

that all of the component members of a controlled group of corporations apply such paragraph (c).

(iii) *Paragraph (e) of this section.* Paragraph (e) of this section applies to any taxable year beginning on or after December 26, 2007. However, taxpayers may apply paragraph (e) of this section to any Federal income tax return filed on or after December 26, 2007.

(2) *Expiration dates.* The applicability of paragraph (c) of this section will expire on December 21, 2009. The applicability of paragraphs (a), (b) and (e) of this section will expire on December 21, 2010.

■ **Par. 6.** Section 1.1563-1T is amended by revising the heading and paragraphs (b)(1), (b)(2)(i), (b)(2)(ii) introductory text, (b)(3), and (e) to read as follows:

§ 1.1563-1T Definition of controlled group of corporations and component members and related concepts (temporary).

* * * * *

(b) *Component members*—(1) *In general*—(i) *Definition.* For purposes of sections 1561 through 1563, a corporation is with respect to its taxable year a component member of a controlled group of corporations for the group's testing date if such corporation—

(A) Is a member of such controlled group on such testing date and is not treated as an excluded member under paragraph (b)(2) of this section; or

(B) Is not a member of such controlled group on such testing date but is treated as an additional member under paragraph (b)(3) of this section.

(ii) *Member of a controlled group of corporations.* For purposes of sections 1561 through 1563, a member of a controlled group is a corporation connected with other member(s) of a controlled group under the stock ownership rules and the stock qualification rules set forth in section 1563. Under the above rules, for a corporation to qualify as a component member of the group with respect to a group's December 31st testing date (or the short-year testing date for a short-year member), that corporation does not have to be a member of that group on that group's testing date. In addition, a corporation that is a member of a controlled group on the group's testing date does not necessarily qualify as a component member of that group with respect to that testing date.

(iii) *Additional concepts used in applying the controlled group rules*—

(A) *Testing date* is the date used for determining the status of controlled group members as either component members or excluded members. That testing date is then also used to

determine which taxable years of those component members are to be subjected to the controlled group rules. Generally, a member's testing date is the December 31st date included within that member's taxable year, whether such member is on a calendar or fiscal taxable year. However, if a component member of a controlled group has a short taxable year that does not include a December 31st date, then the last day of that short taxable year becomes that member's testing date; and

(B) *Testing period* is the time period used for determining the status of controlled group members as either component members or excluded members. The testing period begins on the first day of a member's taxable year and ends on the day before its testing date (Generally, the testing date is December 31st, but for a component member having a short taxable year not ending on December 31st, the testing date for the short taxable year of that member (and only that member) becomes the last day of that member's short taxable year). Thus, for a member on a fiscal taxable year, the portion of its taxable year beginning after December 31st and ending on the last day of its taxable year is not taken into account for determining its status as a component member or an excluded member.

(2) *Excluded members*—(i) A corporation, which is a member of a controlled group of corporations on the group's testing date, a date included within that member's taxable year, but who was a member of such group for less than one-half of the number of days of its testing period, shall be treated as an excluded member of such group for that group's testing date.

(ii) A corporation which is a member of a controlled group of corporations on a testing date shall be treated as an excluded member of such group on such date if, for its taxable year including such date, such corporation is—

* * * * *

(3) *Additional members.* A corporation shall be treated as an additional member of a controlled group of corporations, that is, an additional component member, on the group's testing date if it—

(i) Is not a member of such group on such date;

(ii) Is not described, with respect to such taxable year, in paragraph (b)(2)(ii)(A), (B), (C), (D), or (E) of this section; and

(iii) Was a member of such group for one-half (or more) of the number of days in its testing period.

* * * * *

(e) *Effective date*—(1) *Applicability date.* Paragraph (b) of this section applies to any taxable year beginning on or after December 26, 2007. However, taxpayers may apply paragraph (b) of this section to any Federal income tax return filed on or after December 26, 2007. Paragraphs (a) and (b) (as contained in 26 CFR part 1 in effect on April 1, 2007), and paragraphs (c)(1), (c)(2)(iv) and (d) of this section apply to taxable years beginning on or after December 22, 2006. However, taxpayers may apply the paragraphs described in the preceding sentence to any Federal income tax return filed on or after December 22, 2006. Paragraphs (c)(2)(i) through (iii) of this section apply to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of paragraph (b) of this section will expire on December 21, 2010. The applicability of paragraphs (a) and (b) (as contained in 26 CFR part 1 in effect on April 1, 2007), and paragraphs (c)(1), (c)(2)(iv) and (d) of this section will expire on December 21, 2009. The applicability of paragraphs (c)(2)(i) through (iii) of this section will expire on May 26, 2009.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 17, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7-24874 Filed 12-21-07; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 447

[Docket No. ATF-9F; AG Order No. 2922-2007]

RIN 1140-AA29

U.S. Munitions Import List and Import Restrictions Applicable to Certain Countries (2005R-5P)

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

ACTION: Final rule.

SUMMARY: This final rule conforms the regulations in 27 CFR Part 447 to the revised International Traffic in Arms

Regulations by amending the list of countries from which the importation of defense articles into the United States is proscribed by adding Afghanistan and removing South Africa and some of the states composing the former Soviet Union (Armenia, Azerbaijan and Tajikistan). The rule also removes the arms embargo against the countries of Serbia and Montenegro. It also clarifies an outdated reference in the regulations to Zaire, currently known as the "Democratic Republic of the Congo," and makes a miscellaneous technical amendment to the regulations.

DATES: This rule is effective December 26, 2007.

FOR FURTHER INFORMATION CONTACT:

Lawrence G. White; Firearms and Explosives Imports Branch; Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Department of Justice; 99 New York Avenue, NE., Washington, DC 20226; (202) 648-7113.

SUPPLEMENTARY INFORMATION:

Background

The Arms Export Control Act of 1976 ("AECA"), 22 U.S.C. 2778, gives the President of the United States the authority to control the import and export of defense articles and defense services. The Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") is responsible for administering the import provisions of the AECA. Importation regulations issued under this law are in 27 CFR Part 447.

Executive Order ("E.O.") 11958 of January 18, 1977 (42 FR 4311, Jan. 24, 1977), as amended by E.O. 13284 of January 23, 2003 (68 FR 4075, Jan. 28, 2003), delegated authority to control exports of defense articles and defense services to the Secretary of State. The Executive Order also delegated to the Attorney General the authority to control the import of such articles and services. However, as stated in 27 CFR 447.55, ATF is guided by the views of the Secretaries of State and Defense on matters affecting world peace and the external security and foreign policy of the United States. After consulting the Department of State, ATF is revising the provisions of 27 CFR Part 447 to conform to the International Traffic in Arms Regulations (22 CFR Parts 120-130).

On March 17, 2005, the Department of State informed ATF that on August 27, 1994, the Department of State rescinded the sanctions on trade in defense articles and services from South Africa and technical data relating to defense articles from South Africa as set forth in Category XXII of the U.S. Munitions Import List, 27 CFR 447.21. In an open

letter, dated July 11, 2005, ATF advised federally licensed firearms importers and registered importers of this change and that it planned to revise § 447.21. Accordingly, this rule amends § 447.21 by removing Category XXII and the reference to Category XXII in the definition of "Defense articles" in § 447.11.

On March 28, 2003, the Department of State advised ATF of the publication of a final rule on March 29, 2002 (67 FR 15101), formally removing Armenia and Azerbaijan from the list of proscribed destinations for the exports and imports of defense articles and defense services. ATF is therefore amending 27 CFR Part 447 to conform to this change.

The Department of State also advised ATF of the publication of a final rule on January 9, 2002 (67 FR 1074), formally removing Tajikistan, Serbia and Montenegro (formerly known as the Federal Republic of Yugoslavia) from the arms embargo with the United States. Accordingly, the list of proscribed countries in part 447 is being amended to reflect this change in foreign policy.

On November 20, 2005, the Department of State advised ATF of the publication of a final rule on June 27, 1996 (61 FR 33313), formally adding Afghanistan to the list of proscribed countries for the exports and imports of defense articles and defense services. ATF is therefore amending 27 CFR Part 447 to conform to this change.

Miscellaneous Amendments

The Department is also taking this opportunity to clarify an outdated reference contained in § 447.52(a). "Zaire" is currently listed as a country to which the United States maintains an arms embargo and this listing is amended to read "the Democratic Republic of the Congo."

The Department also is making a technical amendment to § 447.52 to indicate the current phone number for ATF's Firearms and Explosives Imports Branch.

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 subsections 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 excluded 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 on the ability of United States-based companies to compete with foreign-based companies 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 Elizabeth Gillis; 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 ARMS, AMMUNITION AND IMPLEMENTS OF WAR

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

Authority: 22 U.S.C. 2778.

§ 447.11 [Amended]

■ 2. Section 447.11 is amended by removing the last sentence in the definition of the term “Defense articles”.

§ 447.21 [Amended]

■ 3. Section 447.21 is amended by removing Category XXII (South Africa) in its entirety from the U.S. Munitions Import List.

■ 4. Section 447.52 is amended by revising the second and third sentences in paragraph (a), and by removing “(202) 927-8320” in the “Note” at the end of paragraph (a) and adding in its place “(304) 616-4550”, to read as follows:

§ 447.52 Import restrictions applicable to certain countries.

(a) * * * This policy applies to Afghanistan, Belarus (one of the states composing the former Soviet Union), Cuba, Iran, Iraq, Libya, Mongolia, North Korea, Sudan, Syria, and Vietnam. This policy applies to countries or areas with respect to which the United States maintains an arms embargo (e.g., Burma, China, the Democratic Republic of the

Congo, Haiti, Liberia, Rwanda, Somalia, Sudan, and UNITA (Angola)).

* * * * *

Dated: December 17, 2007.

Michael B. Mukasey,

Attorney General.

[FR Doc. E7-24910 Filed 12-21-07; 8:45 am]

BILLING CODE 4410-FY-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1625 and 1627

RIN 3046-AA72

Age Discrimination in Employment Act; Retiree Health Benefits

AGENCY: U.S. Equal Employment Opportunity Commission

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is publishing this final rule so that employers may create, adopt, and maintain a wide range of retiree health plan designs, such as Medicare bridge plans and Medicare wrap-around plans, without violating the Age Discrimination in Employment Act of 1967 (ADEA). To address concerns that the ADEA may be construed to create an incentive for employers to eliminate or reduce retiree health benefits, EEOC is creating a narrow exemption from the prohibitions of the ADEA for the practice of coordinating employer-sponsored retiree health benefits with eligibility for Medicare or a comparable State health benefits program.¹ The rule does not otherwise affect an employer's ability to offer health or other employment benefits to retirees, consistent with the law.

DATES: Effective December 26, 2007.

FOR FURTHER INFORMATION CONTACT: Raymond Peeler, Senior Attorney Advisor, at (202) 663-4537 (voice) or Dianna B. Johnston, Assistant Legal Counsel, at (202) 663-4637 (voice) or (202) 663-7026 (TTY) (These are not toll free numbers). This final rule is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this

¹ The EEOC recognizes that eligibility for Medicare and comparable state health benefits is not necessarily limited to retirees. As explained below, this rule only concerns application of the Age Discrimination in Employment Act to employer-sponsored retiree health benefits for individuals who also happen to be eligible to participate in Medicare or a comparable state health benefit. Individuals who are eligible for and/or receive Medicare or comparable state health benefits, but who are not retired, are not affected by this rule.

document in an alternative format should be made to the Publications Information Center at 1-800-669-3362.

SUPPLEMENTARY INFORMATION: Employer-sponsored retiree health benefits provide a much-needed source of health coverage for older Americans at a time when their health care needs are greatest. Without employer-sponsored retiree health benefits, many retirees are forced to go without health benefits between the time they retire and the time they become eligible for Medicare. Older retirees also rely on employer-sponsored retiree health benefits to cover medical costs that are not covered by Medicare.

Employers are not legally obligated to provide retiree health benefits, and many do not. Moreover, over the past several years, the number of employers who offer such benefits has begun to decline. According to an independent study by the United States General Accounting Office (GAO), about one-third of large employers and less than 10% of small employers offered their retirees health benefits in 2000, compared to about 70% of employers in the 1980s.² Of those employers that do offer coverage, many “have reduced the terms of coverage by tightening eligibility requirements, increasing the share of premiums retirees pay for health benefits, or increasing copayments and deductibles—thus contributing to a gradual erosion of benefits.”³

Rising health care costs, larger numbers of workers nearing retirement age, and mandated changes in the way employers must account for the long-term costs of providing retiree health coverage have been substantial factors contributing to the erosion of this valuable employment benefit. However, the Equal Employment Opportunity Commission (Commission or EEOC) believes that concern about the potential application of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.* (ADEA or Act) to employer-sponsored retiree health benefits also has adversely affected the availability of this benefit. A wide range of stakeholders, including labor organizations, benefits consultants, state and local governments, and private employers, agree that ADEA concerns have created an additional incentive to reduce or eliminate employer-sponsored retiree health benefits.

² U.S. GENERAL ACCOUNTING OFFICE, “Retiree Health Benefits: Employer-Sponsored Benefits May Be Vulnerable to Further Erosion,” GAO Doc. No. GAO-01-374 (May 2001).

³ *Id.*, at 6.