



F.A.I.R.

Firearms & Ammunition Import/Export Roundtable

July 9, 2018

Attn: Robert Monjay
Directorate of Defense Trade Controls
U.S. Department of State
PM/DDTC, SA-1, 12th Floor
2401 E Street, NW
Washington, D.C. 20226

Subject: ITAR Amendment—Categories I, II, and III

Dear Mr. Monjay:

The purpose of this letter is to provide comments to the proposed rule to amend the International Traffic in Arms Regulations (ITAR) U.S. Munitions List (USML) Categories I, II, and III, which published in the *Federal Register* on May 24, 2018 (RIN 1400–AE30; 83 FR 24198).

The F.A.I.R. Trade Group (“F.A.I.R.”) is a nonprofit organization dedicated to protecting the interests of the firearms and ammunition import and export communities. F.A.I.R. works with many U.S. government agencies, including the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the U.S. Department of State, Directorate of Defense Trade Controls (DDTC), and the Department of Commerce, Bureau of Industry and Security (BIS) to provide solutions to the concerns of F.A.I.R. members. Our membership includes importers and exporters of firearms, ammunition, and other defense and dual-use articles who rely on licenses issued by ATF, DDTC, and BIS. Many members also hold Type 07 or Type 10 licenses as manufacturers of firearms. Members provide equipment to domestic law enforcement agencies and the U.S. military who require such items to carry out their public safety and national security missions and sell the articles they import to distributors for general commercial sale. A number of our members also produce firearms and ammunition that are exported to foreign governments for their national defense, consistent with the foreign policy of the United States.

F.A.I.R. welcomes the opportunity to provide comment on the proposed revisions to USML Categories I, II, and III, and applauds the continuing efforts by DDTC and BIS to revise the USML so that its scope is limited to those defense articles that provide the United States with a critical military or intelligence advantage or are inherently for military end use, and to remove those items that are widely available in retail outlets in the United States and abroad.

Overall, the proposed revisions to USML Categories I, II, and III are a positive move to a more rational control of firearms and ammunition, and related parts, components, accessories, and attachments. The transition of certain items to the control of the Export Administration Regulations (EAR) will serve to right-size license requirements while still maintaining necessary oversight of exports of these items. Additionally, by moving such items to the EAR, many domestic

manufacturers who do not conduct exports will be relieved of the financial burden of registering under the ITAR.

We provide the following comments for DDTC's consideration, and are available should DDTC or BIS require additional information or wish to discuss our comments further:

1. **Implementation Period.**

As DDTC notes in the proposed rule, the Department has adopted a delayed effective date of 180 days for previous rules revising entire categories of the USML and moving items to the CCL. DDTC has requested comments from industry as to whether this implementation period should be applied to the revised Categories I, II, and III.

Recommendation: Split implementation period. We wish to support the continued delayed effective date of 180 days for those industry members who need make changes to IT systems, technology controls plans, and other business processes necessary to implement the rule. However, there will be a number of domestic companies who, for example, do not export but manufacture firearms parts and components for firearms that transition to the EAR who will wish to immediately implement the new rules in order to be relieved of the financial burden of ITAR registration. Therefore, we recommend that DDTC allow for a split implementation period to allow those companies whose entire operations transition to the EAR to immediately shift to those controls while allowing those companies whose operations either remain under the ITAR or are now split between the EAR and the ITAR adequate time to make necessary changes to their businesses. There is precedent for a split implementation period as it was done in the *Federal Register* notice implementing of revisions to USML Category XI and corrections to USML Category VIII (See 79 FR 37536).

2. **Transition Silencers to the CCL.**

DDTC's proposed rule indicates that "[USML Category I] Paragraph (e) will continue to cover silencers, mufflers, sound suppressors, and specially designed parts and components." The proposed rule further indicates that its objective, after the proposed revisions, is to capture only those articles in USML Categories I, II, and III, that provide the United States with a critical military or intelligence advantage, or are inherently for military end use. The items proposed for transition to the EAR do not meet this standard, "including many items which *are widely available in retail outlets in the United States and abroad* [emphasis added]." Firearm suppressors (silencers) do not provide a critical military or intelligence advantage and are not inherently for military end use. Moreover, the hardware and associated technology is widely available throughout the world. Therefore, based on the litmus test identified in the proposed rule, firearm suppressors (silencers) should not be listed on the USML and should be more appropriately controlled on the CCL in the EAR.

Recommendation: Remove firearm suppressors (silencers) from USML Category I(e) and add them as a controlled item under ECCN 0A501.

3. USML Cat. III

(a)(7) - Ammunition for fully automatic firearms or guns that fire superposed or stacked projectiles.

The phrase “ammunition for fully automatic firearms” should be removed entirely or revised and clarified. As drafted, this portion of the paragraph could be interpreted to capture almost every caliber of small arms ammunition as most common cartridges are suitable for use in semi-automatic and fully automatic firearms.

(d)(1) Projectiles that use pyrotechnic tracer materials that incorporate any material having peak radiance above 710 nm or are incendiary, explosive, steel tipped, or contain a core or solid projectile produced from one or a combination of the following: tungsten, steel, or beryllium copper alloys.

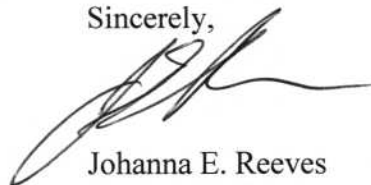
The use of the word “core” should be further defined. How much of the projectile is considered the core? What about projectiles that use a combination of lead and other material, such as dual core or multi core rounds popular in hunting? Furthermore, what is meant by the phrase “produced from?”

In addition to popular hunting rounds that contain multiple core materials, this classification will capture a broad range of cartridges that have been exempted from the so-called “Armor Piercing Ammunition” classification under the Gun Control Act, 18 U.S.C. 921(a)(17)(B)(i), such as .556mm (.223) SS109 and M855 “green tip” ammunition. This ammunition has been considered “sporting” for almost 30 years.

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F.A.I.R. thanks the Departments of State and Commerce for the opportunity to participate in the regulatory revision process. We hope that our comments provide assist the government in reducing jurisdictional ambiguities and clarifying the articles that will remain subject to the ITAR. For your information, we also provide a copy of the comments submitted in response to the BIS proposed rule. Should you have any questions, or require additional information as you review public comments received, please do not hesitate to contact me at 202-587-2709 or execdir@fairtradegroup.org.

Sincerely,



Johanna E. Reeves
Executive Director

Enclosure: Comments to BIS Proposed Rule (RIN 0694–AF47)

items can be controlled. 0A501.y would read as follows: “*Specific ‘parts,’ ‘components,’ ‘accessories’ and ‘attachments’ ‘specially designed’ for a commodity subject to control in this ECCN or common to a defense article in USML Category I and not elsewhere specified in the USML or CCL, as follows [or including]:*”

8. **ECCN 0A502.**

The proposed rule states that this ECCN would control both the shotguns currently on the USML that are to be added to the CCL (barrel length less than 18 inches) and the shotguns and the enumerated “parts” and “components” currently controlled in ECCN 0A984 (barrel length 18 inches or greater). However, the items included in the ECCN header are separated by semicolons and there is no clear statement that the parts and components listed in the header are specific to shotguns. For example, because it is not clear that the enumerated items are specific to shotguns, there could be confusion as to whether 10 round magazines are controlled in ECCN 0A502, ECCN 0A501.y., or would such items fall to EAR99?

Recommendation: Revise ECCN 0A502 to specify the parts and components enumerated in the ECCN header are SHOTGUN parts and components. We also recommend defining or explaining what constitutes “complete breech mechanism” (see comment for ECCN 0A501.d above).

9. **ECCN 0A505.**

The proposed rule states that ammunition parts and components would be eligible for license exception LVS with a limit of \$100 net value per shipment. This is a reduction in value compared to the ITAR license exemption currently available under 22 C.F.R. § 123.16(b)(2), which is capped at \$500. It is unclear why the transition to the EAR would result in a reduction in the license exception value limit.

Recommendation: Revise ECCN 0A505 to increase the value limit for the LVS license exception for ammunition parts and components in paragraph .x to \$500.

10. **ECCN 0A606.**

The DDTC proposed rule states that “the articles currently controlled in [Category II] paragraph (f), engines for self-propelled guns and howitzers in paragraph (a), will be on the CCL in ECCN 0A606.” However, there are no proposed corresponding changes to ECCN 0A606 in the BIS proposed rule.

Recommendation: Revise ECCN 0A606 to clearly identify that engines for self-propelled guns and howitzers are controlled therein.

11. **§ 758.10 Entry clearance requirements for temporary imports.**

The proposed rule fails to take into consideration temporary imports by nonresident aliens who are subject to ATF regulations under 27 C.F.R. § 478.115(d). Although the license exception BAG references ATF's jurisdiction with these types of imports, proposed section 758.10 is silent, except for ATF's regulation of *permanent imports* (paragraph (2)).

Recommendation: Add language to 758.10(a)(2) carving out from the entry clearance requirements for temporary imports by nonresident aliens who temporarily import firearms under the provisions of 27 C.F.R. § 478.115(d).

12. **§ 762.2 Records to be retained.**

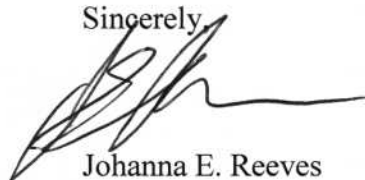
The proposed rule indicates that BIS wishes to make changes to EAR recordkeeping requirements for firearms being moved to the CCL. Specifically, BIS proposes to "add a new paragraph (a)(11) to specify the following information must be kept as an EAR record: Serial number, make, model, and caliber for any firearm controlled in ECCN 0A501.a and for shotguns with barrel length less than 18 inches controlled in 0A502." This additional recordkeeping requirement is unnecessary as it is duplicative of the information that is required to be retained in a company's ATF bound books pursuant to the Gun Control Act and ATF regulations. In other words, the information that BIS seeks to retain is already being maintained by companies under ATF rules and regulations.

Recommendation: Remove the proposal to add paragraph (a)(11).

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