



New Guidance on ITAR Registration in the Firearms Industry

08.24.2016

The State Department has issued new policy guidance regarding the requirement for gunsmiths and others involved in the firearms industry to register with the State Department under Part 122 of the International Traffic In Arms Regulations (“ITAR”). Despite what many believe, the requirements under ITAR apply beyond exports and extend to many purely domestic business activities in the firearms industry, including activities by gunsmiths and other firearms technicians. This is an important pronouncement for anyone involved in manufacturing, sales or servicing of firearms.

ITAR Part 122 requires that any person who engages in the business of manufacturing or exporting or temporarily importing items on the U.S. Munitions List or furnishing defense services is required to register with the Directorate of Defense Trade Controls (“DDTC”) within the State Department. Categories I and II of the U.S. Munitions List include firearms and certain accessories, parts and components, and Category III includes ammunition and certain related equipment, tooling, parts, components and accessories. Thus parties that manufacture such items are required to register with DDTC, subject to a number of limited exemptions.^[1] This requirement is in addition to any registration or licensing requirements imposed by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

ITAR §122.1(a) is quite strict in describing what level of activity constitutes manufacturing – this section provides: “...For purpose of this subchapter, engaging in such a business requires only one occasion of manufacturing or exporting or temporarily importing a defense article or furnishing a defense service. A manufacturer who does not engage in exporting must nevertheless register.” The State Department registration fee for first time registrations is \$2,250.

DDTC has received numerous inquiries regarding whether parties who engage in various activities in the firearms industry, including parties engaged in “gunsmithing,” are required to register under ITAR. Based upon these inquiries, DDTC has published written policy guidance (the “Policy Guidance”) that sets forth additional information regarding which activities constitute “manufacturing” and hence require registration under ITAR §122.1. According to the Policy Guidance, the following activities constitute “manufacturing” and parties that engage in such activities are required to register under ITAR §122.1:

- a. Use of any special tooling or equipment upgrading in order to improve the capability of assembled or repaired firearms;
- b. Modifications to a firearm that change round capacity;
- c. The production of firearm parts (including, but not limited to, barrels, stocks, cylinders, breech mechanisms, triggers, silencers, or suppressors);
- d. The systemized production of ammunition, including the automated loading or reloading of

ammunition;

- e. The machining or cutting of firearms, e.g., threading of muzzles or muzzle brake installation requiring machining, that results in an enhanced capability;
- f. Rechambering firearms through machining, cutting, or drilling;
- g. Chambering, cutting, or threading barrel blanks; and
- h. Blueprinting firearms by machining the barrel.

DDTC has also advised in the Policy Guidance that registration may be required for other activities beyond manufacturing such as:

- a. Assisting foreign persons in the design, development, and repair of firearms may constitute the export of a defense service (see 22 CFR § 120.9) and require ITAR registration with and authorization from DDTC; and
- b. Exporting a firearm or any other item on the USML requires ITAR registration with and authorization from DDTC.

Parties that are subject to ITAR are required to comply with other requirements in addition to registration unless an exemption applies, including: (a) obtaining export/import licenses for the export or temporary import of ITAR-controlled items; (b) obtaining export licenses for the transfer/disclosure of ITAR-controlled technical data to foreign persons in the U.S. or overseas; (c) obtaining DDTC authorization referred to as a Technical Assistance Agreement (“TAA”) for performing services related to U.S. Munitions List items for foreign parties; (d) obtaining DDTC authorization for reexports and retransfers of ITAR-controlled items overseas; (e) registration, advanced approval, reporting and recordkeeping requirements for “brokering” or facilitating the sale of ITAR-controlled items; (f) filing reports in connection with the payment of sales commissions or fees for the sale of ITAR-controlled items; (g) obtaining manufacturing license agreements and/or warehouse and distribution agreements for the licensing, manufacturing and/or sale of ITAR-controlled items overseas; (h) refraining from entering into ITAR-controlled transactions involving the “Proscribed Countries” identified in ITAR §126.1; and (i) recordkeeping requirements, among others.

It is important to note that a company is required to comply with the above requirements in dealing in ITAR-controlled items even if the company is not required to register under ITAR §122. As referenced above, the requirements under ITAR are in addition to any requirements imposed by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Penalties for ITAR violations include civil and criminal sanctions including monetary fines of up to \$1 million per violation and 20 years imprisonment.

The new Policy Guidance reinforces DDTC’s serious position on the importance of ITAR compliance for the firearms industry. Many gunsmiths who have been previously unaware of the ITAR requirement are now on notice of these requirements, and the significant penalties for failure to comply.

[1] A number of exemptions from registration are set forth at 22 CFR §122.1(b). It should be noted, however, that even if a party is exempt from the registration requirement under §122.1, it may still be subject to the other requirements under ITAR.

Related People

- Charles E. "Chuck" James, Jr. – 804.420.6529 – cjames@williamsmullen.com
- Thomas B. McVey – 202.293.8118 – tmcvey@williamsmullen.com
- Camden R. Webb – 919.981.4021 – crwebb@williamsmullen.com

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