

ALERT

Departments of State and Commerce Issue Final Rules Amending Export Regulations on Firearms and Ammunition

January 23, 2020

Today, the U.S. Department of State's Directorate of Defense Trade Controls (DDTC) and the Department of Commerce's Bureau of Industry and Security (BIS) published companion final rules transitioning certain firearms and ammunition from the International Traffic in Arms Regulations (ITAR) to the Export Administration Regulations (EAR). Publication of the rules concludes a nine-year, multi-agency effort to transfer to Commerce jurisdiction items determined not to provide the United States with "a critical military or intelligence advantage or, in the case of weapons . . . an inherently military function." The new rules go into effect in 45 days.

While a more detailed summary of the changes is provided below, here are some high-level, key takeaways from the rules:

- Semiautomatic and non-automatic firearms—.50 caliber and under—will now be regulated under the EAR.
- Fully automatic firearms—those that fire more than one round with a single pull of the trigger—will remain controlled on the ITAR's U.S. Munitions List (USML).
- Paragraph (x) provisions will now be available for USML Categories I, II, and III.
- Firearms and ammunition controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) U.S. Munitions Import List (USMIL) will remain subject to the ITAR Part 129 brokering requirements.
- In USML Category II, a limited, positive list of ITAR-controlled items will replace the broad, parts and components "catch-all"

Authors

John R. Shane
Partner
202.719.7222
jshane@wiley.law
Lori E. Scheetz
Partner
202.719.7419
lscheetz@wiley.law
Michael D. Faucette
Partner
202.719.4587
mfaucette@wiley.law

Practice Areas

Export Controls and Economic Sanctions
International Trade
National Security

in paragraph (j).

ITAR CHANGES

In its rule, DDTC significantly reduced the number of items controlled by Categories I–III of the USML. These changes will have a major impact on many firearms manufacturers’ and exporters’ regulatory responsibilities.

Category I

All non-automatic and semiautomatic firearms up to .50 caliber (12.7mm), and all specially designed parts and components thereof, are being removed from the USML and added to Category 0 of the EAR’s Commerce Control List (CCL). However, fully automatic firearms will remain covered by Category I(b).

Additional notable changes to Category I are as follows:

- Paragraph (a) will now cover firearms that use caseless ammunition.
- Paragraph (c) will now control firearms that are specially designed to integrate automatic tracking and fire control technology.
- Silencers and sound suppressors will remain covered by paragraph (e), with the exception of flash suppressors, which are being transitioned to the CCL.
- Rifle scopes are being completely removed from the jurisdiction of the ITAR, except those captured by USML Category XII.
- Magazines are being transitioned to the CCL, unless capable of holding more than 50 rounds, in which case they remain subject to paragraph (h). All specially designed parts and components for Category I articles will also be controlled by paragraph (h) rather than being classified as significant military equipment (SME). Frames, barrels, slides, sears, receivers and bolts remain in paragraph (g) only if specially designed for the new list of Category I firearms.
- Paragraph (x) is being added to Category I to permit ITAR licensing of EAR-controlled items, provided they are used in or with Category I defense articles.

Category II

Many of the “catch-all” provisions previously included in Category II (e.g., paragraph (j))—which captured a broad range of products—are being replaced with more limited lists of specific items that remain subject to ITAR control.

Other notable changes to Category II include the following:

- Engines specially designed for self-propelled guns and howitzers are being transitioned to the CCL.
- Items formally covered under paragraph (g), which controlled tooling and equipment specifically designed to produce Category II defense articles, are being moved to the CCL under Export Control Classification Number (ECCN) 0B602.

- Certain aircraft gun interface units will now be covered by Category II.
- Test and evaluation equipment and test models specially designed for items in Category II—formerly controlled by paragraph (h)—are being transitioned to the CCL under ECCN 0B602.
- Technical data shifted to the CCL will still be covered by Category II if classified.
- Antique large caliber weapons will no longer be ITAR-controlled.
- Paragraph (x) is being added to Category II to permit ITAR licensing of EAR-controlled items, provided they are used in or with Category II defense articles.

Category III

Most ammunition for firearms under .50 caliber is being moved to the CCL, with a few exceptions. Additionally, and as with Category II, the “catch all” provisions are being replaced with positive lists. Paragraph (x) also is being added to Category III to permit ITAR licensing of EAR-controlled items, provided they are used in or with Category III defense articles.

The following are some of the defense articles that will remain subject to the USML:

- Belted or linked ammunition of any caliber
- Certain caseless ammunition
- Tracer ammunition with a peak radiance above 710 nm
- All ammunition for Category II defense articles
- Projectiles made from steel, tungsten, or beryllium copper alloy
- Cartridge links and belts
- Projectiles that are tracer, incendiary, or explosive

EAR CHANGES

Most of the items removed from the USML are being added to new ECCNs in Category 0 of the CCL. Former USML Categories I and III items are being moved to new “500 series” ECCNs due to their dual civilian/military end-uses, while former USML Category II items are being added to new “600 series” ECCNs because of their inherent military function.

Highlights of the BIS rule include:

- The commercial export of completed firearms listed on the CCL will require a license from BIS.
- Numerous license exemptions previously unavailable under the ITAR are now available for products transitioning to the EAR (e.g., an exception is available for the temporary export of 75 firearms or less for a demonstration or exhibition), and some firearms parts and components will no longer require an export license if certain conditions are met.

- Components and parts that have dual application to both fully automatic and semiautomatic firearms will be controlled by the EAR.
- The online posting of 3D gun printing technology will require a BIS license, but only when related to “technology and software in an electronic format, such as AMF or G-code, that is ready for direct insertion into a computer numerically controlled machine tool, additive manufacturing equipment to produce the firearm frame or receiver or complete firearm.”
- Although the EAR does not have a dedicated license type for temporary exports, if specified on an application, a BIS approval can authorize outbound and inbound clearance for the temporary export/import of firearms and related items.

Overall, the final rules will reduce the regulatory burden on firearms manufacturers and exporters previously imposed by the ITAR. Examples of this relief include:

- Gunsmiths and manufacturers of non-fully automatic firearms as well as many ammunition companies will no longer need to maintain a current ITAR registration (which includes paying the annual \$2,250 ITAR registration fee).
- There is no parallel control in the EAR for “defense services” as they are defined in the ITAR. As such, many services associated with semiautomatic and non-automatic firearms will no longer require a license.
- Dummy ammunition will be classified as EAR99 (unless belted or linked).
- Firearms exporters now covered by the CCL will no longer need to provide congressional notification, even when the value of the shipment exceeds \$1 million USD.
- Purchase orders will not need to be included in BIS export applications.
- Unlike with DDTC licenses, law firms and third parties are able to apply for BIS export licenses on behalf of their clients.
- ITAR Part 130 reporting requirements for payments of commissions and political contributions do not apply to the export of EAR items.

Although many firearms and ammunition companies will experience fewer regulatory hurdles, it is important to keep in mind that navigating the EAR, which requires a fact-specific analysis for each transaction, can be challenging. The new rules also likely will require modifications to existing export compliance programs, policies, and procedures, particularly for companies that historically have operated primarily or exclusively in the ITAR space.

Wiley has unparalleled export control and national security experience. Should you have any questions regarding these new rules, please do not hesitate to contact one of the attorneys listed on this alert.