www.regulations.gov/#!home, you also may file a comment through that Web site.

If you file your comment on paper, write ''Proposed Amendments to the Alternative Fuels Rule, (16 CFR part 309) (Matter No. R311002)'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex N), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 17, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

VI. Proposed Rule

List of Subjects in 16 CFR Part 309

Alternative fuel, Alternative fueled vehicle, Energy conservation, Labeling, Reporting and recordkeeping, Trade practices.

The Commission proposes to amend 16 CFR part 309 as follows:

PART 309—LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND ALTERNATIVE FUELED VEHICLES

1. The authority citation for part 309 continues to read as follows:

Authority: 42 U.S.C. 13232(a).

2. In § 309.1 add new paragraph (f)(3) to read as follows:

§ 309.1 Definitions.

* * * * *

(f) * * *

(3) Any vehicle that is—

(i) A new qualified fuel cell motor vehicle (as defined in 26 U.S.C. 30B(b)(3));

(ii) A new advanced lean burn technology motor vehicle (as defined in 26 U.S.C. 30B(c)(3));

(iii) A new qualified hybrid motor vehicle (as defined in 26 U.S.C. 30B(d)(3)); or

(iv) Any other type of vehicle that the Administrator of the Environmental Protection Agency demonstrates to the Secretary would achieve a significant reduction in petroleum consumption.

* * * * *

3. In § 309.1, remove paragraphs (dd), (ee), and (ff) and redesignate (gg) as (dd).

4. Revise § 309.20 to read as follows:

309.20 Labeling requirements for new covered vehicles.

(a) Before offering a new covered vehicle for acquisition to consumers, manufacturers shall affix or cause to be affixed, and new vehicle dealers shall maintain or cause to be maintained, fuel economy labels as required by under 40 CFR part 600. For dual fueled vehicles, such labels must include driving range information for alternative fuel and gasoline operation and be otherwise consistent with provisions in 40 CFR part 600.

(b) If an aftermarket conversion system is installed on a vehicle by a person other than the manufacturer prior to such vehicle's being acquired by a consumer, the manufacturer shall provide that person with the vehicle's fuel economy label prepared pursuant to 40 CFR part 600 and ensure that new fuel economy vehicle labels are affixed to such vehicles as required by paragraph (a) of this section.

5. Remove §§ 309.21 and 309.22.

6. Redesignate § 309.23 as 309.21.

7. In Appendix A to part 309, remove figures 4, 5, 5.1, and 6.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–14828 Filed 6–18–12; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF STATE

22 CFR Part 120

RIN 1400–AD22

[Public Notice 7921]

Amendment to the International Traffic in Arms Regulations: Definition for ''Specially Designed''

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President's Export Control Reform (ECR) Initiative, the Directorate of Defense Trade Controls (DDTC) seeks public comment on the proposed definition of ''specially designed'' to be adopted in the International Traffic in Arms Regulations (ITAR). This proposed rule is published concurrently with the Department of Commerce's proposed revision to the definition of ''specially designed'' in the Export Administration Regulations (EAR). The revisions contained in this rule are part of the Department of State's retrospective plan under E.O. 13563 completed on August 17, 2011. The Department of State's full plan can be accessed at *http://www.state.gov/documents/organization/181028.pdf.*

DATES: The Department of State will accept comments on this proposed rule until August 3, 2012.

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

- *Email: DDTCResponseTeam@state.gov* with the subject line, ''Specially Designed Definition.''
- *Internet:* At *www.regulations.gov,* search for this notice by using this notice's RIN (1400–AD22).

Comments received after that date will be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not desire to be made public or information for which a claim of confidentiality is asserted because those comments and/or transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov.* Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663–2792, or email *DDTCResponseTeam@state.gov.* ATTN: Specially Designed Definition.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, *i.e.,* ''defense articles,'' are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (''EAR,'' 15 CFR parts 730–774, which includes the

Commerce Control List (CCL) in Supplement No. 1 to Part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

Export Control Reform Update

The Departments of State and Commerce described in their respective Advanced Notices of Proposed Rulemaking (ANPRM) in December 2010 the Administration's plan to make the USML and the CCL positive, tiered, and aligned so that eventually they can be combined into a single control list (*see* ''Commerce Control List: Revising Descriptions of Items and Foreign Availability,'' 75 FR 76664 (December 9, 2010) and ''Revisions to the United States Munitions List,'' 75 FR 76935 (December 10, 2010)). The notices also called for the establishment of a ''bright line'' between the USML and the CCL to reduce government and industry uncertainty regarding export jurisdiction by clarifying whether particular items are subject to the jurisdiction of the ITAR or the EAR. While these remain the Administration's ultimate Export Control Reform objectives, their concurrent implementation would be problematic in the near term. In order to more quickly reach the national security objectives of greater interoperability with U.S. allies, enhancing the defense industrial base, and permitting the U.S. Government to focus its resources on controlling and monitoring the export and reexport of more significant items to destinations, end-uses, and end-users of greater concern than NATO allies and other multi-regime partners, the Administration has decided, as an interim step, to propose and implement revisions to both the USML and the CCL that are more positive, but not yet tiered.

Specifically, based in part on a review of the comments received in response to the December 2010 notices, the Administration has determined that fundamentally altering the structure of the USML by tiering and aligning it on a category-by-category basis would significantly disrupt the export control compliance systems and procedures of exporters and reexporters. For example, until the entire USML was revised and became final, some USML categories would follow the legacy numbering and control structures while the newly revised categories would follow a completely different numbering structure. In order to allow for the national security benefits to flow from re-aligning the jurisdictional status of defense articles that no longer warrant control on the USML on a category-by-category basis while minimizing the impact on exporters' internal control and jurisdictional and classification marking systems, the Administration plans to proceed with building positive lists now and afterward return to structural changes.

Definition for ''Specially Designed''

Although one of the goals of the ECR Initiative is to describe USML controls without using design intent criteria, a few of the controls in the proposed revision nonetheless use the term ''specially designed.'' It is, therefore, necessary for the Department to define the term. Two proposed definitions have been published to date.

The Department first provided a draft definition for ''specially designed'' in the December 2010 ANPRM (75 FR 76935) and noted the term would be used minimally in the USML, and then only to remain consistent with the Wassenaar Arrangement or other multilateral regime obligations or when no other reasonable option exists to describe the control without using the term. The definition provided at that time is as follows: ''For the purposes of this Subchapter, the term 'specially designed' means that the end-item, equipment, accessory, attachment, system, component, or part (*see* ITAR § 121.8) has properties that (i) distinguish it for certain predetermined purposes, (ii) are directly related to the functioning of a defense article, and (iii) are used exclusively or predominantly in or with a defense article identified on the USML.''

The Department of Commerce subsequently published on July 15, 2011, for public comment, (*see* ''Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control under the United States Munitions List (USML),'' 76 FR 41958), the Administration's proposed definition of ''specially designed'' that would be common to the CCL and the USML. The public provided more than 40 comments on that proposed definition on or before the September 13, 2011, submission deadline. The Departments of State, Commerce, and Defense have reviewed those comments and related issues. The Department of State's Defense Trade Advisory Group and the Department of Commerce's Technical Advisory Committees participated in the review. The revised definition provided in this proposed rule is, but for a few modifications, identical to the definition published separately by the Department of Commerce (*see* elsewhere in this issue of the **Federal Register**). The overall goal of the definition is to differentiate between those articles ''enumerated'' on the USML and those articles not enumerated but captured in ''catch-all'' paragraphs.

The July 15 rule referenced above identified nine objectives for the revised ''specially designed'' definition. These objectives have not changed and the U.S. Government is committed to adopting a ''specially designed'' definition under the ITAR and EAR that would achieve these nine objectives. The nine objectives are to:

(1) Preclude multiple or overlapping controls of similar items within and across the two control lists;

(2) Be easily understood and applied by exporters, prosecutors, juries, and the U.S. Government—*e.g.,* by using objective, knowable, and clear requirements that do not rely upon a need to investigate and divine the intentions of the original designer of a part or the predominant market applications for such items;

(3) Be consistent with definitions used by the international export control regimes;

(4) Not include any item specifically enumerated on either the USML or the CCL and, in order to avoid a definitional loop, do not use ''specially designed'' as a control criterion;

(5) Be capable of excluding from control simple or multi-use parts such as springs, bolts, and rivets, and other types of items the U.S. Government determines do not warrant significant export controls;

(6) Apply to both descriptions of end items that are ''specially designed'' to have particular characteristics *and* to parts and components that were ''specially designed'' for particular end items;

(7) Apply to materials and software because they are ''specially designed'' to have a particular characteristic or for a particular type of end item;

(8) Not increase the current control level to ''600 series'' control or other higher end controls of items (*i.e.,* not moving items currently subject to a lower control status to a higher level control status), particularly current EAR99 items, that are now controlled at lower levels; *and*

(9) Not, merely as a result of the definition, cause historically EAR controlled items to become ITAR controlled.

The revised ''specially designed'' definition provided in this notice

proposes a simplified two paragraph structure. Paragraph (a) is to identify what commodities, as a result of development, are ''specially designed,'' and paragraph (b) is to identify what parts, components, accessories, and attachments are excluded from ''specially designed.''

Paragraph (a) begins with the phrase, ''Except for commodities described in (b), a commodity is 'specially designed' if, as a result of development, it [is within the scope of any one of three subparagraphs discussed below].'' It is the beginning of the ''catch'' in the ''catch and release'' structure of the definition. For U.S. Munitions List paragraphs containing the term ''specially designed,'' a defense article is ''caught''—it is ''specially designed''—if any of the three elements of paragraph (a) apply and none of the elements of paragraph (b) apply.

Paragraph (a) is limited by the phrase, ''if, as a result of development.'' The definition would also include a note to paragraph (b)(3) that contains the following definition of development for purposes of the proposed ''specially designed'' definition: '''Development' is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.'' Thus, a defense article is caught by the threshold requirement of paragraph (a) only if someone is engaged in any of these ''development'' activities with respect to the article at issue. Three questions one may ask to determine if a defense article is within the scope of paragraph (a) are as follows: (1) Does the commodity, as a result of development, have properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions described in the relevant USML paragraph?; (2) Is the part or component, as a result of development, necessary for an enumerated defense article to function as designed?; and (3) Is the accessory or attachment, as a result of development, used with an enumerated defense article to enhance its usefulness or effectiveness? If the answer to all three questions is ''no,'' then the commodity is not ''specially designed'' and further analysis pursuant to paragraph (b) is not necessary. If the answer to any one of the questions is ''yes,'' then the exporter or reexporter must determine whether any one of the five parts of paragraph (b) of the definition applies. If any one of the five paragraph (b) exclusions apply, then the commodity is not ''specially designed.'' If none do, then the commodity is ''specially designed.''

Paragraph (a)(1) would capture a commodity if it, as a result of ''development,'' ''has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions described in the relevant U.S. Munitions List paragraph.'' This criterion is essentially the same as was proposed in the July 15 proposed definition. Based on the comments, the public found this part of the definition clear. As an example, even if a commodity is capable of use with a controlled defense article, it is not captured by this part of paragraph (a) unless someone did something during the commodity's development so that it would achieve or exceed the performance levels, characteristics, or functions described in a referenced USML paragraph.

Paragraph (a)(2) would capture a part or component if it, as a result of ''development,'' ''is necessary for an enumerated defense article to function as designed.'' The Department realizes that this element is similar to paragraph (a)(1), but believes that it needs to be listed separately because not all descriptions of parts and components on the USML include performance levels, characteristics, or functions as a basis for control. Paragraph (a)(2) thus will capture parts and components that are necessary for another article on the USML to function ''as designed.'' If an article will function ''as designed'' without the part or component at issue, then that part or component is not captured by paragraph (a)(2).

Paragraph (a)(3) would capture an accessory or attachment if it, as a result of ''development,'' ''is used with an enumerated defense article to enhance its usefulness or effectiveness.'' This phrase is from the ITAR's current and the EAR's proposed definitions of ''accessory,'' ''attachment,'' and ''equipment.''

The July 15 proposed ''specially designed'' definition included two exclusion paragraphs (paragraphs (c) and (d)) that identified what items would not be ''specially designed.'' Many commenting parties requested the July 15 definition be simplified and shortened, including the exclusion paragraphs. The Department has addressed these concerns by adopting a simplified structure for the exclusion paragraph (b) included in this proposed rule. Specifically, any part, component, accessory, or attachment that is described in an exclusion paragraph under (b)(1), (b)(2), (b)(3), (b)(4), or (b)(5), would *not* be controlled by a USML ''catch-all'' paragraph.

These five exclusions under paragraph (b) would play an important role in this proposed ''specially designed'' definition. Paragraphs (a)(2) and (a)(3) are broad enough to capture all the defense articles that would be potentially ''specially designed,'' but in practice would capture a larger set of parts, components, accessories, and attachments than is intended. Paragraph (b) would work to release from inclusion under ''specially designed'' specific and non-specific parts, components, accessories, and attachments, consistent with existing U.S. export control and international commitments. The exclusions under paragraph (b) as proposed in this rule would refine the set of parts, components, accessories, and attachments that would be subject to the ''catch-all'' controls on the USML. In this way, paragraphs (a) and (b) are inextricably linked and are intended to work together to identify the parts, components, accessories, and attachments that need to be treated as ''specially designed'' for purposes of the ''catch-all'' provisions on the USML.

Paragraph (b) codifies the principle in ITAR § 120.3 that, in general, a commodity should not be ITAR controlled if has a predominant civil application or has performance equivalent (defined by form, fit, and function) to a commodity used for civil applications. If such a commodity warrants control under the ITAR because it provides the United States with a critical military or intelligence advantage or for another reason, then it is or should be enumerated on the USML, as described in the ''bright line,'' ''positive list'' objectives in the December 2010 ANPRM (75 FR 76935).

An example of an article that would not be ''specially designed'' as a result of proposed paragraph (b)(4) is one that was or is being developed to be interchangeable between an aircraft enumerated in USML Category VIII *and* also an aircraft controlled by ECCN 9A610.a. Such a conclusion for a particular article does not necessarily mean that the article is not subject to export controls. The article may, for example, be enumerated on the USML and, thus, ITAR controlled. In addition, if it is not enumerated on the USML, it might fall with the scope of the controls at ECCN 9A610.x. The jurisdiction of an article must be determined on a case-by-case basis. Proposed paragraph (b)(4) merely states that such an article would not be within the scope of a ''catch-all'' paragraph of the USML in light of its

commonality with non-ITAR controlled articles.

Paragraph (a) would create more objective tests for what defense articles, as a result of development, would be ''specially designed'' based on the criteria identified in (a)(1), (a)(2), *or* (a)(3). Paragraph (b) would create more objective tests for what parts, components, accessories, and attachments are excluded from ''specially designed'' under the exclusion criteria identified in (b)(1), (b)(2), (b)(3), (b)(4) *or* (b)(5). The objective criteria identified in paragraph (a) working with the objective exclusion criteria identified in paragraph (b) would allow this proposed ''specially designed'' definition to achieve the nine stated objectives identified above for the definition.

Request for Comments

As the U.S. Government works through the proposed revisions to the USML, some solutions have been adopted that were determined to be the best of available options. With the thought that multiple perspectives would be beneficial to the USML revision process, the Department welcomes the assistance of users of the lists and requests input on the following:

(1) The key goal of this rulemaking is to establish a definition of ''specially designed'' that provides a ''bright line'' between the commodities controlled by the USML and the CCL. The public is asked to provide comment on the clarity and understanding of the proposed definition.

(2) The key goal of this rulemaking is to establish a definition of ''specially designed'' that is applicable to all USML categories. The public is asked to provide comments on the use of ''specially designed'' in proposed rules for USML revision where the comment period has already closed, as well those proposed rules with open comment periods.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (Rulemaking) and 554 (Adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function. As noted above, and also without prejudice to the Department position that this proposed rulemaking is not subject to the APA, the Department previously published a related Advance Notice of Proposed Rulemaking (RIN 1400–AC78) on December 10, 2010 (75 FR 76935), and accepted comments for 60 days.

Regulatory Flexibility Act

Since the Department is of the opinion that this proposed rule is exempt from the rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will 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 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.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed amendment 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 Executive Order 13132, it is determined that this proposed amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor is 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 OMB control number. This proposed rule would affect the following approved collections: (1) Statement of Registration, DS–2032, OMB No. 1405–0002; (2) Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data, DSP–5, OMB No. 1405–0003; (3) Application/License for Temporary Import of Unclassified Defense Articles, DSP–61, OMB No. 1405–0013; (4) Nontransfer and Use Certificate, DSP–83, OMB No. 1405–0021; (5) Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data, DSP–85, OMB No. 1405–0022; (6) Application/License for Temporary Export of Unclassified Defense Articles, DSP–73, OMB No. 1405–0023; (7) Statement of Political Contributions, Fees, or Commissions in Connection with the Sale of Defense Articles or Services,

OMB No. 1405–0025; (8) Authority to Export Defense Articles and Services Sold Under the Foreign Military Sales (FMS) Program, DSP–94, OMB No. 1405–0051; (9) Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data, DSP–6, –62, –74, –119, OMB No. 1405–0092; (10) Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements, DSP–5, OMB No. 1405–0093; (11) Maintenance of Records by Registrants, OMB No. 1405–0111; (12) Annual Brokering Report, DS–4142, OMB No. 1405–0141; (13) Brokering Prior Approval (License), DS–4143, OMB No. 1405–0142; (14) Projected Sale of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act, DS–4048, OMB No. 1405–0156; (15) Export Declaration of Defense Technical Data or Services, DS–4071, OMB No. 1405–0157; (16) Request for Commodity Jurisdiction Determination, DS–4076, OMB No. 1405–0163; (17) Request to Change End-User, End-Use, and/or Destination of Hardware, DS–6004, OMB No. 1405–0173; (18) Request for Advisory Opinion, DS–6001, OMB No. 1405–0174; (19) Voluntary Disclosure, OMB No. 1405–0179; and (20) Technology Security/Clearance Plans, Screening Records, and Non-Disclosure Agreements Pursuant to 22 CFR 126.18, OMB No. 1405–0195. The Department of State believes there will be minimal changes to these collections. The Department of State believes the combined effect of all rules to be published moving commodities from the USML to the EAR as part of the Administration's Export Control Reform would decrease the number of license applications by approximately 30,000 annually. The Department of State is looking for comments on the potential reduction in burden.

List of Subjects in 22 CFR Part 120

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 120 is proposed to be amended as follows:

PART 120—PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Sections 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311, E.O. 13284, 68 CFR 4075, 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

2. Add § 120.41 to read as follows:

§ 120.41 Specially designed.

When applying this definition, follow this sequential analysis: Begin with paragraph (a)(1) of this section and proceed through each subsequent paragraph. If a commodity would not be controlled as a result of the application of the standards in paragraph (a) of this section, then it is not necessary to work through paragraph (b) of this section. If a commodity would be controlled as a result of paragraph (a), then it is necessary to work through each of the elements of paragraph (b). Commodities described in any of paragraphs (b)(1) through (5) of this section are not ''specially designed'' commodities controlled on the U.S. Munitions List but may be subject to the jurisdiction of another U.S. Government regulatory agency (*see* § 120.5 of this subchapter).

(a) Except for commodities described in (b) of this section, a commodity is ''specially designed'' if, as a result of development, it:

(1) Has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions described in the relevant U.S. Munitions List paragraph;

(2) Is a part (*see* § 121.8(d) of this subchapter) or component (*see* § 121.8(b) of this subchapter) necessary for an enumerated defense article to function as designed; or

(3) Is an accessory or attachment (*see* § 121.8(c) of this subchapter) used with an enumerated defense article to enhance its usefulness or effectiveness.

(b) A part, component, accessory, or attachment is not controlled by a U.S. Munitions List ''catch-all'' paragraph if it:

(1) Is enumerated in a U.S. Munitions List paragraph;

(2) Is a single unassembled part that is of a type commonly used in multiple types of commodities not enumerated on the U.S. Munitions List or the Commerce Control List, such as threaded fasteners (*e.g.,* screws, bolts, nuts, nut plates, studs, inserts), other fasteners (*e.g.,* clips, rivets, pins), basic hardware (*e.g.,* washers, spacers, insulators, grommets, bushings, springs), wire, and solder;

(3) Has the same form, fit, and performance capabilities as a part, component, accessory, or attachment used in or with a commodity that:

(i) Is or was in production (*i.e.,* not in development); and

(ii) Is not enumerated on the U.S. Munitions List;

(4) Was or is being developed with a reasonable expectation of use in or with defense articles enumerated on the U.S. Munitions List and commodities not on the U.S. Munitions List; or

(5) Was or is being developed with no reasonable expectation of use for a particular application.

Note 1: The term ''enumerated'' refers to any article which is identified on the U.S. Munitions List or the Commerce Control List.

Note 2: The term ''commodity'' refers to any article, material, or supply, except technology/technical data or software.

Note to paragraph (a)(1): An example of a commodity that, as a result of development has properties peculiarly responsible for achieving or exceeding the controlled performance levels, functions, or characteristics in a U.S. Munitions List category would be a swimmer delivery vehicle ''specially designed'' to dock with a submarine to provide submerged transport for swimmers or divers from submarines.

Note to paragraph (b): A ''catch-all'' paragraph is one that does not refer to specific types of parts, components, accessories, or attachments, but rather controls parts, components, accessories, or attachments if they were ''specially designed'' for an enumerated item. For the purposes of the U.S. Munitions List, a ''catch-all'' paragraph is delineated by the phrases ''and 'specially designed' parts and components therefor,'' or ''parts, components, accessories, attachments, and associated equipment 'specially designed' for.''

Note 1 to paragraph (b)(3): For the purposes of this definition, ''production'' means all production stages, such as product engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance. This includes ''serial production'' where commodities have passed production readiness testing (*i.e.,* an approved, standardized design ready for large scale production) and have been or are capable of being produced on an assembly line using the approved, standardized design.

Note 2 to paragraph (b)(3): For the purposes of this definition, ''development'' is related to all stages prior to serial production, such as: Design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.

Note 3 to paragraph (b)(3): Commodities in ''production'' that are subsequently subject to ''development'' activities, such as those pertaining to quality improvements, cost reductions, or feature enhancements, remain in ''production.'' However, any new models or versions of such commodities developed from such efforts that change the basic performance or capability of the commodity are in ''development'' until and unless they enter into ''production.''

Note to paragraphs (b)(4) and (b)(5): For a defense article not to be ''specially designed''

on the basis of (b)(4) or (b)(5), documents contemporaneous with its development, in their totality, must establish the elements of paragraph (b)(4) *or* (b)(5). Such documents may include concept design information, marketing plans, declarations in patent applications, or contracts. Absent such documents, the commodity may not to be excluded from being ''specially designed'' by either paragraph (b)(4) or (b)(5).

Note to paragraph (b)(5): If you have knowledge that the commodity was or is being developed for a particular application, you may not rely on paragraph (b)(5) to conclude that the commodity was or is not ''specially designed.''

Dated: June 7, 2012.

Rose E. Gottemoeller,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2012–14471 Filed 6–15–12; 11:15 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2012–0005; Notice No. 130]

RIN 1513–AB88

Proposed Establishment of the Elkton Oregon Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 74,900-acre ''Elkton Oregon'' viticultural area in Douglas County, Oregon. The proposed viticultural area lies totally within the Umpqua Valley viticultural area and the multi-county Southern Oregon viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received on or before August 20, 2012.

ADDRESSES: Please send your comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2012–0005 at ''Regulations.gov,'' the Federal e-rulemaking portal);
- *U.S. mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments TTB receives about this proposal at *http://www.regulations.gov* within Docket No. TTB–2012–0005. A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 130. You also may view copies of this notice, all related petitions, maps or other supporting materials, and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following—

- Evidence that the area within the proposed viticultural area boundary is locally or nationally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soil, physical features, and elevation, that make the proposed viticultural area distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.