

A Changing Landscape for US Importers of Defense Articles

ATF revises US Munitions Import List and extends term for import permits.

On March 27, 2014, the US Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) published [revisions to the US Munitions Import List \(USMIL\)](#) as an interim final rule (IFR) effective April 28, 2014. The rule reflects ATF's first substantive revisions to articles controlled under the USMIL since early 2013 when [Executive Order 13637](#) and a related [final rule](#) decoupled controls on permanent imports of defense articles from other defense controls. Public comments on the IFR must be submitted by June 25, 2014. In addition, on April 8, 2014, a new ATF [final rule](#) took effect extending the term of permanent import permits for articles subject to the USMIL from one year to two years. These USMIL changes may significantly impact US importers of certain defense articles and make compliance more challenging, particularly in the larger context of the President's Export Control Reform Initiative (ECR) and changes to controls on the export and temporary import of defense articles.

USMIL: Fewer Articles, More Specificity

The USMIL is the official list of defense articles and defense services controlled by ATF for permanent import into the US. Importers of such items must register in advance with ATF and obtain a permit for the items to be imported, unless the transaction qualifies for a permit exception. The USMIL divides covered articles into numbered categories, and provides notes for additional context and reference.

The recent IFR reflects ATF's determination that certain defense articles no longer warrant control on the USMIL, for reasons ranging from the ready availability of such articles in the US domestic market to the control of such articles by other US government agencies. Overall, the changes reduce the number of different defense articles subject to USMIL coverage but describe some articles on the list in greater detail. Descriptions of "vessels of war" and "tanks and military vehicles" in particular include additional factors to consider. Importers of defense articles should review the IFR to determine whether their items are still controlled.

Consistent, Limited Revisions Compared to the US Munitions List

These changes to the USMIL are largely consistent with the US Department of State's changes to the US Munitions List (USML) under ECR, but fall short of that agency's wholesale revisions of USML categories. The USML is the list of defense articles and defense services — divided into the same numbered categories as the USMIL — controlled for export and temporary import under the International Traffic in Arms Regulations (ITAR). The Department of State has already significantly revised 12 USML categories and the IFR impacts seven USMIL categories, but only four categories of defense articles have been revised on both lists.

The fact that the USMIL changes are not in lockstep with the USML changes is a significant development in the evolution of defense trade controls. Prior to Executive Order 13637 and its related final rule, the USMIL had been effectively a subset of the pre-ECR USML. In 2013, however, the Executive Order and final rule decoupled ATF's control of permanent imports of defense articles and defense services under the USMIL from the ITAR. This decoupling and ATF's ensuing changes may signal the emergence of a unique import control list in close coordination with the Department of State.

Importers of defense articles should not rely on old classifications or post-ECR USML classifications to determine whether articles are subject to the import permit requirement under ATF's regulations. Importers also should not assume that articles removed from the USML have been removed from the USMIL. Even after the impact of the IFR, the USMIL will continue to control certain lower-level articles that have been removed from the USML, while excluding some significant types of military equipment on the USML.

Permanent Versus Temporary Imports

As the USMIL and USML undergo further changes, the controls on permanent and temporary imports of specific defense articles will continue to shift. Over the course of these reforms, defense articles ultimately may be controlled for temporary import only, for permanent import only, for neither or for both.

Articles that are on one or both of the lists may be subject to different requirements when imported permanently versus temporarily, even if an article was removed from one of the lists as a result of the recent changes. For example, a defense article previously on both lists now might not require a Department of State license if the import is temporary, but that same article might still require an ATF permit if the import is permanent.

Accordingly, importers should carefully consider — well in advance — whether a contemplated import transaction will be permanent or temporary, in order to ensure compliance with the appropriate set of legal requirements.

Extension of ATF Permit Terms for USMIL Imports

Until recently, ATF permits for the permanent import of defense articles (ATF Form 6) were valid only for one year from issuance. If shipment of the articles could not be completed within that time frame, the importer was required to submit a new application for a permit to cover the unshipped balance in a later period. In a [final rule](#) dated February 7, 2014, ATF extended the term of permanent import permits from one year to two years, effective April 8, 2014. ATF stated that the rule change is designed to “allow importers sufficient time to complete the importation of the authorized commodity” and also to save industry and ATF time and costs associated with permit applications and extensions. While unrelated to changes in coverage of the USMIL itself, this revision to the ATF permit requirement represents a significant and favorable development for importers of defense articles.

Conclusion

These ATF regulatory changes may have an immediate impact on importers of certain commodities, but all importers of defense articles should be prepared for the possibility of further changes or consolidation — especially in the larger context of ECR and changes to the USML. Importers of defense articles should work with counsel to identify and resolve any potential legal issues arising from these changes, including determining product coverage or the applicability of permit requirements, obtaining government licenses or permits, and assessing compliance measures related to registration, authorization, reporting and recordkeeping requirements.

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