



F.A.I.R. TRADE GROUP

FireArms Import/Export Roundtable

May 24, 2016

VIA FEDEX

Ms. Sue Gainor
Director
Office of Defense Trade Controls Compliance
U.S. Department of State
PM/DDTC, SA-1, 12th Floor
2401 E Street, NW
Washington, D.C. 20037

Re: Petition for Reduction in ITAR Registration Fees

Dear Director Gainor:

The FireArms Import/Export Roundtable Trade Group (“F.A.I.R.”) submits this petition to request the U.S. Department of State, Directorate of Defense Trade Controls (“DDTC”) amend the registration and fee requirements currently prescribed under 22 C.F.R. Chapter 1, Subchapter M. Part 122.

F.A.I.R. is a nonprofit organization dedicated to protecting the interests of the firearms and ammunition import and export communities. F.A.I.R. works with many U.S. government agencies, including DDTC, the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), and the Department of Homeland Security, to provide solutions to the concerns of F.A.I.R. members. Our membership includes domestic manufacturers and exporters of firearms, ammunition, parts and components therefor, and other defense articles who are required to register with DDTC annually. Such members provide equipment to state law enforcement agencies and the military who require such items to carry out their public safety and national security missions, and also sell the articles they manufacture to U.S. distributors for general commercial sale.

I. History of Changes to Registration and Fees

Over the years, DDTC has amended the International Traffic in Arms Regulations (“ITAR”) to adjust the requirements for registration and associated fees. For purposes of this Petition, we will review the changes over the last twenty years.

In 1997, DDTC¹ amended the ITAR to update the registration requirements and increase fees. 62 Fed. Reg. 27497 (May 20, 1997). Prior to this change, a person required to register could register for up to five years, and the fees ranged from \$250 for one year to \$1,000.00 for five years. 22 C.F.R. § 122.3(a) (Apr. 1, 1997). A person required to register could choose a registration period

¹ For simplicity, we refer to DDTC throughout this petition, even though prior to 2005 the agency’s official name was the Office of Defense Trade Controls.

from one to four years, and fees ranged from \$600 for a one-year registration up to \$2,200 for a four-year registration. The rationale for increasing fees at this time was to bring the fee structure “in line with the costs of administering registration.” *Id.* at 27497.

In 2004, DDTC again revised the registration structure and associated fees. At this time, DDTC amended the ITAR to decrease the maximum registration period from the existing four-year structure to a two-year maximum. Fees were also adjusted to make a one-year registration \$1,750 and a two-year registration \$3,500. The rationale provided in the *Federal Register* announcing the Interim Rule was that the fees had not been adjusted since 1997. 69 Fed. Reg. 70888, 70888 (Dec. 8, 2004). This fee structure remained in place for the next four years.

On January 22, 2008, the White House issued National Security Presidential Directive/NSPD-56, which mandated the commitment of additional financial and other resources, as well as procedural reforms, to expedite the processing of export license applications for items controlled by the U.S. Munitions List.² Specifically, the President required the State Department to initiate a mechanism that would allow up to 75% of DDTC’s operations to be ultimately self-financed. Pursuant to NSPD-56, DDTC issued a Proposed Rule seeking public comment on a new three-tiered fee structure, which included a new per-license application fee calculation and changed the registration period to an annual registration. 73 Fed. Reg. 43653 (Jul. 28, 2008). The rationale provided for the changes was to “better align registration fees with the cost of licensing, compliance, and other related activities.” *Id.* at 43653.

Later in 2008, this Proposed Rule was published as Final, creating the three-tiered fee structure and one-year registration period under which we operate today. 73 Fed. Reg. 55439 (Sept. 25, 2008). Again, DDTC noted the changes to the registration fees were implemented to keep up with the cost of licensing, compliance, and other related activities. *Id.* at 55439. In its Comment Analysis, DDTC stated in response to comments received in opposition to the raise in fees, “*registration fees are collected and utilized in accordance with the AECA. The President has directed the Department of State to implement a series of improvements to its export licensing system to make it more timely, predictable, and transparent.*” *Id.* Towards that aim, DDTC stated the registration period had been changed to an annual registration to provide DDTC with a revenue stream that reflects its costs. *Id.* DDTC indicated it had taken into consideration small businesses that utilize only limited Department resources, and that DDTC would consider revisiting multi-year registrations once it had experience with the single-year fee structure. *Id.*

Finally, in 76 Fed. Reg. 45195 (Jul. 28, 2011), the ITAR was amended to require electronic payments, and in October 2013, the ITAR was amended to remove the description of fees within Part 122 and add a reference to DDTC’s website for fee information. 78 Fed. Reg. 52680 (Aug. 26, 2013). Since this time the registration period and fee structure has remained steady.

² Text of NSPD-56 available at: <http://fas.org/irp/offdocs/nspd/nspd-56.pdf> (last visited May 24, 2016).

II. Current Law and Regulations

The Arms Export Control Act (“AECA”), 22 U.S.C. § 2778(b)(1), requires any person engaged in the business of manufacturing defense articles to register with DDTC and pay a fee. The AECA goes on to limit how such fees collected may be spent. Specifically, those funds are to be used only for “contract personnel to assist in the evaluation of munitions control license applications, reduce processing time for license applications, and improve monitoring of compliance with the terms of licenses” and “the automation of munitions control functions and the processing of munitions control license applications, including the development, procurement, and utilization of computer equipment and related software.” Id.

The ITAR, 22 C.F.R. Parts 120-130, require “any person who engages in the United States in the business of manufacturing...defense articles” to register with DDTC. 22 C.F.R. § 122.1. Further, a manufacturer who “does not engage in exporting must nevertheless register.” Id.

III. Proposal to Amend Registration Fee Structure

As DDTC now has had several years to gain experience with the single-year fee structure, F.A.I.R. believes it is timely to request DDTC to consider revisiting its registration requirements. Specifically, F.A.I.R. proposes DDTC amend the registration fee structure to create a flat, per-license application fee that applies equally to all sectors of the industry. We believe such a structure would create a more transparent and level playing field as well as improve agency administration.

Under the current fee structure, many of our members or their vendors find themselves required to register with DDTC simply because they engage in the business of manufacturing defense articles. Typically, the only interaction such companies have with DDTC is on a yearly basis when they submit their annual registration renewals. Under the current fee structure, the expense to these businesses is a set fee of \$2,250 per year, even though they may not submit to DDTC any applications for licenses or other approvals. There is no relief for the high registration fee despite the fact that these companies do not add to DDTC’s cost of administering its licensing or compliance programs. Because manufacturers of defense articles who engage solely in domestic sales do not utilize DDTC’s licensing or administrative resources outside of the registration process, the current tiered fee structure places an unfair financial burden on this industry sector.

In addition to DDTC registration requirements, companies whose manufacturing activities fall under the jurisdiction of the Gun Control Act must obtain a license from ATF, 18 U.S.C. § 923(a), resulting in duplicative registrations and associated fees for the same activities. ATF charges a fee to obtain such a license, however those fees, which range from \$30 to \$3,000, are significantly less than the current ITAR registration fees, and the ATF licenses are issued for a period up to three years. Id.

It is also our understanding that DDTC's case load has decreased significantly in the wake of Export Control Reform, from more than 86,000 applications in 2012 to 44,607 in 2015. See, e.g., Directorate of Defense Trade Controls Office of Licensing presentations at Bureau of Industry and Security Update conferences in 2014 and 2015. In light of the ongoing revisions to the U.S. Munitions List and removal of a large number of articles from State Department jurisdiction, we presume the number of license application submissions will continue to decrease. This dramatic reduction in DDTC's case load and the presumed corresponding reduction in the burden on the agency's resources further justifies our request for a revision to the DDTC registration fee structure.

Presuming DDTC considers a registration submission to be an "application" that it must adjudicate, starting the second year of registration DDTC already applies a per-license fee structure (11 applications x \$250 = \$2,275). However, it is not clearly identified as such. F.A.I.R.'s proposal simply streamlines the current system and eliminates the exorbitant fee placed on current "Tier One" companies, who arguably place little to no burden on DDTC's resources but must pay an unfair portion of fees.

Because the actual fee structure is no longer embedded within the text of the ITAR, we do not believe that revising the fee structure would require DDTC to amend the regulatory text of 22 C.F.R. § 122.3. Our proposed changes to the current registration fee structure are as follows:

The fee for new registrations and registration renewals is \$250 per year for all companies engaged in the manufacture, export, temporary import, or brokering of defense articles or defense services.

A fee of \$250 will be assessed on each authorization on which DDTC has taken final action. Authorizations used to calculate this fee include DSP-5, -6, -73, -74, -61, -62, -85s, -53s, -119s, and agreements and their amendments. Cases returned without action and denied cases are not included in the fee calculation. Submissions required under 22 CFR 123 through 126 which do not require response from DDTC (e.g., sales reports) are not counted when determining the registration fee, nor are disclosures or requests for a commodity jurisdiction determination. To insure fairness to registrants who may have many applications but all of a low value, there is a provision for a reduced fee if the fee calculation above is greater than 3 percent of the total value of all of their applications. In such cases, the fee will be 3 percent of the total value of all applications or \$3,000, whichever is greater.

We believe the proposed changes above would result in a more equitable distribution of DDTC's costs associated with licensing, compliance and other related activities.

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Thank you for considering this petition. If there are any questions about our proposal or a need for additional information, please do not hesitate to contact me at 202-587-2709, or execdir@fairtradegroup.org.

Sincerely,

//s//

Johanna Reeves
Executive Director