



EIB World Trade Headlines

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November 15, 2017 - Volume 9, Issue 22

Statement Regarding ACE System Status

Wed, 11/15/2017 | Speeches and Statements

The ACE system resumed cargo processing at approximately 10:00 p.m. EST last night and continues to process normally. All transactions backlogged in the queue were processed as of approximately 1:00 a.m. EST. Our technicians, in collaboration with IBM technicians, are working around the clock to identify the root cause of the disruption to the ACE database. We do know that this issue and the Aug. 2 outage issue are unrelated.

Statement Regarding ACE System Outage

Tue, 11/14/2017 | Speeches and Statements

At approximately 3:30 p.m. EST today, CBP experienced issues with the Automated Commercial Environment (ACE) database.

As a result, the ACE Portal is currently unavailable to all users and the system is unable to process EDI messages. All transaction processing is currently unavailable, including cargo release, all modes of manifest, and entry summary processing. CBP is unable to arrive conveyances electronically in any mode at this time. Access to AES Direct is also inhibited due to the unavailability of the ACE Portal.

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Massachusetts 1st to ban bump stocks since Vegas shooting

By BOB SALSBERG AP, November 3, 2017

BOSTON (AP) — Massachusetts on Friday became the first state to impose a ban on bump stocks since the deadly shooting at a Las Vegas music festival.

An appropriations bill that included a prohibition on the devices, which are designed to make semi-automatic rifles mimic the firing action of fully automatic weapons, was signed into law Friday by Republican Lt. Gov. Karyn Polito. The Democratic-controlled Legislature gave final approval to the measure on Thursday.

Polito is Massachusetts' acting chief executive with Republican Gov. Charlie Baker on vacation outside of the state. Baker had previously expressed support for banning the devices.

Baker and Polito "support the Second Amendment to the Constitution and Massachusetts' strict gun laws," said Brendan Moss, a spokesman for the administration.

Authorities investigating the deadliest mass shooting in modern American history said the gunman, Stephen Paddock, used a bump stock when he opened fire Oct. 1 from his Las Vegas hotel room on concert-goers below. Fifty-eight people were killed and hundreds more wounded.

The Gun Owners Action League of Massachusetts, an affiliate of the National Rifle Association, had sent an alert to its members earlier Friday urging them to contact Baker's office and demand that he use his line-item veto power to separate out the bump stock ban from the rest of the \$85 million budget bill, which was needed so the state's comptroller can close out the books on the previous fiscal year.

"The provision passed by the legislature ... allows for excessive punishment including life imprisonment, with a minimum sentence of 18 months, for the mere possession of these accessories," said the group.

The legislation, which would also ban most trigger cranks, provides no "pathway to legal ownership," for the devices and no ability for current owners to sell them, said the gun owners group. The group previously criticized lawmakers for taking a vote before even holding a public hearing.

Democratic state Rep. David Linsky, one of the first in Massachusetts to call for outlawing the devices, said it would make the state safer while respecting the rights of gun owners.

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"I am proud of my colleagues in the Legislature for continuing Massachusetts' reputation as having among the safest and most effective gun laws in the nation," Linsky said in a statement.

An organization founded by former U.S. Rep. Gabrielle Giffords, who was grievously wounded in a 2011 shooting in Arizona, praised Massachusetts lawmakers for banning bump stocks and urged other states to follow suit.

California law already prohibited the sale of bump stocks.

US STATE DEPARTMENT Web Notice

Discontinuance of ELLIE and form DSP-119: (11.14.17)
Effective December 1, 2017, DDTC will no longer accept form DSP-119 to amend the DSP-85. All pending DSP-119's will be processed pursuant to 123.25 of the ITAR. Any DSP-119 form submitted to DDTC on or after December 1, 2017 will be returned without action. When amending the DSP-85, the applicant must submit a completely new DSP-85 along with a transmittal letter, signed by the Empowered Official explaining the amended change.

Joint Statement on the Second Meeting of the U.S.-UK Trade and Investment Working Group

London, United Kingdom – UK Secretary of State for International Trade Dr. Liam Fox and United States Trade Representative Robert Lighthizer are pleased to announce the conclusion of the second meeting of the U.S.-UK Trade and Investment Working Group (the Working Group) in London. The delegations were led by officials from the Department for International Trade and the Office of the U.S. Trade Representative and included representatives from a wide range of U.S. and UK government agencies.

The Working Group, established in July 2017, is focusing on providing commercial continuity for U.S. and UK businesses, workers, and consumers as the UK leaves the EU and exploring ways to strengthen trade and investment ties ahead of the exit. The Working Group will also begin to lay the groundwork for a potential, future free trade agreement once the UK has left the EU, and explore areas in which the two countries can collaborate to promote open markets around the world.

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The United States and the UK are working together to deepen their economic relationship. The Working Group will cover a range of topics, including industrial and agricultural goods; services, investment, financial services and digital trade; intellectual property rights and enforcement; regulatory issues related to trade; labor and environment/sustainable development; and small and medium-sized enterprises (SMEs). Some examples of areas where the United States and the UK are working closely include:

- **Promoting Small and Medium-sized Businesses:** The United States and the UK will establish a U.S.-UK Small and Medium-sized Enterprise (SME) Dialogue, to promote closer collaboration and the sharing of best practices on policies and programs to support SME businesses and export opportunities in each country's market. The Working Group will also discuss best practices on encouraging entrepreneurship, growth, and innovation.
- **Promoting Intellectual Property:** Recognizing the importance of intellectual property to their respective economies and to the bilateral trade relationship, the UK and the United States have identified short-term cooperative initiatives to support each country's world-class intellectual property framework. Efforts are underway to develop joint educational tools and resources for SMEs to support the export of creative and innovative products and services between the two countries. There is also agreement to continue discussions on enforcement approaches, policy tools, and voluntary initiatives for addressing online piracy including the emerging challenge of illicit streaming devices and services.
- **Strengthening U.S.-UK Financial Regulatory Cooperation:** The United States and the UK will continue their already strong collaborative partnership on financial regulatory issues. Accordingly, the U.S. Department of the Treasury and HM Treasury will work to enhance efforts to promote global financial stability and efficient markets, and to address financial continuity issues arising from the UK's exit from the EU.
- **US/UK Technology Safeguards Agreement (UKSA) and Commercial Space Ports:** United States and UK agencies are working towards a U.S.-UK Technology Safeguards Agreement, which would establish the technical and legal safeguards to support U.S. space launch vehicle operations from UK launch sites. U.S. and UK agencies are also exploring ways in which U.S. companies can participate in activities at UK commercial spaceports.

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In September 2017, the United States and the UK also entered into an historic Science and Technology agreement, which establishes a foundation for enhanced research partnerships to further world-class science and technological innovation.

Secretary of State for International Trade Dr. Liam Fox said:

"Our working group underlines the shared interest in forging closer trade and investment ties between the UK and USA, and the practical steps we can take now to enable our two countries to do business with one another more easily.

"The USA is our single biggest trading partner and this dialogue will help provide certainty and confidence to businesses on both sides of the Atlantic, and identify existing barriers to trade. We are also laying the groundwork for a potential future free trade agreement which will help boost our mutual trade once we leave the EU.

"Our meetings have already seen agreement to focus on areas which will have a real impact on British businesses, from better enforcing their intellectual property rights to supporting the UK's burgeoning SMEs."

United States Trade Representative Robert Lighthizer said:

"I thank Dr. Fox and his team for hosting our U.S. team in London for the second meeting of the U.S.-UK Trade and Investment Working Group.

"The Working Group meetings have quickly developed into a key mechanism to deepen our already strong bilateral trade and investment relationship and to lay the groundwork for our future trade relationship. This week our teams focused on specific ways in which we can expand opportunities for our businesses and workers, including for small and medium sized enterprises. The work has deepened our understanding of our respective trade and investment systems to prepare for our future relationship once the UK has left the EU.

"We look forward to building on our strong economic relationship to achieve free and fair trade and create good-paying jobs on both sides of the Atlantic."

Background

Trade between the two countries is already worth about \$230 billion a year, the U.S. is the single biggest source of inward investment into the UK, and together there is around \$1 trillion invested in each other's economies

USTR Lighthizer Statement on the President's New Paradigm for US-Indo-Pacific Trade

Da Nang, Vietnam – United States Trade Representative Robert Lighthizer today released the following statement in response to President Trump's speech on trade between the United States and the Indo-Pacific region, at the Asia Pacific Economic Cooperation (APEC) CEO Summit:

"The President spoke loud and clear: the era of trade compromised by massive state intervention, subsidies, closed markets and mercantilism is ending. Free, fair and reciprocal trade that leads to market outcomes and greater prosperity is on the horizon.

"President Trump understands that too many nations talk about free trade abroad, only to shield their economies behind tariff and non-tariff barriers at home. The United States will no longer allow these actions to continue, and we are willing to use our economic leverage to pursue truly fair and balanced trade.

"I look forward to doing as the President instructed me and to pursue policies that will improve the lives of our workers, farmers and ranchers."

U.S. Wins WTO Dispute on Indonesia's Agricultural Restrictions

Indonesia's Appeal Rejected, Confirming Original Findings that Its Import Restrictions Are Against WTO Rules

Washington, D.C. – U.S. Trade Representative Robert Lighthizer today announced that the World Trade Organization (WTO) confirmed that Indonesia's import licensing regimes for horticultural products and animals and animal products are inconsistent with WTO rules. This is a resounding victory for the United States that should result in increased export opportunities for U.S. farmers and ranchers, as well as Indonesian consumer access to high-quality U.S. agricultural products.

Indonesia maintains a complex web of import licensing requirements that restrict or prohibit imports of horticultural products and animal products from the United States. These restrictions cost U.S. farmers and ranchers millions of dollars per year in lost export opportunities in Indonesia.

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In a report issued today, the WTO upheld the original panel findings in the dispute that all 18 Indonesian measures challenged by the United States are inconsistent with Indonesia's WTO obligations and are not justified as legitimate public policy measures. This is a complete victory for the United States and its co-complainant New Zealand.

"This is a significant win for U.S. farmers and ranchers," said U.S. Trade Representative Robert Lighthizer. "Given Indonesia's market size and U.S. competitiveness, we should be selling many more agricultural products to Indonesian consumers. The Trump Administration will continue to use all our tools, including WTO dispute settlement and other mechanisms, to ensure that world-class U.S. agricultural products get fair access to markets around the world."

Background

Since 2012, Indonesia has maintained unjustified and trade-restrictive licensing regimes for the importation of horticultural products and animals and animal products. The U.S. products affected by these regimes include fruits, vegetables, flowers, dried fruits and vegetables, juices, cattle, beef, poultry, and other animal products. At the request of USTR, the WTO established a panel to examine the U.S. complaint in 2015.

In a report publicly released in December 2016, the panel in this dispute found that each of the 18 challenged measures was inconsistent with Article XI:1 of the GATT 1994 because they restrict or prohibit importation of horticultural products or animals and animal products. The panel also found that Indonesia failed to demonstrate that any of the challenged measures is justified under Articles XX of the GATT 1994.

In February 2017, Indonesia appealed a number of the panel's findings. The report issued today confirms the panel's findings that each of the challenged measures is WTO-inconsistent.

Indonesia is the fourth most populous country in the world and an increasingly important export market for many U.S. agricultural products. In 2016, Indonesia was the ninth-largest U.S. agricultural export destination by value, and Indonesia was the eighth-largest U.S. agricultural import source by value. The United States exported over \$2.6 billion in agricultural products to Indonesia and imported over \$2.8 billion in agricultural products from Indonesia. In 2016, exports of the horticultural products and animal products affected by Indonesia's import licensing regimes totaled \$170 million.

USTR Lighthizer Statement on the U.S.-India Bilateral Trade Policy Forum

Washington, DC – Today, U.S. Trade Representative Robert Lighthizer welcomed Indian Minister of Commerce and Industry, Sri Suresh Prabhu, for the annual U.S.-India Bilateral Trade Policy Forum (TPF). The Ministers and their delegations met to discuss a full agenda of bilateral trade issues.

“Our work under the Trade Policy Forum focused on achieving progress towards a more balanced trade relationship,” said Ambassador Lighthizer. “U.S.-India trade has grown significantly in the last few years and has the potential to span every sector of the economy. To increase reciprocal trade, we will continue to seek to identify and address trade barriers related to goods, including manufactured and agriculture, services and intellectual property rights. The U.S. objective is to increase trade flows between our two countries and to decrease our bilateral trade deficit. I am confident that with continued work, we will be able to accomplish these goals.”

The United States pressed for strong outcomes across a number of areas, including non-science-based barriers to agricultural trade, continuing and new regulatory and technical barriers to trade that impact sales of U.S. high technology and other products, tariffs in a number of agricultural and industrial sectors, market access in services, and protection and enforcement of intellectual property rights. Ambassador Lighthizer also expressed concern about the \$29.6 billion U.S. trade deficit with India, urging the Indian delegation to further liberalize the Indian economy to facilitate American exports.

Across many of these areas, both sides had differing views that could not be resolved immediately. However, there was emphasis that it was important to conduct discussions on these areas in the TPF and a commitment to redoubling efforts in the future across all areas. There was agreement that it is critical to continue strong engagement over the coming months in order to achieve concrete outcomes before the next TPF.

Trilateral Statement on the 5th Round of NAFTA Negotiations in Mexico City

Mexico City, Mexico – NAFTA Chief Negotiators confirmed today that although the 5th Round of NAFTA negotiations will formally begin on November 17th, some negotiating groups will begin meeting on November 15th.

Nearly 30 negotiating groups will be meeting during the 5th Round, which will conclude on November 21st.

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The three NAFTA Ministers agreed at the end of Round 4 to allow more space between rounds, in order to provide negotiators with enough time to analyze the proposals that all three countries have tabled so far and to conduct internal consultations.

In addition, NAFTA ministers met separately at the Asia Pacific Economic Cooperation (APEC) Leaders Meetings in Da Nang, Vietnam, and instructed NAFTA Chief Negotiators to focus on advancing discussions on tabled proposals as much as possible. Given the substantive discussions held between Ministers at APEC, Ministers agreed not to attend the 5th Round so negotiators can continue to make important progress on key chapters advanced in Round 4.

Chief Negotiators from Mexico, United States and Canada will be in constant communication with their respective Ministers and will report on the progress reached in this round.

Investigating the Depths

While some fear the unknown, the more daring embrace it.

That best describes a specialized U.S. Customs and Border Protection unit, the Border Patrol’s BORSTAR underwater search-and-recovery dive team.

To grasp just how demanding the job is for these multiskilled diving experts, imagine blindly negotiating deep, cold, murky – and sometimes toxic – water, possibly dodging lethal marine life lurking about, or dangerous, hidden foreign objects.

A difficult but rewarding job

Dive teams conduct search-and-recovery operations and inspect under vessels for narcotics and explosives sometimes attached under the hulls of ships. Typical targets could be a corpse, weapon, vehicle or a container loaded with illegal narcotics, all of which are difficult to spot in water where visibility is many times measured in inches.

Diving is an advanced collateral duty requiring a lot of dedication because agents still perform their regular BORSTAR duties when they’re not in the water. To stay on the team, divers must be proficient in core specialties: tactical medicine, rope and swift-water rescue, land navigation, air operations and other Border Patrol requirements. They must also maintain annual certifications with dive equipment, maintenance, and search-and-recovery operations.

Just 60 divers assigned to CBP’s Southwest Border Patrol sectors and in the Blaine Sector make up the team.

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"The type of diving that we do requires commitment, determination and a unique personality," said Marcus Adkinson, supervisory Border Patrol agent and BORSTAR dive team program manager who joined the team in 2012. "Divers have to perform their duties under a variety of hazardous environments and conditions.

"Being a team player is the most important requirement to be a BORSTAR diver," he said. "You have to rely on your teammates to complete all missions, and your life may depend on them. A diver may get entangled in rope or line and his teammates are there to help him. There is always a possibility of equipment failure, and we may have to share air to get to the surface."

Making the cut

The standards to become a BORSTAR diver have evolved since the program started in 2002. Agents must have at least two years of service and successfully complete the BORSTAR selection and training course. Candidates are evaluated on the core specialties and their ability to work in a cohesive unit.

Once they make the cut, there's considerable training - emergency medicine, tactical medicine, emergency medical technician, paramedicine and austere medicine. Agents apply these skills in remote areas or in developing countries or during widespread disaster or mass casualty events.

Other training includes load planning, helicopter rope suspension, operating rescue watercraft and other boats. There's also, cold-weather operations, personnel recovery, small-unit tactics, combat casualty care, and managing and planning operations.

In addition to certifications, divers must maintain and service equipment. "It's considered life support equipment because our lives depend on it to work properly," Adkinson added.

While diving may sound like fun, the reality is quite different. "It's a lot of hard work. It's maintenance, intensive training and hazardous. Basically, it's not a walk in the park. You have to be willing to work hard. Everything we do is done for a reason. Everything has a checklist. When someone's 90 feet under water, there's no room for error," he pointed out.

Equipped for the challenge

BORSTAR divers use two types of gear: Equipment that pumps air from the surface and scuba. The extreme lightweight diving system, is a surface-supplied system and the only type CBP uses. An umbilical cord secured to the diver's helmet supplies surface air and hard-wired communication. Monitors on the surface, oversee depth and air consumption. The equipment allows for longer dives. It's engineered for rapid set up and deployment and used with the standard helmets, face masks and other diving gear.

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Scuba, which stands for self-contained underwater breathing apparatus, is the other ensemble. This is the typical equipment most people envision—divers breathing air from a pressurized tank strapped to their back.

Scuba divers can reach depths up to 130 feet. They use full face masks and rubber-like wet suits that keep divers warm or dry suits for better protection in exceptionally cold or contaminated water. They use hand signals to communicate. Scuba allows for rapid deployment, freedom of movement and simpler preparation compared to the surface-supplied diving equipment.

However, there are cautions when using scuba gear and surface-supplied diving equipment. Dive-related illnesses such as decompression sickness and arterial gas embolism, a blockage caused by air bubbles in the blood, can occur. Many of these ailments are brought on by rapid ascents where the body doesn't adjust to the changing pressure. U.S. Navy dive tables provide decompression times for specific depths.

Ceaseless training and testing

Recently, 12 of the dive team members met in Panama City Beach, Florida, for a course on using the advanced surface-supplied equipment. They also coordinated the largest joint diving exercise working with Air and Marine Operations (AMO), Florida Fish and Wildlife Conservation Commission, Bay County Sheriff's Department, Panama City Beach Fire Department and Florida State University's Evidence Recovery Program.

The exercise involved vehicle and evidence recovery using sound navigation ranging, better know as sonar. Sonar uses transmitted and reflected sound waves to locate submerged objects.

Other recovery exercises took place at Morrison Springs and St. Andrews Marina near Panama City Beach. One scenario near a sunken vessel in the Gulf of Mexico concluded with a foreign vessel inspection and hull search with assistance from the U.S. Coast Guard.

Diver Carl Newmayer from the Tucson Sector, evaluated a hazmat helmet, designed for chemical, biological, nuclear or radiologically contaminated water. He said testing the helmet and a dry suit that enclosed the entire body was exciting.

"I always love diving with the helmets and to be the first one to do it [as a BORSTAR diver] is pretty cool," said Newmayer, who has helmet dived many times. "It's a little bit quieter, you can think clearer."

"With this [dry suit and helmet], you could dive in raw sewage and have no exposure to it," he added.

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Not your typical work schedule

Days are long and grueling and can stretch into night. Typically, work begins early in the morning where the team loads gear onto a big truck, drives to the location and unloads it. There's a lot of manual labor.

The next day, everything is loaded onto boats – usually, AMO's Secure Around Flotation Equipped (SAFE) boat or the 28-foot Intrepid. Divers often work with AMO agents during training and exercises.

"Every person has their role," Newmayer said. That could be driving the truck, arranging for the boats or unloading the gear. Tasks hinge on the equipment required for the mission.

"Are we going to do the surface supply?" he offered. "If we go into that, then there's a bunch of different people who have different jobs to set that up. If you go in scuba mode then you just individually grab the gear you need to set that up."

After the mission, there's sometimes a long boat ride back to the dock where the work continues. Gear needs to be loaded back on a truck, returned and cleaned. "To keep us alive it's very important that we clean our gear properly," said Newmayer.

Having the motivation to work under these conditions takes a special individual," he remarked. "Not everyone is cut out to do it. It can be a little disturbing to be down there and you can't see anything," although Newmayer considers it a "tranquil experience."

"Me, I find it more peaceful," as he describes it. "I might feel something, maybe try to figure out what it is...you just close your eyes and go with it."

Adkinson, the dive team program manager, who began diving in 2004 as a hobby, said that it's paramount divers stay focused on their task and potential hazards and not think about surrounding threats from marine life.

"There is always a chance of encountering dangerous marine life," he said, "but if you are afraid of what's going to hurt you in the water, then you are not able to do your job. All BORSTAR divers are EMTs and BORSTAR. Paramedic divers attend a specialized medical diving course with the U.S. Navy. There is always a dedicated dive medic and equipment on every operation or training to mitigate the risk of injury."

Phil Vanous, supervisory Border Patrol agent and dive team medic at the Laredo Sector Special Operations Detachment, also put the job in perspective.

"Sometimes when you mention scuba dive operations to other coworkers they think you're down in clear water playing with fishes," he said, "when the truth of the matter is, this is probably the most dangerous job anyone in CBP will do."

Risking a bacterial infection from contaminated water, becoming entangled in debris, and limited visibility are just a few of the dangers divers face, Vanous pointed out. "If you have limited amount of air, if your tank runs empty, that's it. That's why we use the surface supply dive equipment for the more high-risk missions. That way if a diver does get entangled, we can keep providing him air."

It's essential for divers to apply their skills, he said. "Some of the most important medical aspects of diving are making sure CBP divers are capable," said Vanous, who keeps tabs on a diver's physical and mental health. "Some of the tasks are stressful. We are trained to control stress before it develops to fear and, even worse, panic."

Staying clear of those pitfalls is best expressed by the team's motto: "Plan your dive, dive your plan."

Missions that pay off

The team logged roughly 20 missions from 2015 to 2016.

March 4, they recovered a vehicle loaded with narcotics from the Rio Grande River that smugglers attempted to float across near the Fort Brown Station, Rio Grande Valley Sector. Smugglers placed the vehicle on a floating trailer and towed it with a small boat. The trailer tipped, and the vehicle plunged into the river. The smugglers, however, retrieved the contraband.

The Rio Grande Valley special operations detachment dive team, working with other agencies and Border Patrol stations, recovered the vehicle after the dive team leader evaluated the conditions.

Submerged about 12 feet in zero visibility water, the vehicle needed to be lifted and floated down the river and removed by a wrecker. To do that, lift bags were attached to the vehicle, then filled with air, creating floats to lift the vehicle from the river.

May 12, another vehicle loaded with marijuana was recovered from the river by the Rio Grande Valley Sector special operations detachment, BORSTAR dive team. Divers used a special search pattern to find the vehicle and attached a chain to hoist it from the river. Five bundles of marijuana weighing 377 pounds were recovered.

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In December 2015, BORSTAR divers from Special Operations Group headquarters, Yuma, Laredo and Tucson Sectors recovered an airplane that crashed into Lake Heron near Chama, New Mexico, four years earlier in April 2011. Twenty-three kilos of cocaine were recovered after washing up on the shore.

The recovery wasn't attempted in 2011 because the mission was too complex and hazardous. Working with divers from the New Mexico State Police and

Albuquerque Police Department, the BORSTAR team recovered two large sections of the small, multi-engine, piston-driven aircraft, a Cessna 320F. Most of the wreckage was buried in layers of mud and silt, in the zero visibility 40-degree water. BORSTAR's sonar and surface-supplied dive equipment made the task less hazardous.

"The New Mexico mission was definitely the most in-depth, extensive and dangerous mission that I've been part of," Newmayer said. "Every aspect of it was trying, in some way, for myself and every diver."

Tim Sullivan, chief patrol agent with the special operations group based in El Paso, noted the dive team is critical to national security.

"The threat to our ports and water borders is very real," he said. "The BORSTAR dive team provides CBP and DHS with another special operations capability to mitigate these threats."



Rocky Heikkinen of Dive Lab checks over U.S. Border Patrol Agent Carl Newmayer of the BORSTAR dive team as Newmayer dons a hazmat dry suit near Panama City, Florida.

DEPARTMENT OF COMMERCE Bureau of Industry and Security 15 CFR Parts 740 and 746

Amendments to Implement United States Policy toward Cuba

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the licensing policy for Cuba and portions of three license exceptions available for exports and reexports to Cuba: License Exceptions Gift Parcels and Humanitarian Donations ("GFT"), Consumer Communications Devices ("CCD"), and Support for the Cuban People ("SCP"). The Bureau of Industry and Security is publishing this rule to implement portions of the National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba, dated June 16, 2017.

DATES: This rule is effective November 9, 2017.

FOR FURTHER INFORMATION CONTACT: Foreign Policy Division, Bureau of Industry and Security, Phone: (202) 482-4252.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 2017, President Trump announced changes to U.S. policy toward Cuba that are intended to enhance compliance with United States law; hold the Cuban regime accountable for oppression and human rights abuses; further the national security and foreign policy interests of the United States and the interests of the Cuban people; and lay the groundwork for empowering the Cuban people to develop greater economic and political liberty. The President's policy is stated in the National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba ("Cuba NSPM"), dated June 16, 2017. The Cuba NSPM also directs the Secretary of Commerce, as well as the Secretaries of State and the Treasury, to take certain actions to implement the President's Cuba policy.

The Department of Commerce's Bureau of Industry and Security ("BIS") is issuing this final rule to implement portions of the Cuba NSPM. The Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the Department of State are simultaneously publishing related actions in the Federal Register.

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Specific Changes Made by This Rule

Cuba Licensing Policy

In accordance with the statutory embargo of Cuba, license applications for the export or reexport to Cuba of items subject to the Export Administration Regulations (“EAR”) currently are subject to a general policy of denial unless the transactions are eligible for another review policy stated in § 746.2(b). License applications for certain export or reexport transactions are reviewed on a case-by-case basis or under a general policy of approval, depending upon the types of items, end uses, and end users involved, as described in the EAR.

On January 27, 2016, BIS created a case-by-case licensing policy in paragraph (b)(3)(i) of § 746.2 of the EAR for applications to export or reexport items to meet the needs of the Cuban people, including exports and reexports of such items to state-owned enterprises, agencies, and other organizations of the Cuban government that provide goods and services for the use and benefit of the Cuban people (81 FR 4580). Note 2 to paragraph (b)(3)(i) explains that BIS generally will deny applications to export or reexport items for use by state-owned enterprises, agencies, and other organizations that primarily generate revenue for the state, including those engaged in tourism and those engaged in the extraction or production of minerals or other raw materials. Note 2 to paragraph (b)(3)(i) also explains that BIS generally will deny applications for the export or reexport of items destined to the Cuban military, police, intelligence, or security services.

Pursuant to section 3(a) of the Cuba NSPM, this rule amends note 2 to paragraph (b)(3)(i) of § 746.2 of the EAR to clarify that BIS also generally will deny applications for the export or reexport of items for use by certain entities or subentities the State Department identifies on its List of Restricted Entities and Subentities associated with Cuba (“Cuba Restricted List”), unless such transactions are determined to be consistent with the Cuba NSPM. Section 3(a)(i) of the Cuba NSPM directs the Secretary of State to publish a list of entities and subentities that it has determined (1) are under the control of, or act for or on behalf of, the Cuban military, intelligence, or security services or personnel and (2) with which direct financial transactions would disproportionately benefit such services or personnel at the expense of the Cuban people or private enterprise in Cuba (Cuba Restricted List). Today the Department of State is publishing that list in the **Federal Register** and posting it on its Web site at <https://www.state.gov/e/eb/tfs/spi/cuba/cubarestrictedlist/index.htm>.

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Section 3(a)(ii) of the Cuba NSPM states that regulatory changes made pursuant to section 3(a) shall prohibit direct financial transactions with entities or subentities identified by the Department of State's Cuba Restricted List unless the transactions are determined by the Secretary of Commerce or the Secretary of the Treasury, in coordination with the Secretary of State, to be consistent with the policy in section 2 and the criteria specified in section 3(a)(iii)(A)-(I) of the Cuba NSPM. Consequently, license applications submitted to BIS that involve one or more parties on the Department of State's Cuba Restricted List generally will be denied unless the transactions are determined by BIS, in coordination with the Department of State, to be consistent with the aforementioned sections of the Cuba NSPM.

Prohibited Cuban Government Officials

License exceptions authorize certain exports and reexports pursuant to specified terms and conditions. Only the license exceptions specified in § 746.2(a)(1) of the EAR are available for exports and reexports to Cuba. License Exceptions Gift Parcels and Humanitarian Donations (“GFT”), Consumer Communications Devices (“CCD”), and Support for the Cuban People (“SCP”) (§§ 740.12, 740.19, and 740.21 of the EAR, respectively) specify certain eligible and ineligible Cuban transaction parties. On October 17, 2016, BIS revised its list of ineligible Cuban government officials in §§ 740.12(a)(2)(v)(A), 740.19(c)(2)(i), and 740.21(d)(4)(ii) of the EAR to correspond to amendments OFAC made to its definition of prohibited officials of the Government of Cuba in § 515.337 of the Cuban Assets Control Regulations (“CACR”) (31 CFR part 515) (81 FR 71365).

In accordance with section 3(d) of the Cuba NSPM, today OFAC is amending its definition of prohibited officials of the Government of Cuba to include certain additional individuals. This rule amends the list of ineligible Cuban government officials in §§ 740.12(a)(2)(v)(A), 740.19(c)(2)(i), and 740.21(d)(4)(ii) of the EAR to conform with OFAC's amendment.

Cuban Private Sector

On January 16, 2015, BIS created License Exception Support for the Cuban People (SCP) in § 740.21 of the EAR to authorize the export and reexport of certain items to Cuba that are intended to improve the living conditions of the Cuban people; support independent economic activity and strengthen civil society in Cuba; and improve the free flow of information to, from, and among the Cuban people (80 FR 2286). On September 21, 2015, March 16, 2016, and October 17, 2016, BIS amended License Exception SCP to authorize additional categories of exports and reexports intended to further benefit the Cuban people (80 FR 56898, 81 FR 13972, and 81 FR 71365, respectively).

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Consistent with section 2(d) of the Cuba NSPM, this rule revises § 740.21(b) to further support free enterprise in Cuba. Prior to this rule, the text in § 740.21(b)(1)-(3) identified certain types of items, such as tools and equipment, that were eligible for export or reexport to Cuba for (1) use by the private sector to construct or renovate privately-owned buildings, (2) private sector agricultural activities, or (3) use by private sector entrepreneurs. This rule simplifies and expands § 740.21(b) by creating a single provision authorizing the export and reexport to Cuba of items, without specifying types, for use by the Cuban private sector for private sector economic activities. To be eligible for this provision, the items may not be used to primarily generate revenue for the state or used to contribute to the operation of the state, including through the construction or renovation of state-owned buildings. Additionally, eligible items are limited to those that are designated as EAR99 or controlled only for anti-terrorism reasons on the Commerce Control List (“CCL”). Of note, medicines, medical devices, and agricultural commodities are not eligible for any provision of License Exception SCP due to limitations in the Cuban Democracy Act of 1992, as amended (22 U.S.C. 6001-6010) and the Trade Sanctions Reform and Export Enhancement Act of 2000, as amended (22 U.S.C. 7201-7211).

Export Administration Act

Although the Export Administration Act of 1979 expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 15, 2017, 82 FR 39005 (August 16, 2017), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act of 1979, as Start Printed Page 51985 appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. 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, distributive 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.

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Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB). This rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a foreign affairs function of the United States.

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 OMB control number. This rule involves a collection of information approved under OMB control number 0694-0088—Simplified Network Application Processing+ System (SNAP+) and the Multipurpose Export License Application, which carries an annual estimated burden of 31,833 hours. BIS believes that this rule will have no significant impact on that burden. To the extent that it has any impact, BIS believes that this rule will reduce the paperwork burden to the public because it will make some transactions that currently require a license from BIS eligible for a license exception. In those instances, exporters and reexporters will be relieved of the burden of applying for a license. Although this rule makes certain additional Cuban government officials ineligible for specified license exceptions, BIS believes that this change will result in the submission of very few, if any, additional license applications.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet K. Sehra, Office of Management and Budget, by email at jsehra@omb.eop.gov or by fax to (202) 395-7285.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (*see* 5 U.S.C. 553(a)(1)). This rule implements portions of the President Trump's policy toward Cuba, as directed by the National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba, dated June 16, 2017. Delay in implementing this rule to obtain public comment would undermine the foreign policy objectives that the rule is intended to implement. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

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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 requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Note 2 to paragraph (b)(3)(i):

The policy of case-by-case review in this paragraph is intended to facilitate exports and reexports to meet the needs of the Cuban people. Accordingly, BIS generally will deny applications to export or reexport items for use by state-owned enterprises, agencies, and other organizations that primarily generate revenue for the state, including those engaged in tourism and those engaged in the extraction or production of minerals or other raw materials. Applications for export or reexport of items destined to the Cuban military, police, intelligence or security services also generally will be denied. Additionally, pursuant to section 3(a) of the National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba (NSPM), dated June 16, 2017, BIS generally will deny applications to export or reexport items for use by entities or subentities identified by the Department of State in the Federal Register or at <https://www.state.gov/e/eb/tfs/spi/cuba/cubarestrictedlist/index.htm>, unless such transactions are determined to be consistent with sections 2 and 3(a)(iii) of the NSPM.

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Dated: November 6, 2017.

Richard E. Ashooh,

Assistant Secretary for Export Administration.



CBP Eagle Pass Recruiting Office is Open for Business; Recruiters to Provide Application Assistance for OFO, USBP, AMO Positions

Release Date:

November 15, 2017

EAGLE PASS, Texas – U.S. Customs and Border Protection (CBP), is informing potential job seekers interested in a fulfilling federal law enforcement career that the CBP Eagle Pass Recruiting Office, housed at Eagle Pass International Bridge, is open for business and provides a one-stop shop for recruiting and application assistance for frontline positions within CBP's three principal field components, Office of Field Operations (OFO), U.S. Border Patrol (USBP) and Air and Marine Operations (AMO).

"We welcome the community of Eagle Pass to visit our newest recruiting office. The CBP Eagle Pass Recruiting Office gives the opportunity to everyone interested in a position with U.S. Customs and Border Protection to speak directly to a recruiter, ask questions and consider a law enforcement career with CBP," said Port Director John L. Brandt, Eagle Pass Port of Entry.

The recently inaugurated Eagle Pass Recruiting Office is staffed with recruiters from CBP's OFO, USBP and AMO who are on hand to answer applicants' questions regarding the job application process, provide assistance regarding the electronic submittal of applications, provide resume writing assistance and help guide applicants through the application process. The Eagle Pass Recruitment Office recruits for CBP officer, U.S. Border Patrol agent, Air and Marine agent positions and other non-uniformed CBP positions through recurring open vacancy announcements.

The Eagle Pass Recruiting Office is located at 160 E. Garrison Street, Eagle Pass, Texas. Assistance is provided on an appointment basis. To make an appointment regarding CBP officer, U.S. Border Patrol agent, Air and Marine agent or other CBP positions, please call 830-752-3569 or 830-752-3570.

For more information about a career with CBP, please visit the [Careers section](#). For a video with even more information regarding the Laredo Recruiting Office please click on this [link](#).

U.S. Customs and Border Protection is the unified border agency within the Department of Homeland Security charged with the management, control and protection of our nation's borders at and between the official ports of entry. CBP is charged with keeping terrorists and terrorist weapons out of the country while enforcing hundreds of U.S. laws.

Last published:

November 16, 2017

Don't Buy Fake: Help Us Combat Counterfeits

Author: Acting Commissioner Kevin K. McAleenan
Publication Date: Thursday, November 2, 2017

The holiday shopping season is about to begin and retailers everywhere will roll out bargains online and in stores. For CBP, this annual spike in commercial activity means that we are busier than ever at our 328 land, air, and sea ports of entry because in addition to terrorist threats, protecting our economic security as well as the health and safety of the public are top priorities.

Last year, CBP processed \$2.3 trillion worth of imports. Most of the cargo we process is legitimate, but not all of it. In Fiscal Year 2017, we seized and destroyed nearly 32,000 shipments of counterfeit goods – a 52 percent increase since 2014.

Trade in counterfeit and pirated goods is not a victimless crime. It harms America's economy by threatening the competitiveness of our businesses. In turn, it jeopardizes the livelihoods of our workers. In addition, many counterfeit goods have negative health and safety implications. In some cases, the profits are even used to fund criminal enterprises.

Counterfeiters focus on trends to make fake versions of popular products, such as smartphones or makeup. Maybe you remember the hover board craze from late 2015 and early 2016. Many of those products contained counterfeit batteries, which ended up sparking fires and causing significant safety concerns.

In 2016, CBP seized more items that pose health and safety risks than ever before. These include commonly used personal care items such as toothpaste, shampoo, or cosmetics, as well as, many different kinds of pharmaceuticals, and consumer electronics.

I'd like to invite you to join us in addressing this serious problem. Here are some tips on what you can do:

- *Know exactly what you are purchasing and who you are purchasing from.
- *Protect yourself and your family by buying only from reputable sources.
- *If a price for an item seems too good to be true, there is probably a reason. It very likely is a fake.
- *If a website seems suspicious, there is probably a reason for that, too. The operator may be selling counterfeit goods.

(*Continued On The Following Column)

CBP launched a major ad campaign – Fake Goods, Real Dangers – and a companion webpage containing information about the downsides of purchasing counterfeit goods. Check it out and let me know what you think.

We also collaborate with U.S. Immigration and Customs Enforcement Homeland Security Investigations and 23 other partners at the National Intellectual Property Coordination Center to ensure that border seizures representing criminal activities lead to investigations, arrests and convictions.

And if you suspect that you have purchased a counterfeit product – or if you spot something you think could be a fake – you can report it through CBP's online portal called E-Allegations. One of those e-Allegation reports led to the seizure of 42 shipments of counterfeit furniture last year.

This holiday season – and all year round – I encourage all consumers to join CBP and be a part of our "front line" in the fight against fakes.

Web Notice: The Directorate of Defense Trade Controls (DDTC) is currently in the process of modernizing its IT systems. During this time period, we anticipate there may be delays in response times and time to resolve IT related incidents and requests. We apologize for any inconvenience, and appreciate your patience while we work to improve DDTC services. If you need assistance, please contact the DDTC Service Desk at (202) 663-2838, or email at DtradeHelpDesk@state.gov (06.28.16)

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"Sometimes later becomes never, do it now."