;
- (2) A transmission to provide drive to both front and rear wheels simultaneously, including those vehicles having additional wheels for load bearing purposes whether driven or not;
- (3) Gross Vehicle Weight Rating (GVWR) greater than 4,500 kg; and
- (4) Designed or modified for off-road use.

NOTE: An “amphibious vehicle” in Category VII(f) is a vehicle or chassis that is equipped to meet special military requirements, and that is designed or adapted for operation on or under water, as well as on land.

NOTE: Engines and engine parts are not included in paragraph (h) of Category VII.

NOTE: Paragraph (i) of Category VII does not apply to civil vehicles designed or modified for transporting money or valuables.

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**CATEGORY XIV—TOXICOLOGICAL AGENTS AND EQUIPMENT AND
RADIOLOGICAL EQUIPMENT**

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(b) [Reserved]

(c) All specifically designed or modified equipment, including components, parts, accessories, and attachments for disseminating the articles in paragraph (a) of this category.

(d) [Reserved]

(e) [Reserved]

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CATEGORY XVI—NUCLEAR WEAPONS DESIGN AND TEST EQUIPMENT

(a) [Reserved]

(b) Modeling or simulation tools that model or simulate the environments generated by nuclear detonations or the effects of these environments on systems, subsystems, components, structures, or humans.

NOTE: Category XVI does not include equipment, technical data, or services controlled by the Department of Energy pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as amended, or are government transfers authorized pursuant to these Acts.

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March 21, 2014
Date

Eric H. Holder, Jr.
Attorney General

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