

# Rules and Regulations

Federal Register

Vol. 69, No. 168

Tuesday, August 31, 2004

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 770 and 774

Docket No. 040810235–4235–01

RIN 0694–AC91

#### Clarification of Export Controls on Military Vehicles and Parts

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule clarifies the export controls on parts and components of certain military ground vehicles, adds a new class of vehicles to the Commerce Control List (CCL) and provides guidance for classifying ground vehicles that are subject to the Export Administration Regulations and distinguishing those vehicles from those that are subject to the International Traffic in Arms Regulations.

**DATES:** This rule is effective August 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Gene Christiansen, in the Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–2984.

**SUPPLEMENTARY INFORMATION:** The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export licensing requirements based on their characteristics. Certain entries on the CCL implement multilateral national security controls established by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (the Wassenaar Arrangement). The Wassenaar Arrangement controls strategic items with the objective of

improving regional and international security and stability.

One list maintained by the Wassenaar Arrangement is the Munitions List. The United States administers export controls on these Wassenaar Arrangement Munitions List items by making certain items subject to the export licensing jurisdiction of the Directorate of Defense Trade Controls in the Department of State, and listed on the United States Munitions List (USML), and other items subject to the export licensing jurisdiction of the Bureau of Industry and Security in the Department of Commerce, listed on the CCL.

This rule revises Export Control Classification Number (ECCN) 9A018 on the CCL of the Export Administration Regulations to make clear that this ECCN applies to parts and components as well as to vehicles. This rule updates ECCN 9A018 to include unarmed all-wheel drive vehicles capable of off-road use that have been manufactured or fitted to provide a specified level of ballistic protection. This rule also clarifies that ECCN 9A018 does not include vehicles that are on the USML.

This rule also revises Interpretation 8 in Part 770 of the Export Administration Regulations (EAR), which provides guidance relating to ECCN 9A018.b. Revised Interpretation 8 eliminates explanations of terms that are no longer used in the EAR. It employs language from the Wassenaar Arrangement Munitions List to distinguish military vehicles from civil vehicles. It also provides guidance to distinguish military vehicles subject to the export licensing jurisdiction of the Directorate of Defense Trade Controls from those subject to the export licensing jurisdiction of the Bureau of Industry and Security.

The Export Administration Act of 1979 (the Act) provides authority to administer dual-use export controls. Although the Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended by the notice of August 7, 2003 (3 CFR, 2003 Comp., p. 328 (2004)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

#### Savings Clause

Items eligible for export or reexport without a license or under a License

Exception prior to publication of this rule and for which this rule imposes a license requirement or removes that License Exception eligibility may be exported or reexported without a license or under that License Exception if they are on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, pursuant to actual orders for export or reexport by September 14, 2004, and are actually exported or reexported September 30, 2004. Any such items not meeting these conditions require a license in accordance with this rule.

#### Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves collections of information subject to the PRA. These collections have been approved by the Office of Management and Budget (OMB) under control number 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 58 minutes to prepare and submit. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at [david\\_rostker@omb.eop.gov](mailto:david_rostker@omb.eop.gov) or by fax to (202)395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of

proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to William H. Arvin, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

#### List of Subjects in 15 CFR Parts 770 and 774

Exports, Foreign trade.

■ Accordingly, part 770 and Supplement No. 1 to part 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

#### PART 770—AMENDED

■ 1. The authority citation for part 770 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 2. In § 770.2 revise paragraph (h) to read as follows:

#### § 770.2 Item Interpretations.

\* \* \* \* \*

(h) *Interpretation 8: Ground vehicles.*  
(1) The U.S. Department of Commerce, Bureau of Industry and Security has export licensing jurisdiction over ground transport vehicles (including trailers), parts, and components thereof specially designed or modified for non-combat military use. Vehicles in this category are primarily transport vehicles designed or modified for transporting cargo, personnel and/or equipment, or to move other vehicles and equipment over land and roads in close support of fighting vehicles and troops. The U.S. Department of Commerce, Bureau of Industry and Security also has export licensing jurisdiction over unarmed all-wheel drive vehicles capable of off-road use which have been manufactured or fitted with materials to provide ballistic protection, including protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better if they do not have armor described in 22 CFR part 121, Category XIII. In this section, and in ECCN 9A018, the word

“unarmed” means not having weapons installed, not having mountings for weapons installed, and not having special reinforcements for mountings for weapons.

(2) Modification of a ground vehicle for military use entails a structural, electrical or mechanical change involving one or more specially designed military components. Such components include, but are not limited to:

(i) Pneumatic tire casings of a kind designed to be bullet-proof or to run when deflated;

(ii) Tire inflation pressure control systems, operated from inside a moving vehicle;

(iii) Armored protection of vital parts, (e.g., fuel tanks or vehicle cabs); and

(iv) Special reinforcements for mountings for weapons.

(3) *Scope of ECCN 9A018.b.* Ground transport vehicles (including trailers) and parts and components thereof specially designed or modified for non-combat military use are controlled by ECCN 9A018.b. Unarmed all-wheel drive vehicles capable of off-road use that are not described in paragraph (h)(4) of this section and which have been manufactured or fitted with materials to provide ballistic protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better are controlled by ECCN 9A018.b. ECCN 9A018.b. does not cover civil automobiles, or trucks designed or modified for transporting money or valuables, having armored or ballistic protection, even if the automobiles or trucks incorporate items described in paragraphs (h)(2) (i), (ii), or (iii) of this section. In this section, the term “civil automobile” means a passenger car, limousine, van or sport utility vehicle designed for the transportation of passengers and marketed through civilian channels in the United States, but does not include any all-wheel drive vehicle capable of off-road use which has been manufactured or fitted with materials to provide ballistic protection at level III (National Institute of Justice Standard 0108.01, September 1985) or better, nor does it include any vehicle described in paragraph (h)(4) of this section. Ground vehicles that are not described in paragraph (h)(4) of this section and that are not covered by either ECCN 9A018.b or 9A990 are EAR99, meaning that they are subject to the EAR, but not listed in any specific ECCN.

(4) *Related control.* The Department of State, Directorate of Defense Trade Controls has export licensing jurisdiction for all military ground armed or armored vehicles and parts

and components specific thereto as described in 22 CFR part 121, Category VII. The Department of State, Directorate of Defense Trade Controls also has export licensing jurisdiction for all-wheel drive vehicles capable of off-road use that have been armed or armored with articles described in 22 CFR part 121 or that have been manufactured or fitted with special reinforcements for mounting arms or other specialized military equipment described in 22 CFR part 121.

\* \* \* \* \*

#### SUPPLEMENT NO. 1 TO PART 774—AMENDED

■ 3. The authority citation for part 774 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 4. Supplement 1 to part 774, Category 9, Export Control Classification Number 9A018 is amended by revising the heading, and the *Related Controls* and *Items* paragraphs in the List of Items Controlled section to read as follows:

#### 9A018 Equipment on the Wassenaar Arrangement Munitions List

\* \* \* \* \*

#### List of Items Controlled

*Unit:* \* \* \*

*Related Controls:* (a) Parachute systems designed for use in dropping military equipment, braking military aircraft, slowing spacecraft descent, or retarding weapons delivery; (b) Instrument flight trainers for combat simulation; and (c) military ground armed or armored vehicles and parts and components specific thereto described in 22 CFR part 121, Category VII; and all-wheel drive vehicles capable of off-road use that have been armed or armored with articles described in 22 CFR part 121, Category XIII (See § 770.2(h)—Interpretation 8) are all subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls.

#### Related Definitions \* \* \*

*Items:*

a. Military trainer aircraft bearing “T” designations:

- a.1. Using reciprocating engines; or
- a.2. Turbo prop engines with less than 600 horse power (h.p.);
- a.3. T-37 model jet trainer aircraft; and

a.4. Specially designed component parts.

b. Ground transport vehicles (including trailers) and parts and components therefor designed or modified for non-combat military use and unarmed all-wheel drive vehicles capable of off-road use which have been manufactured or fitted with materials to provide ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better. (See § 770.2(h)—Interpretation 8).

c. Pressure refuelers, pressure refueling equipment, and equipment specially designed to facilitate operations in confined areas; and ground equipment, n.e.s., developed specially for military aircraft and helicopters, and specially designed parts and accessories, n.e.s.;

d. Pressurized breathing equipment specially designed for use in military aircraft and helicopters;

e. Military parachutes and complete canopies, harnesses, and platforms and electronic release mechanisms therefor, except such types as are in normal sporting use;

f. Military instrument flight trainers, except for combat simulation; and components, parts, attachments and accessories specially designed for such equipment.

Dated: August 25, 2004.

**Peter Lichtenbaum,**

*Assistant Secretary for Export Administration.*

[FR Doc. 04-19872 Filed 8-30-04; 8:45 am]

BILLING CODE 3510-33-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 143

#### RIN 3038-AC13

### Adjustment of Civil Monetary Penalties for Inflation

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is amending its rule which governs the maximum amount of civil monetary penalties, to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties (CMPs) assessable

for violations of the Commodity Exchange Act (Act) and Commission rules and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

**EFFECTIVE DATE:** October 23, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Daniel A. Nathan, Chief, Office of Cooperative Enforcement, Division of Enforcement, at (202) 418-5314 or [dnathan@cftc.gov](mailto:dnathan@cftc.gov); Terry S. Arbit, Associate General Counsel, at (202) 418-5357 or [tarbit@cftc.gov](mailto:tarbit@cftc.gov); Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. This document also is available at <http://www.regulations.gov>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA),<sup>1</sup> requires the head of each Federal agency to adjust by regulation, at least once every four years, the maximum amount of CMPs provided by law within the jurisdiction of that agency by the cost-of-living adjustment defined in the FCPIAA, as amended.<sup>2</sup> Because the purposes of the inflation adjustments include maintaining the deterrent effect of CMPs and promoting compliance with the law, the Commission monitors the impact of inflation on its CMP maximums and adjusts them as needed to implement the requirements and purposes of the FCPIAA.<sup>3</sup>

##### II. Relevant Commission CMPs

The inflation adjustment requirement applies to:

[A]ny penalty, fine or other sanction that—

<sup>1</sup> The FCPIAA, Pub. L. 101-410 (1990), and the relevant amendments to the FCPIAA contained in the DCIA, Pub. L. 104-134 (1996), are codified at 28 U.S.C. 2461 note.

<sup>2</sup> The DCIA also requires that the range of minimum and maximum CMPs be adjusted, if applicable. This is not applicable to the Commission because, for the relevant CMPs within the Commission's jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the rules and orders thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

<sup>3</sup> Specifically, the FCPIAA states:

The purpose of [the FCPIAA] is to establish a mechanism that shall—

(1) Allow for regular adjustment for inflation of civil monetary penalties;

(2) Maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

(3) Improve the collection by the Federal Government of civil monetary penalties.

- (A) Is for a specific monetary amount as provided by Federal law; or
- (ii) Has a maximum amount provided for by Federal law; and
- (B) Is assessed or enforced by an agency pursuant to Federal law; and
- (C) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts[.]

28 U.S.C. 2661 note. The Act provides for CMPs that meet the above definition, and are therefore subject to the inflation adjustment, in three instances: Sections 6(c), 6b, and 6c of the Act.<sup>4</sup>

Penalties may be assessed in a Commission administrative proceeding pursuant to Section 6(c) of the Act, 7 U.S.C. 9, against “any person” found by the Commission to have:

- (1) Engaged in the manipulation of the price of any commodity, in interstate commerce, or for future delivery;
- (2) Willfully made a false or misleading statement or omitted a material fact in an application or report filed with the Commission; or
- (3) Violated any provision of the Act or the Commission's rules, regulations or orders thereunder.

Penalties may be assessed in a Commission administrative proceeding pursuant to Section 6b of the Act, 7 U.S.C. 13a, against: (1) Any registered entity<sup>5</sup> that the Commission finds is not enforcing or has not enforced its rules, or (2) any registered entity, or any director, officer, agent, or employee of any registered entity, that is violating or has violated any of the provisions of the Act or the Commission's rules, regulations or orders thereunder.

Penalties may be assessed pursuant to Section 6c of the Act, 7 U.S.C. 13a-1, against “any person” found by “the proper district court of the United States” to have committed any violation of any provision of the Act or any rule, regulation or order thereunder.

##### III. Relevant Cost-of-Living Adjustment

The formula for determining the cost-of-living adjustment, first defined by the FCPIAA, and amended by the DCIA, consists of a four-step process.

<sup>4</sup> 7 U.S.C. 9, 13a and 13a-1.

<sup>5</sup> The Commodity Futures Modernization Act of 2000, Appendix E of the Consolidated Appropriations Act of 2000, Pub. L. 106-554, 114 Stat. 2763 (2000) (CFMA), substituted the term “registered entity” for the term “contract market” throughout the Act, including in Section 6b. The CFMA also added a definition of the term “registered entity” in section 1a(29) of the Act, 7 U.S.C. 1a(29) of the Act, 7 U.S.C. 1a(29), which includes designated contract markets, registered derivatives transaction execution facilities, and registered derivatives clearing organizations. The amended Rule 143.8 includes a technical correction substituting the term “registered entity” for the term “contract market” to conform to this change in the Act.