

# PUBLIC SUBMISSION

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**Docket:** DOS-2017-0046

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-2430

Comment on DOS-2017-0046-0001

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## Submitter Information

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## General Comment

The proposed ITAR revision for firearms and ammunition promises little, and risks much. As an analyst of the global arms trade and weapons proliferation for thirty years, I recognize the transformative power of regulatory reform. But this is something else. The proposed revisions promise short-term benefits, which seem unlikely to amount to much in an already competitive global market. That makes this deregulation for the sake of deregulation itself. Meanwhile, the change unleashes three forces certain to accelerate long turn American industrial decline and loss of influence over global consequences.

First, they show that the United States no longer will set global normative standards for all form of arms transfers and non-proliferation. Previously the United States Government has shown it will not further tighten restrictions. As the first outright relaxation of oversight standards in arms exports in over fifty years, the change marks a switch in policy dating from the Kennedy Administration.

Second, as the dominant player in global small arms trade, the United States has the most to lose from further loosening. As other countries emulate Americas relaxation of restrictions, not only will there be more firearms reaching more hotspots, but we can be certain the United States will see its share of a more competitive market decline. Other manufacturing countries, with lower wages and more aggressive export subsidies, are more likely to reap the seeds sown here.

Third, the change marks a fundamental shift in the nature of arms export oversight. By reducing the role of the US Government, it leaves regulation exclusively to the recipient government. This shifts the burden

of proof in international human rights and state oppression, from outside powers with no direct interest in the outcome, to the recipient governments, governments that are often guilty of using imported weapons in appalling or frightful ways, ways that would be completely illegal in the United States.

**From:** [Josh Rowe](#)  
**To:** [DDTCTPublicComments](#)  
**Subject:** ITAR Amendment – Categories I, II, and III  
**Date:** Friday, May 18, 2018 6:15:24 PM

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To whom it may concern,

I would like to submit my opinion concerning the proposed regulatory changes that would facilitate the move of select firearms and related items from the purview of the DDTC/ITAR to the Department of Commerce. I fully support the proposed changes although I do believe they should go further. In my opinion, there is no reason for a business to register with DDTC as a manufacturer of military goods at all unless said business is actually a) actively doing business with a military entity or b) in the business of, and actively engaged in, import and export activities.

The purpose of the ITAR is to allow the DDTC to limit the export of proprietary or sensitive military technologies and to establish a chain of custody for such information and products. The purpose of requiring registration of certain companies is to have a ready listing of those businesses engaged in the manufacture of goods whose likely end user is a military or other foreign customer whom DDTC/DoS finds qualified to possess such items. While there is no doubt having the ability to track these items is of the utmost importance to our national security, the overwhelming majority of licensed firearms manufacturers in the US do not, and likely will never produce a single item for export. Should a foreign customer become interested in acquiring an item, an export permit from DoS would be needed regardless of registration status and I see no reason why registration could not be completed on an as-needed basis. Requiring manufacturers of even limited types of firearms to pay the more than \$2k per year tax (registration fee) simply for the privilege of being on a list of companies that may possibly make a product that might at some point be of interest to a military or foreign entity is absurd. Moreover, there is already a full listing of every Federal Firearms Licensee (FFL) posted and available, for free, on the BATF website; a clear duplication of government services. In short, I completely support the proposed changes and very much hope that even more progress can be made to limit the needless expense of maintaining a duplicate registration for both the government and the businesses in question.

As a concerned US citizen and a registered voter in the state of Pennsylvania, I do hope sensibility prevails and that we, as a Nation, continue toward a smaller, more efficient government. Thank you for your time.

Regards,

**Joshua D. Rowe, Gunsmith**

Allegheny Arms & Gun Works

<http://alleghenyarms.com>

412-409-2925

**From:** [Americans Against Gun Violence](#)  
**To:** [DDTCPublicComments](#)  
**Subject:** ITAR Amendment—Categories I, II, and III.  
**Date:** Monday, July 9, 2018 11:32:48 AM

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Dear State Department:

Americans Against Gun Violence opposes the transfer of oversight for regulation of firearms exports from the State Department to the Commerce Department, as proposed by the Trump Administration in the ITAR amendment, categories I, II, and III. The new proposed changes would have numerous adverse effects, including, but not limited to, the following:

- Reclassifies semi-automatic assault rifles as “non-military”, despite their use by U.S. troops, their use by state and non-state groups in armed conflicts, and their prohibition for civilian possession in many countries.
- Eliminates Congressional oversight for important gun export deals.
- Transfers the cost of processing licenses from gun manufacturers to taxpayers.
- Removes statutory license requirements for brokers, increasing risk of trafficking.
- Reduces or eliminates end-use controls, such as State Dept’s Blue Lantern program, and by eliminating registration of firearms exporters, a requirement since the 1940s.
- Enables unchecked gun production in the U.S. and exports abroad by removing the block on 3D printing of firearms.
- The Commerce Department does not have the resources to enforce export controls, even now.
- Reduces transparency and reporting on gun exports.
- Transfers gun export licensing from agency with mission to promote stability, conflict reduction, and human rights, to an agency with mission to promote trade.
- Firearms are used to kill a thousand people every day around the world in acts of organized crime, political violence, terrorism, and human rights violations. They should be subject to *more controls, not less*.

The ITAR amendments proposed by the Trump Administration are clearly an effort to boost lagging domestic gun sales without regard to the safety of civilians in other countries. The epidemic of gun violence in the United States is a national disgrace. We should not be in the business of exporting this epidemic abroad.

Yours truly,

Bill Durston, MD

President, Americans Against Gun Violence

(916) 668-4160 / (888) 286-8122



DATE: June 14, 2018

TO: Directorate of Defense Trade Controls  
U.S. Department of State  
[DDTCTPublicComments@state.gov](mailto:DDTCTPublicComments@state.gov)

and

Regulatory Policy Division  
Bureau of Industry and Security  
U.S. Department of Commerce  
Room 2099B  
14th Street and Pennsylvania Avenue NW  
Washington, DC 20230

FROM: Adotei Akwei, Amnesty International USA, Washington DC

I am writing on behalf of Amnesty International-USA to comment on proposed changes to the *International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III* issued by the Department of State and proposed regulations for the *Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML)*, both of which were published in the Federal Register on May 24, 2018.

As a global civil society organization focused on the promotion and protection of human rights, Amnesty International does not oppose the arms trade per se but calls for strong legally-binding controls to prevent arms being used for serious violations of international human rights and humanitarian law. We do document

the human rights impact of the irresponsible arms trade, raising concerns or calling for specific transfers that pose significant human rights risks to be halted.

Our comments and questions about the proposed changes to International Traffic in Arms Regulations and the Export Administration Regulations, thus, are all conveyed with potential human rights consequences in mind. In particular, we are concerned that some of the proposed changes weaken existing controls on transfers, increasing the risk that irresponsible brokers of small arms and light weapons could evade regulation, and arms will be diverted to states or non-state actors with poor human rights records. There is further risk of undermining US laws restricting transfers to foreign military units that have committed gross violations of human rights. Amnesty International has for many years called attention to the risks associated with untrammeled export of small arms and light weapons around the world. These arms have been associated with the deployment of child soldiers and the rise of insurgent groups. They are easier to divert than larger weapons and often end up in the illicit market.

The proposed changes to Categories I-III of the ITAR introduced as part of the Export Control Reform Initiative would transfer some specific and completely operable military-style semi-automatic weapons from the USML to the CCL and thereby affect some statutory controls on what are now considered defense articles. We do not believe that the line drawn between automatic and semi-automatic is as clear as the proposed regulations would suggest, and accordingly we are concerned that the changes would significantly diminish Congressional oversight of the transfer of these weapons.

Below we have elaborated and itemized our concerns for each set of proposed changes.

**Comment on changes to ITAR proposed by Department of State and relevant to the changes proposed for the EAR/CCL.**

1. Our principal concern here is with the risk of proliferation and diversion that could be exacerbated by the transfer of semi-automatic weapons to the CCL from the USML, where such weapons currently meet the statutory definition of “defense article” and are subject to a number of oversight mechanisms. The term “defense article” is used explicitly in several statutes to require controls on brokering, Congressional notification, and inclusion of an item on the US Munitions Import List controlled by the Bureau of Alcohol, Tobacco and Firearms. In addition, semi-automatic weapons are currently included as defense articles in Directorate of Defense Trade Control’s annual 655 report and are currently included, as defense articles, in the definition of security assistance (22 USC 2014 and 22 USC 2304). The explanatory text accompanying the rules proposed by the State Department did not comment on the ancillary effect of removing semi-automatic weapons from the USML, but the implied changes are of concern to us. Several of these concerns are elaborated below.
2. Brokering Laws. The proposed changes to Categories I, II and III mean that brokers of semi-automatic weapons and related ammunition will be exempt from registration and licensing that is currently triggered by their inclusion as defense articles on the USML. On many occasions over the past two decades, human rights advocates have called attention to national brokering laws as a weak link in the chain of efforts to curtail illicit market transfers of small arms and light weapons. [See Amnesty International’s 2010 report, “[Deadly Movements](#).”]

Since 1996, US brokering laws have been seen among the strongest in the world. They apply to US agents wherever they are located as well as to foreign nationals operating from within the US; and they cover the full range of facilitating activity--including finance, insurance, transport and

trans-shipment (freight-forwarding). The US statutory provisions on brokering are robust, but their application is directly and specifically linked to the USML. Regulatory authority over brokers in the Export Administration Regulations that house the CCL is without a clear statutory basis. Consequently, we are concerned that moving semi-automatic weapons and related ammunition to the CCL – and simultaneously *removing* them from the USML – will lead to the US government relinquishing its regulatory authority over brokers of these weapons. This is of particular concern because many of the proposed changes to Categories I-III pertain to completely operable weapons or ammunition, and not simply components or software.

We agree with [the State Department](#)'s past assessment that establishing controls over brokering activity is a major step towards blocking unauthorized and illicit arms transfers that have fueled so many conflicts and serious human rights violations around the world. In some [well-known cases](#), states have been unable to prosecute notorious arms traffickers because local brokering laws were insufficiently robust. We strongly support the current requirement for arms brokers to be registered and licensed before arranging deals to transfer these small but still deadly weapons. For that reason, we oppose transferring semi-automatic weapons and ammunition to the CCL until and unless the continuing application of this requirement can be assured.

3. The proposed changes do not appear to be in line with established Wassenaar Categories I-III. Semi-automatic weapons are included in Wassenaar ML1 explicitly as munitions, with exceptions for smooth bore weapons used in hunting and sporting. From descriptions in the Wassenaar Munitions List, it seems clear that the intention was to differentiate between military and security items, on one hand, and dual-use items on the other. Semi-automatic weapons used by peacekeepers, military, and

police are intended to be controlled as munitions. The proposal to move semi-automatic firearms and large caliber rifles to the 500-series on CCL does not appear to be in line with this designation.

Moreover, we are concerned that the proposed changes may result in increased circulation of plans for non-automatic weapons produced by 3D printing technology, and this may be at odds with Wassenaar expectations, at least with regards to Wassenaar Best Practices Guidelines on Small Arms and Light Weapons. We are concerned about possible weapons proliferation from 3D printing. We took note of the well-publicized 2012 case where the State Department invoked ITAR (and by extension the USML) to oblige a manufacturer to remove plans for a 3D printable gun from the internet. The Fifth Circuit Court upheld the State Department's view that the device in question was a "defense article" covered by ITAR, but we are concerned that the case might have ended differently if the 3D gun were considered a CCL-500 item rather than a defense article included on the US Munitions List. From our perspective, this story illustrates the grave dangers of uncontrolled arms proliferation. The combination of internet dissemination and do-it-yourself 3D production is problematic in that the government has no knowledge of or control over the producer or end-user or the purpose to which the weapons will be put. Permitting such transactions would be a significant step backwards in normative development and contrary to US policy over past 25 years.

4. Registration and End Use Controls (Blue Lantern). The fact that manufacturers (and brokers) of semi-automatic weapons would no longer be required to register before applying for a license presents an additional concern. As we understand it, registration documents often provide regulators with important information during the licensing phase, and we are concerned that under the new rules the regulators at Commerce would not have access to the same background information that DDTC now uses

in the early stages of its monitoring and investigation. Moreover, we are concerned that Blue Lantern investigations would exclude transfers of semi-automatic weapons.

5. Waiting period before implementation. A sufficient amount of time should be allowed for Congress to enact statutory changes to address gaps noted above.

**Additional comments on CCL rules proposed by Department of Commerce.**

6. It appears that the new 500-series number would add specificity to reports required by the UN and the Wassenaar Arrangement, and that would be welcome. However, Amnesty International has concerns about changing the designation of semi-automatic weapons so as to exclude them from consideration as “defense articles,” elaborated in comments to the State Department above.
7. While some of the weapons that are proposed for inclusion on the CCL are commercially available in the US, that is not the case globally and – increasingly – state governments in the US seek to limit their sale. In recent months many commercial outlets have discontinued sales of semi-automatic assault weapons, and the proposed rule goes in the opposite, and wrong, direction. Seventeen American states have proposed a total of 56 bills to regulate or ban the sale of assault weapons in the 2018 legislative season.

8. Amnesty International generally supports strong oversight measures for arms transfers and from that perspective, we welcome detailed digital record-keeping requirements (serial number, model, caliber, and manufacturer) and increased enforcement of end-use controls. However, given the increase in license applications shifted to Commerce combined with the absence of information currently gained through the registration procedure, we are concerned at the likelihood that increased workload without commensurate resources will actually result in less oversight than at present under authority of the State Department.

Thank you for your attention to our concerns.

Sincerely,



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Deputy Director Advocacy and Government Relations  
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# PUBLIC SUBMISSION

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Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-2899

Comment on DOS-2017-0046-0001

## Submitter Information

**Name:** Anonymous Anonymous

## General Comment

After reviewing the proposed regulations under the Federal Register for the revision of Category 1, we have noticed some irregularities in the overall objective of the transition.

Industry has been told that the shift from USML to CCL would be beneficial for the following reasons.

1. No export fees
2. Less Documentation For Exports of Commercial Type products

The issues, which are not clearly addressed in the Federal Register, are listed below.

In the proposal on Page 24198, titled Revision of Category 1, the FR indicates that items, which are inherently military will continue to be controlled under the USML. One could argue that inherently military can be applicable to any modern firearm depending on the End Use of the defense article. An End User in country X for example can use a commercial product for military applications regardless of original design and manufacture of the product. What will be the determination for the split between USML and CCL for an inherently military firearm?

Secondly, is Category I(G). I(G) will continue to cover many parts for commercial firearms such as Bolt Carriers, Slides, and Sears, which can be interchangeably used by commercial and military firearms. If a commercial customer wants to order a semi-automatic rifle and parts, such as replacement bolt carrier group or a upper receiver, barrel etc., then the applicant has to file an application with Commerce and State Department. This is a huge cost on industry and major cost to Commerce and the State Department. Right now the applicant could just file one application with State Department. The proposal would force applicants to get two different sets of documentation from the Consignee and then submit two applications. The cost associated to submit an application has now doubled since manpower is required to submit two licenses, and the cost to the US Government has increased since two applications now need to

be reviewed by two different organizations. What about firearms such as Glock, Sig Sauer or Beretta etc.? Who will cover the parts since the United States military has used these products in the past? Will third party aftermarket accessories be considered as inherently Military parts and require a State Department license?

DDTC has certain threshold guidelines for case processing times. What is the current, and projected processing times for Commerce to process applications? It is not uncommon for Commerce to staff out cases back to State Department for Referral further adding to the total time for processing. There is little to benefit industry if the average processing time for a case takes longer than current DDTC performance.

In addition, presently DDTC will RWA a case with explanation if there are certain factors contained within the case that may jeopardize national security interests. This allows industry to take corrective measures. What will be the RWA measure with Commerce? One major benefit of having a case RWA with explanation is the case officer has acted as a subject matter expert to accurately decide if a defense article contains features that will not be allowed for export to a certain country or individual. This safety net limits the liability of the applicant. When a case officer can act as a secondary set of eyes, it always is in the benefit of the applicant.

In the proposal on page 24200 under Regulatory Analysis and Notices there is little to indicate if Commerce will implement fees at a later date for applications of export. Although there will be a cost savings to the State Department what will be the cost implications to Commerce? How will Commerce accommodate the influx of applications without charging a fee to hire new personnel? Specifically, on page 24201 the Department of Commerce indicates it is unable to estimate the increase in costs. How will this impact case applications and timelines?

Perhaps, State Department could adopt a sliding fee structure for organizations that do not export or export very little. Under the proposal most manufacturers will still have to register with State Department.

In summation, as the proposal stands, there is blurred lines between inherently military items, many applicants will need to file two export licenses for parts and firearms with Commerce and State, increase in processing times, liability, and potential fees later on. We support changes in making the process more efficient, more effective and giving US Companies more advantageous positions to be competitive internationally. Many companies will benefit but many companies will also be significantly disadvantaged by the proposed changes.

# PUBLIC SUBMISSION

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Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-3126

Comment on DOS-2017-0046-0001

## Submitter Information

**Name:** Anonymous Anonymous

## General Comment

I am an individual who happens to work for a USML I firearms manufacturer, & am one of the principal members of its Compliance Department. I am not authorized to speak on behalf of my company, but will comment as an individual who has had "direct contact" with the ITAR, 7 days a week for the past 6 years. In the years that I have interfaced with the firearms licensing unit of the DDTC for my applications, I have had relatively few problems and have been witness to some amendments which have resulted in positive changes. In terms of the everyday reality of working within this system, the ability to track the status of licenses in ELISA and if need be communicate directly with the licensing agent assigned to the application has been a productive process. I have also learned a great deal from working with the personnel of the DDTC unit charged with handling Category I firearms and accessories applications. The unit has proven to be both knowledgeable and helpful in achieving my licensing goals. Other than the occasional EAR99 shipment, my involvement with the BIS regulations has been minimal and I have yet to utilize the SNAP-R system, so I cannot directly judge exactly what real improvements would result from this migration, if any. The devil you know is often preferable to the one you don't.

Given that the licensing process under this proposed migration from DDTC to Commerce will still involve inter-agency review and the same staffing out to DOD and State Dept. Agencies, I don't see a clear indication of improvement, especially not in terms of processing times. This change represents a shift from one entity receiving an application to another. (Yes, we will save a few thousand dollars in registration fees.) The metric cited of 43.8 minutes for a BIS application vs. 60 minutes for DDTC application and the extrapolations of that metric to conclude a result of major savings fails to capture the true cost of the existing process or any nuances of how the process actually works. It certainly does not address the substantial burden created by the proposed the data capture for AES filing which will be amended to include make, model, and serial number.

The migration of non and semi-automatic firearms from USML I to BIS 0A501 will also initially create a substantial burden in terms of time and money for reclassifying product, retraining personal and revising all the SOPs associated with our exporting processes. I am not seeing a demonstrated case of either paperwork reduction or person-hour savings. Complicating the AES process at the end of the exporting

chain is going to increase burdens for companies and place more burden on an already overloaded CBP. I do see areas where relief could and should be granted. While the change from the fee-based registration and licensing structure of State to the no-fee structure of Commerce, will provide much needed relief for smaller companies, I have to believe that simply changing the definition of a manufacturer by including a minimum size requirement for registration could easily produce the same result and reduce the number of small businesses which are currently being caught in the net of the existing manufacturing definition and its fees which they cannot easily afford.

Also, major improvement could be easily achieved by raising value of the exemption in 123.17(a) from \$100 to \$500. While the proposed changes within LVS do increase this amount, they then reduce it by shifting the definition of value from wholesale to selling price, thus giving with one hand while taking away with the other. Permitting the export of receivers and breech mechanisms could be achieved by simply amending the "Canadian Exemption" within the ITAR. Also helpful, would be an increase in wholesale value from \$500 to \$1000 for Canada. The proposed LVS change with its "selling price" definition is not genuine relief.

I appreciate the reduced controls on technical data and the elimination of the concept of defense services which would be achieved by the migration, but given that there has been relatively little substantive change in basic firearms technology over the decades, a simple amendment to or exemption from the existing controls for firearms technology within the ITAR could likely achieve the same result without having to totally move to a new process. (I have watched competitors place manuals online-which we believe to be in violation of ITAR regulations-without repercussion.) A change in this area would level the playing field and eliminate an unfair competitive advantage and also improve our ability to market and repair firearms. Likely this type of improvement could be achieved without a major overhaul of the entire system.

In conclusion, speaking as someone who deals with ITAR functionality, I am quite certain positive relief could be achieved by judicious and minimal amendment to what already exists as opposed to a major overhaul which is certain to create a messy transition.

# PUBLIC SUBMISSION

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Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-1762

Comment on DOS-2017-0046-0001

## Submitter Information

**Name:** Anonymous Anonymous

## General Comment

No, this change in arms regulations must not be approved. For gunsmiths to have to fill out a little paperwork and pay fees is merely inconvenient and a small price to pay to keep military style weapons out of the hands of terrorists and crazies who like to shoot up schools and public places. We need MORE regulation, not less.

**From:** [Steve Baker](#)  
**To:** [DDTCPublicComments](#)  
**Subject:** Re: ITAR Amendment – Categories I, II, and III  
**Date:** Friday, May 18, 2018 6:37:01 AM  
**Attachments:** [The Hearing Protection Act and Silencers.pdf](#)  
[Options to Reduce or Modify Firearms Regulations.pdf](#)

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A few minor corrections to my email below.

1. A Special Occupational Taxpayer stamp is not required to manufacture or sell magazines over 50+ rounds nor is a FFL required as it is an accessory, not a firearm. The SOT and FFL are required only for manufacturing or selling NFA firearms and suppressors.
2. By extrapolation, there are likely over one million suppressors (silencers) lawfully in civilian hands per the ATF's NFA registry database (the NFRTR). The attached Washington Post article is focused on civilian use of firearms suppressors and their history in the US and in Europe. It should further illuminate the fact that firearms suppressors are definitely "not inherently for military end use." Their wide availability in civilian markets in European countries further negates any claim that suppressors somehow contain any critical military or intelligence advantaged technology that would justify continued inclusion on the USML.

On May 18, 2018, at 3:23 AM, Steve Baker <[sbaker@thebakerfamily.org](mailto:sbaker@thebakerfamily.org)> wrote:

Suppressors and 50+ round magazines are not inherently for military end use and are commonly available in commercial retail gun stores that have paid the Special Occupational Tax Stamp. These stores are common in the over 40 states that do not have Prohibition-era laws prohibiting silencers. It is unclear why the Department of State would remove semi-automatic firearms from the USML but retain the burdensome registration fee for companies that manufacture suppressors and high-capacity magazines - many of which DO NOT export any of their products. In aggregate, civilian sales of these items over the last couple of decades far outnumber contract sales of these accessories to the US military or the militaries of other countries. In fact, most small companies that manufacture these items sell them exclusively into domestic markets for lawful use by private parties. Sound suppressors are becoming widely accepted by civilian gun owners and despite the current \$200 transfer tax and burdensome paperwork, they are in common use at rifle ranges in the above 40+ states. They are also legal in a growing number of states for use in hunting since they reduce the likelihood of hearing loss in hunters and in their animal companions afield.

The decision to retain 50+ round magazines and sound suppressors on the USML seems to contradict the Department of State's stated goal to "revise the U.S. Munitions List so that its scope is limited to those defense articles that provide the United States with a critical military or intelligence advantage or, in the case of weapons, are inherently for military end use."

President Trump has required federal agencies to take a long, hard look at the efficacy of their regulations and to take action to roll back or eliminate unnecessary or obsolete regulations. To this end, the Bureau of Alcohol,

Tobacco, Firearms and Explosives put forth a framework white paper for firearm deregulation options that the Bureau views as not compromising its public safety mission. Part of the deregulation framework outlined in the ATF's white paper is a long overdue proposal relating to firearm suppressors - removing them from the purview of the National Firearms Act and regulating their manufacture and transfer the same as ordinary Title I firearms under the 1968 Gun Control Act.

The following attached document is authored by Ronald Turk, Associate Deputy Director (Chief Operating Officer) Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). For relevant input related to the proposed ITAR Amendment and firearms suppressors, refer to section 8 as it outlines the ATF's deregulation proposal to treat firearm sound suppressors (silencers) the same as ordinary Title I firearms - the same firearms that the ITAR Amendment proposes to transfer from the USML to the Department of Commerce EAR regime.

Steve Baker  
Arvada, CO

July 6, 2018

To: Office of Defense Trade Controls Policy, U.S. Department of State  
Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce

In Reference to FRN 2018-10366 (State) and 83 FR 24166 (Commerce).

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I am writing to express my opposition to the proposed regulatory changes published in the Federal Register on May 24, 2018, as "[International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III](#)" (DOS\_FRDOC\_0001-4527) and "[Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List \(USML\)](#)" (83 FR 24166). The proposed changes raise significant concerns for me as a parent, as an American citizen and taxpayer, and as someone who has studied and wrote my graduate thesis on the international small arms trade.

As a parent of a young child, I am deeply concerned about the impact that these changes will have on both global and domestic security for the foreseeable future. The proposed changes would greatly diminish oversight of the export of semi-automatic assault weapons, high capacity ammunition clips and training on such military equipment. The suggested changes would make it more likely that these dangerous weapons will end up in the hands of traffickers, terrorists or cartels and used against US service members. This increases the likelihood for greater destabilization and conflict worldwide as well as for these weapons to be trafficked back into the U.S. for nefarious uses here. The new rule also removes the block on 3D printing of firearms. This will facilitate unregulated gun production in the U.S. and abroad by making it possible for anyone, anywhere, with access to a 3D printer to produce a lethal weapon. By effectively eliminating many means to detect firearms, background checks on domestic sales and end-use controls on international exports for such weapons, these changes could generate many preventable tragedies. These proposed changes will create a world that is less safe for my son and other children to grow up in and to live; and therefore should not be adopted.

As an American citizen, I believe that these proposed changes diminish U.S. credibility in the eyes of the international community and compromise our global leadership. The proposed changes call for transferring gun export licensing from the State Department, an agency with a mission to promote stability, conflict reduction, and human rights, to the Commerce Department, an agency with mission to promote trade. In doing this, we are retreating on our global commitment to human rights and acting as though the export of firearms is just another commodity when the impact of these weapons is far more consequential and deadly. Firearms are used to kill a thousand people every day around the world in acts of organized crime, political violence, terrorism, and human rights violations. Research shows that the types of weapons being transferred to Commerce control, including AR-15, AK-47, and other military-style assault rifles and their ammunition, are sought out weapons used by criminal organizations in Mexico and other Latin American countries to perpetrate most of the increasing and record levels of homicides in those countries. The U.S. should not be adopting policies like the proposed changes which amplify this. Rather, we should be working collaboratively, as we have under previous administrations, to find ways to prevent and reduce firearms from being used to carry out human rights violations and crime.

As a U.S. taxpayer, I also find these proposed changes to be fiscally irresponsible. The new rule would transfer the cost of processing licenses from gun manufacturers to U.S. taxpayers. Registration fees that since the 1940s have been used to offset the costs to the government of

tracking who is manufacturing weapons would no longer apply to manufacturers of semi-automatic weapons, and the Commerce Department does not charge any fee for licensing. This means that U.S. taxpayers, such as me, will absorb the cost of reviewing applications and processing licenses rather than the gun exporters that benefit from these sales. In addition, U.S. taxpayers also will need to shoulder the costs of having to build the capacity and expertise of the Commerce Department to properly administer the proposed changes. The Commerce Department currently does not have resources to enforce export controls, even before the addition of 10,000 firearms export license applicants as a result of this rule predicted by Commerce (see Department of Commerce Budget in Brief FY2017, p. 57, <http://www.osec.doc.gov/bmi/budget/FY17BIB/AllFilesWithCharts2.pdf>). The Commerce Department's Bureau of Industry and Security's enforcement office, who would be charged to oversee the new changes, does not have staff in Latin America, Africa, or many other parts of the world and is not equipped to take the same level of preventive measures for end-use controls. In stark contrast, the State Department, who oversees these items while they reside on the USML, has developed extensive data, expertise and institutional relations to implement the Leahy Law for security assistance, which can serve as a critical foundation in both pre-license and post-shipment checks to control and verify end uses and end users. The Commerce Department does not have these resources and developing them will come at a substantial cost to U.S. taxpayers.

Finally, as someone who has studied and researched the international small arms trade, I can confidently say that greater regulation, not less as the proposed rule would enable, is needed to curb the disproportionate impact that these weapons have on fueling conflict, terrorism, and crime around the world. One particularly troubling part of the new rule is its reduction of end-use controls for gun exports. It would eradicate the State Department's Blue Lantern program for gun and ammunition exports, which carries out hundreds of pre-license and post-shipment inspections and publicly reports on them. It also would move license approval out of the department within State that compiles the U.S. Government's information on human rights violations, decreasing the ability to effectively stop weapons licenses from going to international human rights violators. End-use controls also are weakened by removing the registration of firearms exporters, a requirement since the 1940s. Under the current rules, registration of exporters lets the State Department check an exporter's history whenever a manufacturer or broker requests a license for a particular gun export sale. Migrating the licensing to the Commerce Department will remove new exporters and brokers of these firearms from the State Department database, losing an important part of the evidentiary trail that enables the prosecution of arms traffickers.

It is for all the reasons listed above that I urge you to reject the proposed changes and to keep the items currently listed on the State Department-administered US Munitions List (USML) intact.

Thank you for your time and consideration.

Sincerely,

Beth Katz  
Omaha, Nebraska

June 11, 2018

From: Bill Root, billroot23@gmail.com; tel 517 333 8707  
To: DDTCPublicComments@state.gov; and  
BISPublicComments@bis.doc.gov  
  
Subject: ITAR Amendment Categories I, II, and III and  
Related EAR Amendment RIN 0694-AF47

These comments relate the combined ITAR and EAR amendments to USG commitments to multilateral controls. Each of 33 numbered topics is listed in the order that topic appears in the Wassenaar Munitions List (WML). It is then subdivided into three parts, with the following number of examples:

- a 27 US and multilateral texts are either identical or substantially equivalent;
- b 74 US controls omit what WML controls (or WML omits US decontrols); and
- c 165 WML omits what US controls (or US omits WML decontrols).

Part b should either be added to US controls or the US should seek removal from WML controls. Part c should either be deleted from US controls or be proposed by the US to be added to WML.

These three parts omit second order impacts. For example, the number of differences between WML and US would increase exponentially if each difference in a weapon item was counted again when tallying the differences for ammunition, each of the types of components, production equipment, software, and technology related to that weapon difference.

The above a,b,c differences omit 16 examples of “and specially designed components therefor,” which should be deleted from the proposed revised USML for consistency with the Export Control Reform intent to transfer insignificant items to the CCL (identified in topic 31 below).

These comments assume deletion of “specially designed” wherever it appears; use of “required” for software and technology; and a definition of “components” to include parts, accessories, attachments, and associated equipment.

## **1. Caliber**

WML 1      Smooth-bore weapons with a caliber of less than 20 mm, other arms and automatic weapons with a caliber of 12.7 mm (caliber 0.50 inches) or less, as follows

*Note: WML 1 does not apply to:*

- a      *Firearms for dummy ammunition incapable of discharging a projectile;*
- b      *Firearms to launch tethered projectiles having no high explosive charge or communications link, to a range of less than or equal to 500 m;*
- c      *Weapons using non-center fire cased ammunition not fully automatic;*
- d      *Deactivated weapons*

- a      Rifles and combination guns, handguns, machine, sub-machine and volley guns

*Note: WML 1.a does not apply to:*

- a      *Rifles and combination guns, manufactured earlier than 1938;*
- b      *Reproductions of rifles and combination guns, the originals of which were manufactured earlier than 1890;*
- c      *Handguns, volley guns and machine guns, manufactured earlier than 1890 and their reproductions;*
- d      *Rifles or handguns to discharge an inert projectile by compressed air or CO<sub>2</sub>.*

- b      Smooth bore weapons as follows::

b1      for military use

b2      other smooth-bore weapons as follows:

b2a      fully automatic;

b2b      semi-automatic or pump-action

*Note: WML 1.b.2 does not apply to weapons to discharge an inert projectile by compressed air or CO<sub>2</sub>*

*Note: WML 1.b does not apply to:*

- a      *Smooth-bore weapons manufactured earlier than 1938;*
- b      *Reproductions of smooth-bore weapons, the originals of which were manufactured earlier than 1890;*
- c      *Smooth-bore weapons used for hunting or sporting purposes. These weapons must not be for military use or of the fully automatic firing type;*
- d      *Smooth-bore weapons for:*
  - d1      *Slaughtering of domestic animals;*
  - d2      *Tranquilizing of animals;*
  - d3      *Seismic testing;*
  - d4      *Firing of industrial projectiles; or*
  - d5      *Disrupting Improvised Explosive Devices (IEDs).*

*N.B. For disruptors, see WML 4 and I.A.6 on the Dual-Use List.*

WML 2      Smooth-bore weapons with a caliber of 20 mm or more, other weapons or armament with a caliber greater than 12.7 mm (caliber 0.50 inches), projectors ... as follows

- a      Guns, howitzers, cannon, mortars, anti-tank weapons, projectile launchers, ... rifles, recoilless rifles, smooth-bore weapons ...

*Note 2: WML 2.a does not apply to weapons as follows:*

- a      Rifles, smooth-bore weapons and combination guns, manufactured earlier than 1938;*
  - b      Reproductions of rifles, smooth-bore weapons and combination guns, the originals of which were manufactured earlier than 1890;*
  - c      Guns, howitzers, cannons, mortars, manufactured earlier than 1890;*
  - d      Smooth-bore weapons used for hunting or sporting purposes. These weapons must not be for military use or of the fully automatic firing type;*
  - e      Smooth-bore weapons for any of the following:*
  - e1     Slaughtering of domestic animals;*
  - e2     Tranquilizing animals;*
  - e3     Seismic testing;*
  - e4     Firing of industrial projectiles;*
  - e5     Disrupting Improvised Explosive Devices (IEDs);*
- NB     For disruptors, see WML 4 and 1.A.6 on the Dual-Use List.*

USML I.b    Fully automatic firearms to .50 caliber (12.7 mm) inclusive

USML 1.d    Fully automatic shotguns regardless of gauge.

USML II.a    Guns and armament greater than .50 caliber (12.7 mm), as follows:

- a1     Guns, howitzers, artillery, and cannons;
- a2     Mortars;
- a3     Recoilless rifles;
- a4     Grenade launchers; or
- a5     Development guns and armament greater than .50 caliber (12.7 mm) funded by DOD

*Note 1: a5 does not control greater than .50 caliber*

- a      in production;*
- b      subject to EAR; or*
- c      being developed for both civil and military applications*

*Note 2: Note 1 to a5 does not apply to USML items, whether in production or development.*

- 0A501.a Non-automatic and semi-automatic firearms of caliber less than or equal to .50 inches (12.7 mm)
- 0A501.b Non-automatic and non-semi-automatic rifles, carbines, revolvers, or pistols with a caliber greater than .50 inches (12.7 mm) but less than or equal to .72 inches (18.0 mm)
- 0A602.a Guns and armament manufactured between 1890 and 1919.

### **1a Caliber US identical to WML**

- 1-5 WML 2.a/USML II.a1-3 guns, howitzers, cannon, mortars, and recoilless rifles greater than .50 caliber

### **1b Caliber US Omissions from Multilateral Controls**

- 1 US omits WML 1 semi-automatic smooth bore caliber from 12.7 mm to 20 mm.
- 2 US omits WML non-automatic smooth bore caliber from 18 mm to 20 mm.
- 3 WML 2a rifles greater than .50 caliber is broader than:  
0A501.b, which is limited to non-automatic and non- semi-automatic rifles, carbines, revolvers, or pistols between caliber .50 and .72; and
- 4,5 USML II.a5 (and Notes 1 and 2) which applies to developmental guns funded by DOD but not if in production or being developed for both civil and military application;
- 6-10 US omits explicit WML 1.a mention of combined guns, handguns, machine, sub-machine and volley guns
- 11 WML covers more than US by the following differences in decontrols in:  
WML 1a Note b or 1b2 Note *vs.* Note 1 to 0A501  
(Rifles or handguns) (weapons) specially designed to discharge an inert projectile by compressed air or CO<sub>2</sub> omit portions of BB guns, pellet rifles, paint ball, and all other air rifles
- 12-14 WML 1b Note a and b and 2a Note 2 a and b *vs.* 0A501 Note 1
  - a (Smooth bore weapons) (Rifles, smooth-bore weapons and combination guns) manufactured earlier than 1938;
  - b Reproductions of (smooth-bore weapons) (rifles, smooth-bore weapons and combination guns), the originals of which were manufactured earlier than 1890 omit portions of “antique firearms manufactured before 1890 and reproductions thereof, muzzle loading black powder firearms except those designs based on centerfire weapons of a post 1937 design”
- 15,16 WML 2.a anti-tank weapons and projectile launchers.

### **1c Caliber Multilateral Omissions from US Controls**

- 1 WML omits USML I(d) fully automatic shotguns more than .50 caliber.
- 2-4 WML omits 0A501.b explicit mention of carbines, revolvers, or pistols
- 5-17 US covers more than WML by omission of decontrols in Notes for WML1, WML 1.a, WML 1.b.2, WML 1.b, including US covers more than WML by the following differences in decontrols in:
  - a 0A501 Note 1 vs. WML 1a Note b or 1b2 Note:  
(BB guns, pellet rifles, paint ball, and all other air rifles omit portions of (rifles or handguns) (weapons) to discharge an inert projectile by compressed air or CO2
  - b 0A501 Note 1 plus 0A602.a vs. WML 1b Note a and b:  
US decontrol of antique firearms manufactured before 1890 and reproductions thereof, muzzle loading black powder firearms except weapons of a post 1937 design;
  - c 0A602.a guns and armament manufactured between 1890 and 1919 omits portions of WML decontrol of
    - 1 Smooth bore weapons manufactured earlier than 1938;
    - 2 Reproductions of smooth-bore weapons, the originals of which were manufactured earlier than 1890

### **2. Firearms using caseless ammunition**

- WML 1.c weapons using caseless ammunition
- USML I.a firearms using caseless ammunition

### **2a Firearms using caseless ammunition substantially equivalent**

- 6 WML 1./USML I.a

### **3. Firearms to integrate**

USML 1.c Firearms to integrate fire control, automatic tracking, or automatic firing

### **3c Firearms to integrate Multilateral Omissions from US Controls**

- 18 WML omits USML I.c

**4. Detachable**

WML 1.d      detachable cartridge magazines  
WML 2.d      detachable cartridge magazines

USML III.a7    Ammunition for fully automatic firearms or guns that fire superposed or stacked projectiles  
0A501.d        Detachable magazines with a capacity of greater than 16 rounds for 0A501.a or .b

**4b Detachable US Omissions from Multilateral Controls**

17      WML 1.d and 2.d are broader than USML III.a7 or 0A501.d.

**4c Detachable Multilateral Omissions from US Controls**

19      WML omits USML III.a7

**5. Sound suppressors**

WML 1.d      ... sound suppressors or moderators ... for WML 1.a, b, c.

USML I.e      Silencers, mufflers, and sound suppressors ...

### **5a. Sound suppressors US Omissions from Multilateral Controls**

7 WML 1.d/USML I.e Sound suppressors

### **5b. Sound suppressors US Omissions from Multilateral Controls**

18 WML 1.d Sound moderators

### **5c. Sound suppressors Multilateral Omissions from US Controls**

20 USML I.e Silencers, mufflers

21 USML 1.e Sound suppressors for other than USML I

### **6. Mounts**

WML 1.d ... gun mountings for WML 1.a,b,c,

WML 2.c ... weapon sight mounts for military use and for WML.2a;

WML 2.d Mountings ... for WML 2.a,

USML II.h3 ... automatically stabilize aim (other than gun rests).

USML II.j9i Mounts for independently powered ammunition handling systems

0A501.c ... mounting blocks (trunnions) ...

### **6b. Mounts US Omissions from Multilateral Controls**

19-21 WML 1.d, 2.c, 2d are broader than USML II.h3, j9i, and 0A501.c

### **6c. Mounts Multilateral Omissions from US Controls**

22-23 USML II.h3, j9i, and 0A501c omit for I or II or military use.,

## **7. Optical weapon sights**

- WML 1.d ... optical weapon-sights ... for WML 1.a,b,c, except without electronic image processing, with a magnification of 9 times or less, provided not for military use or incorporate any reticles for military use.
- WML 2.c Weapons sights ... for military use and for ML 2.a
- USML II. j2 Sights to orient indirect fire weapons
- 0A501,y3 Iron sights
- 0A504 Optical sighting devices for firearms and components as follows:
- a Telescopic sights;
  - b Holographic sights;
  - c Reflex or “red dot” sights;
  - d Rericle sights;
  - e Other sighting devices that contain optical elements;
  - f Laser aiming devices or laser illuminators for use on firearms, and having an operational wavelength exceeding 400 nm but not exceeding 710 nm, except laser boresighting devices that must be placed in the bore or chamber to provide a reference for aligning the firearms sights.
  - g Lenses, other optical elements and adjustment mechanisms for articles in a,b,c,d,e, or i.
  - i Riflescopes that were not “subject to the EAR” as of (DATE ONE DAY PRIOR TO THE EFFECTIVE DATE OF THE FINAL RULE) and are for use in firearms that are “subject to the EAR.”

### **7b. Sights US Omissions from Multilateral Controls**

22,23 WML 1.d and 2.c omit technical limits in USMLII.j2, 0A501.y3, or 0A504.a-i

### **7c. Sights Multilateral Omissions from US Controls**

25-34 USML II.j2, 0A501.y3, and 0A504.a-1 omit WML 1.d for WML 1.a,b,c or WML 2.c for WML 2.a

## **8. Flash suppressors**

- WML 1.d ... flash suppressors
- USML II.e muzzle flash suppression devices

### **8b. Flash suppressors US Omissions from Multilateral Controls**

24 WML 1.d omits USML II.e “muzzle”

**9. Flame throwers**

WML 2.a ... military flame throwers

USML II.b Flame throwers with a minimum effective range of 20 meters (i.e., whether or not military) plus

0A602.b Military flame throwers with an effective range less than 20 meters

**9c Flame throwers Multilateral Omissions from US Controls**

35 US is broader by covering non-military with minimum 20m range.

## **10. Discharge type and administer electric shock**

0A503 Discharge type arms, non-lethal or less-lethal grenades and projectiles, ... and devices to administer electric shock

### **10c. Discharge type and administer electric shock Multilateral Omissions from US Controls**

36 WML omits 0A503

## **11. Signature reduction**

WML 2.a ... signature reduction devices for 2.a  
 USML II.e: Signature reduction devices for II a, b, or d

### **11a Signature reduction substantially equivalent**

8 WML 2.a/USML II.e

## **12. Liquid propelling charges**

WML 2.a Note 1: WML 2.a includes injectors, metering devices, storage tanks and other components for liquid propelling charges for WML 2.a

### **12b. Liquid propelling charges US Omissions from Multilateral Controls**

25-28 US omits WML 2.a Note 1

## **13. Smoke and flares**

WML 2.b Smoke ... projectors or generators for military use

III.d14 Illuminating flares ...  
 1A984 ... non-irritant smoke flares

### **13b. Smoke and flares US Omissions from Multilateral Controls**

29,30 US omits WML 2.b smoke projectors or generators

### **13c Smoke and flares Multilateral Omissions from US Controls**

37 WML omits III.d14 illuminating flares  
 28 WML omits 1A984 non-irritant smoke flares

## **14. Gas**

WML 2.b ... gas ... projectors or generators and  
 WML 7.e Equipment ... for the dissemination of ... chemical agents

USML XIV.f1 Equipment for the dissemination of chemical agents.  
 1A607.c Equipment for dissemination of riot control agents

### **14a Gas identical**

WML 7.e/USML XIV.f1 and 1A607.c

### **14b Gas US Omissions from Multilateral Controls**

31,32 US omits WML 2.b projectors or generators

## **15. Pyrotechnic**

WML 2.b ... pyrotechnic projectors or generators for military use

USML III.a6 Ammunition employing pyrotechnic material in the projectile base ...  
 d1 Projectiles that use pyrotechnic tracer materials that incorporate any material having peak radiance above 710 nm ...;  
 1A984 ... pyrotechnic articles (excluding shotgun shells, unless the shotgun shells contain only chemical irritants) having dual military and commercial use;

### **15b Pyrotechnic US Omissions from Multilateral Controls**

WML 2.b is broader than 1A984 because:

33 WML omits US exclusion from pyrotechnic articles; and  
 34 US crime control reason is less restrictive than US national security reason applied to other WML- controlled items.

### **15c Pyrotechnic Multilateral Omissions from US Controls**

1A984 is broader than WML 2.b because:

39 articles is broader than projectors or generators; and  
 40 dual military and commercial use is broader than military use  
 41,42 pyrotechnic material omitted from WML

## **16. Signal**

WML 2.b Note WML 2.b does not apply to signal pistols  
 0A503 decontrol arms solely for signal ...use

### **16b Signal US Omissions from Multilateral Controls**

35 0A503 “solely” decontrol is narrower than WML 2.b Note decontrol

## **17. Kinetic energy**

WML III.a	Ammunition for weapons specified by ... WML 12
WML 12.a	Kinetic energy weapon systems for destruction or effecting mission abort of a target
USML II.d	kinetic energy weapon systems for destruction or rendering mission-abort of a target .
WML 12 Note 1.c.	WML 12 includes ... target acquisition, tracking, fire control or damage assessment systems
USML II.j15	Kinetic energy weapon target acquisition, tracking fire control, and damage assessment systems

### **17a Kinetic energy substantially equivalent**

10 WML 12.a/USML II.d  
 11 WML 12 Note 1.c/USML II.j15

## **18. Metal or plastic**

WML 3 Note 1a      WML 3 includes metal or plastic fabrications ...

- USML III.a5 Ammunition, except shotgun ammunition, based on non-metallic cases, or non-metallic cases that have only a metallic base, which result in a total cartridge mass 80% or less than the mass of a brass- or steel-cased cartridge that provides comparable ballistic performance
- d1 Projectiles that use pyrotechnic tracer materials that incorporate any material having peak radiance above 710 nm or are incendiary, explosive, steel tipped, or contain a core or solid projectile produced from one or a combination of the following: tungsten, steel, or beryllium copper alloys;
  - d6 Hardened cores, regardless of caliber, produced from one or a combination of the following: tungsten, steel, or beryllium copper alloy;
  - d8 Non-metallic cases, including cases that have only a metallic base, for III.a5;
- 0A505.x Note 2      0A505.x includes ... metallic cartridge cases, and standard metallic projectiles such as full metal jacket, lead core, and copper projectiles.

### **18b. Metal or plastic parts US Omissions from Multilateral Controls**

36,37 WML 3 Note 1.a omits limits in USML III.a5, d1, d6, d8

### **18c. Metal or plastic parts Multilateral Omissions from US Controls**

43,44 USML III.a5 and d8 non-metallic is broader than WML 3 Note 1a plastic

## **19. Primer**

WML 3 Note 1.a ...WML 3 components include primer anvils

USML III.d10 Primers other than Boxer, Bordan, or shotshell types

Note: III.d10 does not control caps or primers of any type in use prior to 1890.

0A505.x Note 2 05A505.x includes Bordan and boxer primers.

### **19b. Primer Multilateral Omissions from US Controls**

38      US omits primer WML 3 primer anvils

### **19c. Primer US Omissions from Multilateral Controls**

45,46 WML omits USML III.d10 and 0A505.x primers

## **20. Cartridge links and belts**

WML 3 Note 1.a WML 3 includes ...cartridge links for WML 1, 2, or 12

USML III.a2 Ammunition preassembled into links or belts;

USML III.d9 Cartridge links and belts for fully automatic firearms controlled in USML I or II

### **20b. Cartridge links and belts US Omissions from Multilateral Controls**

39,40 US omits cartridge links for non-automatic or semi-automatic firearms...

### **20c. Cartridge links and belts Multilateral Omissions from US Controls**

47 WML omits ammunition preassembled into links or belts

## **21. Anvils, bullet cups, rotating bands**

WML 3 Note 1.a anvils, bullet cups, rotating bands

### **21b. Anvils, bullet cups, rotating bands US Omissions from Multilateral Controls**

41-43 US does not control anvils, bullet cups, or rotating bands

## **22 Safing**

WML 3.a Note 1.b Safing and arming devices, fuzes, sensor and initiation devices  
MTCR 2A1f Weapon or warhead safing, arming, fuzing, and firing mechanisms ...

USML III.d11 Safing, arming, and fuzing components (to include target detection and proximity sensing devices) for the ammunitions in this category

USML IV.h9 Missile and rocket safing, arming, fuzing, and firing (SAFF) components (to include target detection and proximity sensing devices)

### **22a Safing substantially equivalent**

12-15 safing, arming, fuzing, firing WML 3a Note 1b, MTCR 2A1f/USML III.d11, IV.h9

### **22c. Safing Multilateral Omissions from US Controls**

48,49 WML and MTCR omit US target detection and proximity sensing devices

### **23. Power supplies**

WML 3 Note 1.c power supplies with high one-time operational output

- USML II.j14 Prime power generation, energy storage, thermal management, conditioning, switching, and fuel-handling equipment, and the electrical interfaces between the gun power supply and other turret electric drive components of II.d kinetic weapons
- 3A226 High-power direct current power supplies producing over 8 hours 100 V or greater with current output of 500 A or greater and current or voltage stability better than 0.1% over 8 hours
- 3A227 High-voltage direct current power supplies producing over 8 hours 20 kV or greater with current output of 1A or greater and current or voltage stability better than 0.1% over 8 hours.

### **23b. Power supplies US Omissions from Multilateral Controls**

- 44 WML 3 Note 1.c is broader than USML II.j14 and 3A226 and 3A227 by omitting US limits on one time operational output

### **23c. Power supplies Multilateral Omissions from US Controls**

- 50 USML II.j14 includes power supply features other than WML 3 Note 1.c output

### **24. Combustible cases**

WML 3 Note 1.d combustible cases for charges

USML III.d7 ... combustible cases for USML II

### **24b. Combustible cases US Omissions from Multilateral Controls**

WML 3 Note 1.d for charges is broader than USML III.d7for USML II

## **25. Submunitions and terminal guidance**

WML 3 Note 1.e      Submunitions including bomblets, minelets and terminally guided projectiles for WML 1, 2, or 12

USML III.d4 Projectiles ... guided or unguided for USML II

USML III,d5 ... sub-munitions (e.g., bomblets or minelets) ...for USML II

USML III.j13 Terminal seeker assemblies for category III

7A611 Military fire control, laser, imaging , and guidance equipment, as follows:

- a      Guidance or navigation systems, not elsewhere specified on the USML, that are for a defense article on the USML or a 600 series item;
- x      Components, including accelerometers, gyros, angular rate sensors, gravity meters (gravimeters), and inertial measurement units (IMUs), that are for USML XII or 7A611, and that are NOT:
  - x1     in the USML or elsewhere within 7A611;
  - x2     Described in 6A007, 6A107, 7A001, 7A002, 7A003, 7A101, 7A102, or 7A103; or
  - x3     Elsewhere specified in 7A611,y or 3A611,y.

### **25a Submunitions and terminal guidance substantially equivalent**

16-18 WML 3 Note 1.e for WML 2 or 12/USML III.d4,5 for II

### **25b Submunitions and terminal guidance US Omissions from Multilateral Controls**

WML 3 Note 1.e terminally guided projectiles for WML 1, 2, or 12 is broader than USML III.d4,5 only for II or 7A611 only for USML or 600 series. .

## **26. Electromagnetic**

USML III.a8 Electromagnetic armament projectiles or billets for weapons with a design muzzle energy exceeding 5 MJ

### **26.b Electromagnetic US Omissions from Multilateral Controls**

50      WML omits USML III.a8

**27 Useless cartridge and shell casings**

USML III Note 2 decontrol cartridge and shell casings rendered useless

**27b Useless cartridge and shell casings US Omissions from Multilateral Controls**

51        WML omits USML III Note 2 (WML 1 Note 1.d "Deactivated Firearms" does not apply to ammunition)

**28 Shotgun shells**

0A505.b	Buckshot (No.4 .24" diameter and larger) shotgun shells
0A505.c	Shotgun shells (including less than lethal rounds) that do not contain buckshot
1A984	Shotgun shells that contain chemical irritants

**28c Shotgun shells Multilateral Omissions from US Controls**

51-53 WML omits 0A505.b,c and 1A984 shotgun shells

**29 Blank and dummy ammunition**

WML 3 Note 2 c	decontrol blank and dummy ammunition not incorporating components for live ammunition
0A505.d	Blank ammunition for 0A501

**29c Blank and dummy ammunitions Multilateral Omissions from US Controls**

54        US omits WML 3 Note 2.c decontrol  
 55        WML omits 0A505.d

**30 Fuse setting devices**

WML 3b      Fuse setting devices for WML 3a ammunition for WML 1, 2, or12

USML III.b2 Fuze setting devices for USML III ammunition

**30a Fuse setting devices substantially equivalent**

19        WML 3.b/USML III.b2

## **31 Other Components**

WML 1, 2, 3 headings each control specially designed components for 1, 2, 3 sub-tems. These are matched by 0A501.x, 0A505.x, and 0A602.x, except for the following 16 examples of specially designed parts and components in proposed USML I, II, III: I.e, I.h1, 1.h3, II.a5, II.j4, II.j5, II.j10 II.j13, II.j14, II.j15, III.a10, III.d4, III.d5, III.d11, III.d12, III.d13.

It is recommended that “and specially designed parts and components therefor” be deleted from  
I.e, I.h1, 1.h3, II.a5, II.j4, II.j5, II.j10 II.j13, II.j14, II.j15, III.a10, III.d4, III.d5, III.d11,  
III.d12, and III.d13

### **31a Other components substantially equivalent**

20-22 WML 1, 2, 3/0A501.x, 0A505.x, 0A602.x (after 16 deletions from USML recommended above)

### **31c Other components Multilateral Omissions from US Controls**

56-124 The other USML I, II, III and 0A501-0A505 components not examined above are:

- USML I.g Barrels, receivers (frames), bolts, bolt carriers, slides, or sears for USML I....b ...;
- h1 Drum and other magazines for firearms to .50 caliber with a capacity greater than 50 rounds, regardless of jurisdiction of the firearm;
- h2 Parts and components for conversion of a semi-automatic firearm to a fully automatic firearm;
- USML II.j1 Gun barrels, rails, tubes, and receivers ...;
- j3 Breech blocks;
- j4 Firing mechanisms;
- j6 Servo-electronic and hydraulic elevation adjustment;
- j7 Muzzle brakes;
- j8 Bore evacuators;
- j9 Independently powered ammunition handling and platform interface as follows:
- j9i Carriages;
- j9iii Gun pallets;
- j9iv Hydro-pneumatic equilibration cylinders; or
- j9v Hydro-pneumatic systems scavenging recoil energy to power howitzer functions;
- j10 Recoil systems to mitigate the shock associated with the firing process of guns integrated into air platforms;
- j11 Independent ammunition handling;
- j12 Ammunition containers/drums, chutes, conveyor elements, and ammunition container/drum entrance and exit units;
- j13 Aircraft/gun interface units with rate of fire greater than 100 rounds per minute;
- j16 Classified
- USML III.d3 projectiles of any caliber produced from depleted uranium;
- d6 Hardened cores, regardless of caliber, produced from one or a combination of the following: tungsten, steel, or beryllium copper alloy;
- d15 Classified
- 0A501.c Barrels, cylinders, barrel extensions, ... bolts, bolt carriers, operating rods, gas pistons trigger housings, triggers, hammers, sears, disconnectors, pistol grips that contain fire control parts or components (e.g., triggers, hammers, sears, disconnectors) and buttstocks that contain fire control parts or components for 0A501.a or .b or USML I unless listed in I.g or .h
- e Receivers (frames) and complete breech mechanisms, including castings, forgings or stampings thereof for 0A501.a or .b
- 0A502 Shotguns, complete trigger mechanisms, magazines and magazine extension tubes, complete breech mechanisms, except equipment used exclusively to treat or tranquilize animals
- 0A505.x Note 3 The controls on parts and components in 0A505.x include those parts and components that are common to ammunition and ordnance described in 0A505.x and to USML III

## **32 Production**

WML 18.a ... equipment for the production of WML 1, 2, 3

WML 18.b ... environmental test facilities and equipment therefor, for the certification, qualification or testing of WML

Note      WML 18.a and .b include:

- a      Continuous nitrators
- b      Centrifugal testing ...
- c      Dehydration presses
- d      Screw extruders for military explosive extrusion
- e      Cutting machines for sizing of extruded propellants
- f      Sweetie barrels (tumblers) 1.85 m or more in diameteer and having over 227 kg product capacity
- g      Continuous mixers for solid propellants
- h      Fluid energy mills for grinding or milling the ingredients of military explosives
- i      Equipment to achieve both sphericity and uniform particle size in metal powder listed in WML 8.c.8 (aluminum powder particle size 60 micrometer or less)
- J      Convection current converters for the conversion of maerials listed in WML 8.c.3 (carboranes, decaborane, pentaboranes and their derivatives)

0B501 Test, inspection, and production commodities for development or production of 0A501 or USML I, as follows:

- a      Small arms chambering machines
- b      Small arms deep hole drilling machines and drills therefor
- c      Small arms rifling machines
- d      Small arms spill boring machines
- e      Dies, fixtures, and other tooling

0B505 Test, inspection, and production commodities for development or production of 0A505 or USML III, as follows:

- a      Tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test equipment, not USML III\* for production of 0A505.a or .x or USML III  
\* No such items in proposed USML III
- b      Equipment for production of 0A505.b
- c      Equipment for production of 0A505.c
- d      Equipment for production of 0A505.d
- x      components for 0B505.a

- 0B602 Test, inspection, and production commodities for development or production of 0A602 or USML II
- a1 Gun barrel rifling and broaching machines and tools therefor
  - a2 Gen barrel rifling machines
  - a3 Gun barrel trepanning machines
  - a4 Gun boring and turning machines
  - a5 Gun honing machines of 6 feet stroke or more
  - a6 Gun jump screw lathes
  - a7 Gun rifling machines
  - a8 Gun straightening presses
  - b Jigs and fixtures and other metal-working implements for manufacture of 0A602 or USML II
  - c Other tooling and equipment for production of 0A602 or USML II
  - d Test and evaluation equipment and test models, including diagnostic instrumentation and physical test models for 0A602 or USML II

1B608.c Environmental test facilities for certification, qualification, or testing of 1C608 or USML V

### **32a Production substantially equivalent**

- 23 WML 18.a for WML 2/0B602.c
- 24 WML 18.b/1B608.c

### **32b Production US Omissions from Multilateral Controls**

- 52, 53 WML 18.a for WML 1 and 3 is broader than 0B501, 0B505, because “include” in WML 18.a Note makes a-j only non-definitive examples, whereas 0B501 controls only a-e and 0B505 controls only a-d and x.
- 54-63 US omits WML 18.a Note a-j
- 64-66 US omits WML 18.b for WML 1, 2, 3

### **32c Production Multilateral Omissions from US Controls**

- 125-164 WML omits:
  - test and inspection in 0B501, 0B505, 0B602
  - development in 0B501 and 0B505
  - 0B501.a-e, 0B505.,a-d, x, 0B602.a1-8, b, d

### **33 Software and Technology**

WML 21 Software for:

- a1 development, production, operation, or maintenance of WML equipment
- a2 development or production of WML material
- a3 development, production, operation or maintenance of WML software
- b1 military use and modelling, simulating or evaluating military weapon systems
- b2 military use and modeling or simulating military operational scenarios
- b3 determining the effects of conventional ... weapons
- c enabling equipment not WML-controlled to perform military functions of WML-controlled equipment.

WML 22 Technology for

- a development, production, operation, installation, maintenance (checking), repair, overhaul, or refurbishing of WML-controlled items.  
*Note 1: development, production, operation, installation, maintenance (checking), repair, overhaul, or refurbishing of WML-controlled items remains under control even when applicable to any item not WML-controlled.*

- b1 design, assembly, operation, maintenance, or repair of complete installations for WML-controlled items, even if the components of such production installations are not WML-controlled
- b2 development or production of small arms, even if used to produce reproductions of antique small arms

*Note 2 WML 22 does not apply to:*

- a *Technology that is the minimum necessary for the installation, operation, maintenance (checking), or repair of items not WML-controlled or whose export has been authorized*
- b *Technology that is “in the public domain,” “basic scientific research,” or the minimum necessary information for patent applications.*

USML I.i Technical data and defense services for I.a,b,d,e,g,h or classified 0A501, 0B501, 0D501, 0E501

USML II.k Technical data and defense services for II.a,b,d,e,f or classified 0A602, 0B602, 0D602, 0E602

USML III.e Technical data and defense serivces for III.a,b,d or classified 0A505, 0B505, 0D505, 0E505.

0D501 Software for development, production, operation, or maintenance of 0A501 or 0B501.

0D505 Software for development, production, operation, or maintenance of 0A505 or 0B505.

0D602 Software for development, production, operation, or maintenance of 0A602 or 0B602.

- 0E501 Technology for development, production, operation, installation, maintenance, repair, or overhaul of 0A501 or 0B501, as follows:
- a Technology for development or production of 0A501 (other than 0A501.y) or 0B501;
  - b Technology for operation, installation, maintenance, repair, or overhaul of 0A501 (other than 0A501.y) or 0B501.
- 0E502 Technology for development or production of 0A502.
- 0E504 Technology for development or production of 0A504 that incorporate a focal plane array or image intensifier tube.
- 0E505 Technology for development, production, operation, installation, maintenance, repair, overhaul, or refurbishing of 0A505.
- 0E602 Technology for development, production, operation, installation, maintenance, repair, overhaul, or refurbishing of 0A602 or 0B602, or 0D602
- 0E982 Technology for development or production of ... 0A503

**33a Software and technology substantially equivalent**

25-27 WML21a1,2, WML 22a/USML Ii,IIk,IIIe. 0D501,5, 602, 0E501,2,5, 602, 982

**33b Software and technology US Omissions from Multilateral Controls**

67-74 WML21a3,b1-3,c, WML22aNote 1, b1,2

**33c Software and technology Multilateral Omissions from US Controls**

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# PUBLIC SUBMISSION

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Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-3179

Comment on DOS-2017-0046-0001

## Submitter Information

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**Organization:** BORDERVIEW International Firearm Logistics

## General Comment

BORDERVIEW appreciates the opportunity to comment on the long-awaited transition of firearms and related items from the jurisdiction of the Department of State to the Department of Commerce. We have closely followed the efforts since the early days of the Obama administration to complete this phase of Export Control Reform, and applaud the publishing of these proposed rules.

Broadly speaking, we are very supportive of the proposal and would like to underscore the well-laid justifications made in your proposed rule, and the companion Department of Commerce proposed rule, in addition to the 'Myths vs. Facts' release posted on your website. BORDERVIEW looks forward to your publishing of the Final Rule and completion of these longstanding and bipartisan efforts to simplify our nation's export control infrastructure to better control the most military-sensitive items, while maintaining appropriate controls on Dual Use items such as firearms.

We submitted a detailed comment letter to the U.S. Department of Commerce as their proposed rules would cover a supermajority of our sporting firearm export activity going forward. Nonetheless, we offer here our affirmation of the broad transition affected by these companion rules. Furthermore, we encourage a split effective date where a delayed effective date of 180 days is given so larger companies can align IT systems, etc, and an immediate effective date is allowed for smaller companies or those prepared to make the immediate shift to the EAR. This would directly impact smaller companies and especially those non-exporting companies such as gunsmiths required to register under the ITAR, who may be facing costly renewals during an extended delayed effective period. While not standard practice, there is precedent in the July 2014 notice of FR 79 37535, which gave two effective dates for that Final Rule.

Regardless of the effective date published in the Final Rule, we respectfully request that DDTC and BIS complete their review of comments and publish a Final Rule as soon as is reasonably possible. Given the

long-awaited nature of these rules, prompt publishing of the Final Rule after appropriate review and consideration of all relevant comments by impacted parties would be greatly appreciated and beneficial to both industry and government.

The justification provided is clear and absolutely sensible. This is not a de-controlling as some are wrongly asserting. Regardless of recent politicization by some in Congress and the media, this has truly been an historic bipartisan effort over many years, starting in the earliest days of the Obama administration and now coming to fruition under the current administration.

Thank you for your consideration and we look forward to review of the final rule.



Comments of the Brady Center and Brady Campaign to Prevent Gun Violence  
On the  
Department of State Proposed Rule to Amend the International Traffic in Arms Regulations:  
U.S. Munitions List Categories I, II, and III  
And the  
Department of Commerce Proposed Rule Regarding Control of Firearms, Guns, Ammunition  
and Related Articles the President Determines No Longer Warrant Control Under the United  
States Munitions List

*Filed via email to [DDTCPublicComments@state.gov](mailto:DDTCPublicComments@state.gov); electronically via  
<http://www.regulations.gov>*

Together the Brady Center and the Brady Campaign to Prevent Gun Violence (“Brady”) are national leaders in strengthening, supporting and expanding gun laws, policies, and practices in the United States. Our complimentary missions are to significantly decrease the number of gun deaths and injuries in America. We achieve this by amplifying the voice of the American public; changing social norms through public health and safety programs; and holding the gun industry accountable for dangerous and irresponsible practices and products.<sup>1</sup> These comments are submitted in furtherance of those shared goals. Brady specifically seeks to ensure the safe use and transfer of legal firearms within and outside of the United States by advocating for appropriate regulations that reflect the sensitive nature of the firearms industry.

Brady hereby comments on the proposed rules published by the Department of State’s Directorate of Defense Trade Controls (“DDTC”) and the Department of Commerce’s Bureau of Industry and Security (“BIS”) on May 24, 2018 (83 Fed. Reg. 24198; 83 Fed. Reg. 24166) (“Proposed Rules”), which seek comments on the transfer of certain firearms and related items from the International Traffic in Arms Regulations’ (“ITAR”) U.S. Munitions List (“USML”) to the Export Administration Regulations’ (“EAR”) Commerce Control List (“CCL”). In particular, the Proposed Rules would transfer a broad range of semi-automatic and non-automatic firearms, including those used by the military, (along with their components and ammunition) from USML Categories I, II, and III, where they are classified as significant military equipment, to the CCL, where they will be categorized as “600 Series” items

We respectfully submit that the proposed transfer of semi-automatic and firearms used by the military (and related items) from the stringent control of the USML to the more permissive regime administered by the Commerce Department would be contrary to Congressional intent and would undermine U.S national security interests, international stability and the protection of human rights. We respectfully request that the State and Commerce Departments withdraw their current

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<sup>1</sup> For more about Brady’s mission and work, see [www.bradcampaig.org](http://www.bradcampaig.org).

proposed rules, and keep these dangerous weapons (and related items) subject to State Department jurisdiction on USML, consistent with well-settled and established practice.

Both the Proposed Rules indicate that the firearms at issue, which include armor-piercing sniper rifles used by the military, side arms used by the military, and semi-automatic rifles such as AR-15 and other military-style weapons, no longer warrant control under the ITAR because they are not “inherently military” or are widely available for commercial sale. The transfer of these items to Commerce Department jurisdiction is framed by DDTC and BIS as merely technical measures to reduce procedural burdens and compliance associated with exports of firearms. The reality, however, is that these rule changes would significantly weaken existing controls on the exports of military-style weapons, and would thereby increase the supply of such weapons to dangerous repressive regimes, rebel movements, criminals, and gun and drug traffickers. Many state and non-state groups in importing countries use semi-automatic weapons and sniper rifles in armed conflicts, drug trafficking and crime, and would be eager beneficiaries of the proposed rule changes. Further, if U.S. troops are called upon to intervene in certain conflicts, they may be exposed to significant danger from enemy combatants using military sniper rifles and semi-automatic weapons exported from the United States because of the weaker standards set forth in this rule change. Since Congress first imposed these regulations many years ago, the world has not suddenly become more safe, nor our military less at risk.

In granting statutory authority to regulate arms exports to the State Department in the Arms Export Control Act (“AECA”), Congress emphasized the importance of promoting regional stability and preventing armed conflict. In contrast, the delegation of export control authority to the Commerce Department in the Export Administration Act (“EAA”) provides that the promotion of trade and other commercial interests are significant factors in agency decisions. Congress purposefully delegated the authority for licensing arms exports to the State Department, recognizing that the two agencies have very different mandates. In the State Department licensing process, international security and human rights are given more weight, while in the Commerce Department licensing process, commercial interests are given more weight. To transfer jurisdiction over these firearms, which have substantial military utility, from the State to the Commerce Department means that U.S. international security and human rights interests will not have the appropriate weight required before determining whether exports of firearms should be undertaken.

We also note that many of the firearms that are subject to the proposed rules are not widely available for commercial sale. As set forth in more detail below, a number of countries prohibit the commercial sale and civilian possession of semi-automatic weapons and military-style firearms, and therefore these weapons cannot be considered to be widely commercially available. Transferring semi-automatic firearms to the more permissive Commerce Department regime would result in less control over these items and a greater likelihood that they will end up in the hands of repressive regimes, terrorist organizations, criminal gangs, gun traffickers and other dangerous actors. Less stringent state gun laws in the United States already fuel a gun pipeline across the border into Mexico and other Central and Latin American countries, causing an increase in violent crime in those countries and subsequently higher numbers of displaced citizens of those countries fleeing across the border into the United States. The proposed transfer of the firearms in question to the less stringent regulation of items on the CCL would further exacerbate these existing problematic firearm and migration flow issues.

We discuss below the various ways the current controls on exports of semi-automatic and military-style firearms would be weakened by the transfer of such items to the jurisdiction of the Commerce Department.

### **1. Types of Firearms that Would be Released from State Department Control**

The Proposed Rules would transfer a broad range of semi-automatic and non-automatic firearms, including firearms typically used by the military and military-style firearms, to Commerce Department jurisdiction. For example, below is a non-exhaustive list of the types of weapons that would be transferred:

<b>Sniper Rifles Used by Armed Forces</b>
<ul style="list-style-type: none"><li>• M40A5 (used by US Marines)</li><li>• M24 (used by US Army)</li><li>• L115A3 (used by UK Armed Forces)</li><li>• Barrett M82 (used by multiple armies including US)</li><li>• Knight's Armament M110 (used by US Army)</li></ul>
<b>Sidearms Used by Armed Forces</b>
<ul style="list-style-type: none"><li>• Sig Sauer XM17 and XM 18 pistols (used by US Army)</li><li>• Glock M007 (Glock 19M) pistol (used by US Marines)</li><li>• Heckler &amp; Koch Mk 23 pistol (used by US Special Forces)</li><li>• SIG Sauer Mk 25 (used by Navy Seals)</li></ul>
<b>Semi-automatic Assault Rifles</b>
<ul style="list-style-type: none"><li>• Bushmaster XM15 (AR-type rifle)</li><li>• Daniel Defense M4A1 rifles (AR-type rifle)</li><li>• IWI TAVOR</li><li>• Kalashnikov KR-9 (AK-type rifle)</li><li>• Kel-Tec Sub-2000</li><li>• Mossberg MMR Tactical rifles (AR-type rifle)</li><li>• POF USA P415 (AR-type rifle)</li><li>• SIG Sauer MCX rifles</li><li>• SKS assault rifle (predecessor to the AK-47)</li><li>• Sturm, Ruger &amp; Co. AR-556 rifles (AR-type rifle)</li></ul>
<b>Semiautomatic Assault Pistols</b>
<ul style="list-style-type: none"><li>• Bushmaster SquareDrop pistol</li><li>• CZ Scorpion pistol</li><li>• CORE Rifle Systems Core 14 Roscoe pistol</li><li>• Daniel Defense MH18 pistol</li><li>• PAP M92 pistol</li></ul>

The sniper rifles set forth above are some of the deadliest and most lethal firearms used on the battlefield when used by trained snipers. They can be used to target battlefield commanders, radio or heavy weapon operators, and other equipment, inflicting considerable damage to troop morale.<sup>2</sup>

A number of the semi-automatic rifles set forth above, including the Bushmaster XM15 and the Mossberg MMR Tactical Rifle, are AR-15 style rifles that were originally based on the M16 automatic rifle used by the U.S. military. Certain semi-automatic rifles, including the Kalashnikov KR-9 above, are based on the original design of the AK-47 automatic rifle used by many militaries and terrorist groups around the world.

## **2. The Firearms at Issue Would be Subject to a Less Stringent Licensing Policy and Review Process under the EAR**

The transfer of the firearms at issue, including those set forth above, to BIS jurisdiction would likely result in more permissive licensing of these firearms for export. Congress enacted the AECA, which provides the statutory authority for the ITAR, in order to “bring about arrangements for reducing the international trade in implements of war and to lessen the danger of outbreak of regional conflict and the burdens of armaments.” AECA § 1. In contrast, the Export Administration Act (“EAA”), which provided the original statutory authority for the EAR, emphasizes in addition to national security concerns that “[i]t is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.” EAA § 3.

The purposeful delegation of authority by Congress in the AECA to regulate arms to the State Department, rather than the Commerce Department, reflects the reality that these two agencies have very different mandates governing their priorities and decision-making. The State Department’s mission is to promote international security and human rights, while the Commerce Department is tasked with promoting and regulating trade and the interests of U.S. industry in addition to protecting national security. Specifically, in the DDTC review process for firearms, U.S. national security, U.S. foreign policy, and human rights considerations are important elements of the review. Under the BIS licensing process, commercial considerations would have a heightened significance, which would result in less stringent licensing decisions. The risk associated with transferring semi-automatic and military-style firearms from the State Department to the Commerce Department is that the latter will elevate commercial interests associated with increasing beneficial trade and assisting U.S. companies, while deemphasizing international security and human rights concerns.

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<sup>2</sup> Kyle Mizokami, “5 Sniper Rifles That Can Turn Any Solider into the Ultimate Weapon,” National Interest (March 11, 2018), located at <<http://nationalinterest.org/blog/the-buzz/5-sniper-rifles-can-turn-any-soldier-the-ultimate-weapon-24851>>.

In addition, the State Department, unlike the Commerce Department, keeps a database of human rights violators that it uses to conduct Leahy Law vetting of military and police assistance overseas, and many recipients of exported firearms are military and police actors. Under the ITAR, a license application involving firearms is reviewed against this database to prevent their use in human rights abuses. It is not clear that this practice would continue once the licensing jurisdiction moves to the Commerce Department.

### **3. The Firearms at Issue are not Widely Available for Commercial Sale**

The Commerce Department's proposed rule provides that the scope of the items that are to be moved from the USML to the CCL "is essentially commercial items widely available in retail outlets and less sensitive military items."<sup>3</sup> The rule adds that: "There is a significant worldwide market for firearms in connection with civil and recreational activities such as hunting, marksmanship, competitive shooting, and other non-military activities."<sup>4</sup>

The proposed rule, however, cites to examples of firearms sales in the United States rather than providing examples of countries that import firearms from the United States:

"Because of the popularity of shooting sports in the United States, for example, many large chain retailers carry a wide inventory of the firearms described in the new ECCNs for sale to the general public. Firearms available through U.S. retail outlets include rim fire rifles, pistols, modern sporting rifles, shotguns, and large caliber bolt action rifles, as well as their 'parts,' 'components,' 'accessories' and 'attachments.'"<sup>5</sup>

The U.S. market should not be the basis for assessing the commercial availability of firearms, as this is not the market to which the proposed rule would be directed. Moreover, the U.S. retail firearms market is unique and cannot be used as a proxy for other markets, given that the United States, with less than 4.5% of the world's population, comprises more than 45% of the world's firearms in civilian possession.<sup>6</sup>

Furthermore, a number of importing countries outside the United States ban or otherwise substantially restrict the sale and transfer of firearms that are subject to the Proposed Rules, including semi-automatic and military-style weapons. By way of example, in Mexico, there is only one retail outlet in the entire country for the legal purchase of any kind of firearm;<sup>7</sup> China bans firearm purchases for most people, and private gun ownership is almost unheard of;<sup>8</sup> Germany bans semi-automatic weapons not intended for hunting or marksmanship, as well as

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<sup>3</sup> Department of Commerce, Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML), 83 Fed. Reg. 24,166 (proposed May 24, 2018).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Aaron Karp, Estimating Global Civilian-Held Firearms Numbers, Small Arms Survey (June 2018), located at <<http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf>>.

<sup>7</sup> Kate Linthicum, "There is only one gun store in all of Mexico. So why is gun violence soaring?" The Los Angeles Times (May 24, 2018), located at <<https://www.latimes.com/world/la-fg-mexico-guns-20180524-story.html>>.

<sup>8</sup> Ben Blanchard, "Difficult to buy a gun in China, but not explosives," Reuters (October 2, 2015), located at <<https://www.reuters.com/article/uk-china-security-idUSKCN0RV5QV20151002>>.

some multiple-shot semi-automatic firearms; Norway bans certain semi-automatic weapons; Great Britain bans military-style weapons; Spain bans firearms “designed for war use”; and many other countries ban “military style” and other high capacity weapons.<sup>9</sup> In the vast majority of countries, according to one of the few studies of firearms regulations, “there is a presumption against civilians owning firearms unless certain conditions and requirements are met.”<sup>10</sup>

Given the significant differences in the regulation of semi-automatic and non-automatic firearms outside the United States, it appears that firearms that are covered by this rule change as “widely commercially available” are, in fact, not only not widely commercially available in many countries, but outright banned in other major developed countries. Therefore, at a minimum, BIS and DDTC should withdraw the proposed rules and further study the retail or commercial availability worldwide of the firearms at issue prior to taking any regulatory action.

#### **4. Under the EAR, Firearms Manufacturers Would no Longer be Subject to Registration Requirements**

Under the ITAR, persons who engage in the business of manufacturing, exporting, or temporarily importing defense articles in the United States must register with the DDTC. *See* ITAR Part 122. In order to register, manufacturers are required to submit a Statement of Registration and undergo a background check, and then must re-register and pay a registration fee annually. In contrast, the EAR contain no such registration requirement, so firearms manufacturers will be able to engage in exports, re-exports, and other activities subject to the EAR, or seek an export license, without being subject to the additional controls of registering with the U.S. Government, being subject to a background check and paying an annual registration fee. In addition, the U.S. Government would lose a valuable source of information about manufacturers of firearms in the United States, such as the registrant’s name, address, organization structure, directors and officers, foreign ownership, and whether directors or officers of the company have been charged, indicted or convicted of a U.S. or foreign crime. This information is used by the U.S. Government to monitor gun manufacturers and exporters, and losing this source of information would increase the likelihood of dangerous firearms being manufactured and transferred in significant quantities without effective oversight.

#### **5. The Proposed Rules Would Permit Foreign Companies to Assume Control of U.S. Firearms Manufacturers with Minimal Oversight**

The ITAR require registrants to notify DDTC at least 60 days in advance of any intended sale or transfer to a foreign person of ownership or control of the registrant or any entity owned by the registrant. *See* ITAR § 122.4(b). This 60-day notification from the registrant must include detailed information about the foreign buyer, the target, and the nature of the transaction, including any post-closing rights the foreign buyer will have with regard to ITAR-controlled

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<sup>9</sup> *See* Firearms-Control Legislation and Policy, Law Library of the Library of Congress, February 2013, located at <<http://www.loc.gov/law/help/firearms-control/firearms-control.pdf>>.

<sup>10</sup> Sarah Parker, “Balancing Act: Regulation of Civilian Firearm Possession,” States of Security: Small Arms Survey 2011 6, located at <<http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2011/en/Small-Arms-Survey-2011-Chapter-09-EN.pdf>>.

items and any related steps that will be taken to confirm compliance with the ITAR. The 60-day rule ensures that DDTC is aware of acquisitions that pose potential threats to U.S. national security or foreign access to controlled commodities and technical data, and can coordinate review by the Committee on Foreign Investment in the United States (“CFIUS”) as necessary. In contrast, the EAR impose no such 60-day advance notification requirement for acquisitions of U.S. companies with sensitive items or technology by foreign entities. Therefore, to the extent a U.S. manufacturer of semi-automatic or non-automatic firearms (and related items) is acquired by a foreign company, there would no longer be an advance notification required to the U.S. Government. As such, the U.S. Government would be unaware of a potential acquisition of a U.S. firearms manufacturer by a foreign entity that could influence the sales and marketing activities of the manufacturer in a manner that undermines U.S. national security, international security, and human rights.

## **6. Under the EAR, the Firearms at Issue Would no Longer be Subject to Congressional Reporting Requirements**

Once semi-automatic and military-style firearms are transferred to the CCL, there would no longer be any requirements for reporting significant sales of this significant military equipment to Congress. This would result in less transparency and would weaken Congress’s ability to monitor exports of dangerous firearms to other countries.

Under the ITAR, Congress must be provided with a certification prior to the granting of “[a] license for export of a firearm controlled under Category I of the [USML] in an amount of \$1,000,000 or more.” *See* ITAR § 123.15(a)(3). The EAR does not impose similar reporting requirements on firearms controlled as 600 Series items.<sup>11</sup> Therefore, Congress would not be give advance notification of Commerce Department licensing of sizeable exports of firearms, undermining its oversight role with regard to these significant military equipment, which potentially could be diverted to repressive regimes, criminal enterprises, rebel factions, or terrorist organizations.

Congress has in the past played a vital role in halting arm sales that were inconsistent with U.S. interests. For example, Congress halted the \$1.2 million sale of 1,600 semi-automatic pistols to the security force of Turkish President Recep Tayyip Erdogan in 2017 after reports of public beatings of protestors. Furthermore, Senator Ben Cardin opposed the sale of 26,000 assault weapons to the Philippines police in 2016, citing grave human rights concerns. In sum, the State Department’s regulatory framework ensures that both Congress and the public are kept aware of arms sales that raise human rights and other concerns. This critical oversight function, which stop transfers against U.S. national interests, would be lost if regulatory oversight of the firearms at issue were transferred to the Commerce Department.

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<sup>11</sup> Under the EAR, items that are “600 Series Major Defense Equipment” are subject to Congressional notification requirements where such items are exported (a) in an amount exceeding \$14,000,000 to a country outside the countries listed in Country Group A:5, or (b) in an amount exceeding \$25,000,000, to a country listed in Country Group A:5. “600 Series Major Defense Equipment” is defined as “[a]ny item listed in ECCN 9A610.a, 9A619.a, 9A619.b or 9A619.c, having a nonrecurring research and development cost of more than \$50,000,000 or a total production cost of more than \$200,000,000,” which would not include the firearms affected by the Proposed Rules. *See* EAR §§ 743.5.; 772.1.

## **7. The Firearms at Issue Would no Longer be Subject to the ITAR’s Controls on Public Release of Controlled Technology**

It has been DDTC’s long standing practice to require prior authorization for any public release of ITAR-controlled technical data, source code or software (e.g., posting controlled technical data on a public website). BIS, however, takes a less stringent approach to publicly available information, removing technology, software, and source code from EAR controls once the items are made public (or intended to be made public) without requiring prior authorization BIS. *See* EAR § 734.3(b)(3). Therefore, if jurisdiction over technical data related to the design, production or use of semi-automatic or military-style firearms transfers to BIS, there would no longer be any controls on companies or individuals releasing such sensitive information into the public domain.

This significant risk is not hypothetical. In *Defense Distributed v. U.S. Department of State*, the Fifth Circuit ordered manufacturer Defense Distributed to remove 3-D printing instructions from the Internet after the State Department charged the company with violating the ITAR. In contrast, under the proposed rules, such manufacturers would be able to freely release 3-D printing instructions and code into the public domain (and thereby enable the private production of firearms overseas and in the United States), as the EAR permit publication of source code and technology (except encryption source code and technology) without authorization from BIS. If this were the case, the public would have significantly higher access to the knowledge needed to manufacture guns, which could result in huge increases in the private manufacture and transfer of firearms with little to no oversight by governments.

In general, items that would move to the CCL would be subject to existing EAR controls on technology, software, and source code. However, while the EAR control certain technology, software, and source code set forth in the CCL, Section 734.3 excludes certain published information and software from control under the EAR. For example, if a gun manufacturer posts a firearm's operation and maintenance manual on the Internet, making it publicly available to anyone interested in accessing it and without restriction on further dissemination (i.e., unlimited distribution), the operation and maintenance information included in that published manual would no longer be “subject to the EAR,” and therefore no longer subject to export controls. *See* EAR §§ 734.3(b) and 734.7(a). Non-proprietary system descriptions, including for firearms and related items, are another example of information that are not subject to the EAR. *See* EAR § 734.3(b)(3)(v).

This lack of control on public release of technology, software and source code related to semi-automatic and non-automatic firearms appears to be a significant loophole that could be exploited to release sensitive design, production and use technology regarding highly dangerous weapons.

## **8. The Proposed Rules Would Remove Licensing Requirements for Temporary Imports, Creating Another Channel for Criminals to Obtain Dangerous Weapons in the United States**

Temporary imports (import into the United States of defense articles, technical data, and defense services on the USML and their subsequent export) are regulated by the ITAR (*see* ITAR Part

123), while permanent imports of items on the U.S. Munitions Import List (“USMIL”) are regulated by the Department of Justice’s Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”). The EAR imposes no import licensing requirements, so if semi-automatic or military-style firearms are transferred from the USML to the CCL, temporary imports of such items will not be regulated by any agency. Therefore, semi-automatic and military-style firearms could be freely imported into the United States without any authorization if the importer intends to subsequently export the items (the subsequent export of the item would require an export license from BIS). This includes temporary imports into the United States of semi-automatic and military-style firearms for gun shows, trade shows, or for repair or refurbishment. While the subsequent export of these firearms would require an export license from BIS, a key control that requires U.S. Government authorization *before* the import of the controlled firearms into the United States would be removed.

This approach would not only cause confusion and make compliance more difficult, but could result in more firearms flooding the U.S. market without any meaningful regulation. The United States already has a significant crime gun problem; while every firearm is manufactured as a legal consumer product, the opportunities for diversion to the criminal market are numerous. Guns are trafficked across jurisdictional lines, from states with weak laws to those cities and states where there are more gun regulations. This practice continues to fuel violence in cities like Chicago and Baltimore, which both have strong gun laws in place but border areas where it is easy to purchase multiple guns in one transaction with little or no regulation. Additionally, the large private sale loophole continues to put guns in the hands of dangerous criminals, who can exploit a system that only requires licensed gun dealers to conduct background checks on firearms sales. It is through this method that approximately at least one in five guns are sold in the United States today without a background check. Continually flooding the market with a supply of cheap handguns and assault rifles by permitting the legal “temporary import” of firearms that may never be re-exported will only exacerbate these problems.

Furthermore, the ATF does not have the capacity or resources to pursue the illegal distribution of firearms that were originally intended to be temporary imports, but are subsequently sold in the United States (thus making them permanent imports). While the ATF is tasked with regulating permanent imports of items on the USMIL, it is subject to severe resource constraints in exercising its jurisdiction, including finding and sanctioning individuals trying to distribute temporarily imported firearms in the United States. Therefore, the BIS export licensing process and the reality of the ATF’s capacity together mean that illegal gun sales and transfers within the United States may skyrocket if the Proposed Rules go into effect.

## **9. The Proposed Rules Would Make it Easier For Foreign Gun Manufacturers to Sell and Distribute Firearms Based on U.S. Origin Components and Technology**

Under the ITAR, defense articles, such as firearms and their components and ammunition, require export licensing regardless of their destination, unless a narrow exemption applies. The ITAR “See-Through Rule” provides that foreign manufactured items are subject to the ITAR, including licensing requirements, if they contain any amount of U.S.-origin content subject to the ITAR, no matter how trivial. As such, foreign manufacturers must seek authorization from DDTC prior to exporting foreign items that incorporate ITAR-controlled components or technology in their foreign made item.

BIS, however, has a less strict approach to incorporation of U.S.-origin content than DDTC. Unlike the ITAR, the EAR apply the “De Minimis Rule” to foreign items that are manufactured using U.S.-origin content. *See* EAR § 734.4. Under the De Minimis Rule, foreign items that have less than 25% U.S.-origin controlled content (by value) are not subject to the controls of the EAR. Therefore, foreign manufacturers could use U.S.-origin components or technology to produce products that are not subject to U.S. export control laws if the value of the U.S.-origin controlled content is under 25% of the value of the final product. With regard to components of semi-automatic and non-automatic firearms transferred to the CCL, such items would remain subject to the ITAR’s See-Through Rule when incorporated into a foreign firearm and exported to certain countries subject to U.S. unilateral or United Nations arms embargoes. *See* ITAR § 126.1. However, exports of such firearms with U.S. content outside of these arms embargoed countries would be subject to the more permissive De Minimis Rule under the EAR. As such, foreign manufacturers would be able to export semi-automatic and military-style firearms made using less than 25% U.S.-origin controlled content without any U.S. Government scrutiny to most countries around the world (except for those subject to U.S. or United Nations arms embargoes).

For example, under the current State Department rules, if a foreign gun manufacturer in Germany sourced its barrels from a U.S. company and the barrels made up 20% of the value of the foreign manufactured gun, that gun would be subject to ITAR licensing and congressional reporting requirements if the German manufacturer wanted to export such guns to the Philippines. Under the Commerce Department rules, such sales would not be subject to U.S. export control requirements.

Based on the foregoing, we urge DDTC and BIS to withdraw the proposed rule and keep semi-automatic and military-style guns (along with their components and ammunition) on the USML under DDTC jurisdiction. This approach would best support the safe use and export of firearms outside the United States.

Brady is available to comment further on this proposed rule change and any other agency initiatives impacting the domestic or global firearms policy. Please contact us by reaching out to Sean Kirkendall, Policy Director, Brady Campaign to Prevent Gun Violence, at [skirkendall@bradymail.org](mailto:skirkendall@bradymail.org) or (202) 370-8145.

# PUBLIC SUBMISSION

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Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-2887

Comment on DOS-2017-0046-0001

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## Submitter Information

**Name:** Constance Anderson

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## General Comment

I want all guns to be regulated just like cars. All have to take a mental stability test and use of firearm tests. All need to be insured and close all the loop holes at gun shows. No one should sell a gun without a paper trail. The data base will be paid for by gun owners through their fees and this data base is live, all law enforcement and courts should see complete history from every state. No more guns in public places or schools. End open carry, no one needs to take a gun to the movies or to concerts.

# PUBLIC SUBMISSION

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**Docket:** DOS-2017-0046

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-1608

Comment on DOS-2017-0046-0001

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## Submitter Information

**Name:** David Forbes

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9078 Stump Point Rd  
Hayes, VA, 23072-4604

**Email:** dforbes@ieee.org

**Phone:** 8042232073

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## General Comment

The words below, taken from Defense News dot com, echo my own views on this matter. Please take these words under consideration.

There are five key dangers of shifting oversight of firearms exports to the Commerce Department.

First, there is an increased risk of exports to unauthorized end users and conflict zones. Under the Commerce Department system, companies can generally use several broad license exemptions to export military equipment without U.S. government approval. When the U.S. government shifts oversight of firearms exports to companies, it loses the ability to identify key warning signs, including risky middlemen, unusual routes and mismatched weapons systems, of a possible diversion of U.S. guns to terrorists, criminals or conflict zones. Without U.S. oversight, the government also couldnt stop the sale of firearms to foreign security force units accused of serious human rights violations or corruption.

Second, a shift to the Commerce Department could compromise the United States ability to investigate and prosecute arms smugglers. The Trump administrations proposal would likely eliminate the current requirement that individuals receive government approval before attempting to broker a deal to non-NATO countries for firearms controlled by the Commerce Department. The proposal might also remove the requirement that companies first register with the U.S. government before engaging in arms exports, which U.S. law enforcement has used to build investigations against illegal arms traffickers. Furthermore, the proposal could create greater legal ambiguity about restrictions on firearms exports and, thus, impede U.S. law enforcements efforts to prosecute cases of illegal arms trafficking. Indeed, if an arms exporter

can show that a reasonable person would be confused by U.S. regulations, the illegal exporter could escape prosecution.

Third, the proposal risks losing key legal restrictions on dangerous arms transfers. Commerce Department regulations, unlike the State Departments, are not tied to all federal laws that regulate security assistance, including the commercial export of defense articles to foreign governments that support terrorism, violate internationally recognized human rights norms or interfere with humanitarian operations as well as country-specific controls imposed on nations of concern, such as China. A shift to the Commerce Department would likely complicate, if not end, State Department reviews of a recipient's human rights violations, as the State Department bureau in charge of human rights may face greater difficulties in pressing for restraint on risky firearms exports. Such a shift would thereby dilute the State Departments ability to prevent high-risk transfers.

Fourth, the Trump proposal risks eroding global norms on firearms exports. Over the past two decades, through bilateral and multilateral agreements, the United States has successfully encouraged governments around the world to adopt better laws and policies to stop irresponsible and illegal arms transfers. Many of these agreements note the need to review export licenses on a case-by-case basis, highlight the importance of brokering registration and licensing and contain other key controls. If the United States decides to reduce or remove some of these controls, many other countries may choose to do so as well, particularly if it allows them to better compete with the United States.

Finally, a shift would likely result in less transparency in arms sales. The proposal could eliminate both Congresss and the publics view of U.S. firearms sales authorizations and deliveries around the world because the Commerce Departments annual reports cover only about 20 countries. Furthermore, there are no public end-use reports on arms exports authorized by the Commerce Department such as those for exports authorized by the State Department. The reports are useful to identify key trafficking patterns that can help avoid risky arms transfers.

Sincerely,

David Forbes

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July 9, 2018

Sarah Heidema, Director  
Office of Defense Trade Controls Policy  
Bureau of Political-Military Affairs  
U.S. Department of State  
2401 E Street NW  
Washington, D.C.

ATTN: Request for Comments Regarding Reform of USML Categories I, II, and III  
Public Notice 10094, RIN 1400-AE30, 83 FR 24198

Dear Ms. Heidema:

Esterline Technologies Corporation supports the goals and objectives of the Export Control Reform (ECR) Initiative, and submits the following comments on the reform of USML Categories I, II, and III:

### **Summary of Comments and Recommendations**

This section outlines our main comments, each of which is explained more fully in the remainder of this letter.

1. Keep the Commerce Control List free of AECA brokering.
2. Coordinate changes to USML Categories I, II, and III with changes to the United States Munitions Import List.
3. Clarify classification of propellant containers and combustible ordnance components.
4. Address conflict with companion rule 83 FR 24166.

### **Comments and Recommendations**

#### **1. Keep CCL free of AECA brokering**

One of the main advantages of ECR is that items on the CCL are not subject to the brokering requirements in section 38(a)(1) of the Arms Export Control Act (AECA) and 22 CFR 129. This advantage has been highlighted by the U.S. Government in public

remarks, such as Under Secretary Hirschorn's address to the BIS Update 2014 Conference.

Absence of brokering controls for CCL items has more significance than the absence of double licensing. Currently, items subject to the CCL do not require registration or licensing under 22 CFR 129, period. Once an item is determined to be on the CCL, it is clear that it is not subject to brokering, so there is no need to review the USMIL or the requirements in 22 CFR 129 before engaging in business. Knowledge that items on the CCL are not subject to brokering simplifies and streamlines transactions. Addition of brokering requirements for any item on the CCL would be an unwelcome development as it would introduce a significant complicating factor.

Esterline recommends DDTC reform USML Categories I, II, and III without introducing brokering controls to items in the CCL.

## **2. Coordinate changes to USML Categories I, II, and III with USMIL**

The proposed rule would add the need to review the USMIL for activities that are not imports to the United States. Classifying items against multiple control lists for a single transaction increases the cost and complexity of U.S. export controls.

Esterline recommends DDTC coordinate its change to USML Categories I, II, and III with the Bureau of Alcohol, Tobacco, Firearms, and Explosives so that a corresponding change is made to the USMIL at the same time. This would eliminate the need to consider both the USML and the USMIL when deciding whether a transaction involves brokering.

## **3. Clarify classification of both combustible and consumable case components.**

With regard to the proposed paragraph III(d)(7), Esterline suggests changing the text from

(7) Cartridge cases, powder bags, or combustible cases for the items controlled in USML Category II

to

(7) Cartridge cases, powder bags, charges, propellant containers, or combustible cases for the items controlled in USML Category II, or "specially designed" parts and components therefor.

Alternately, include an explanatory note:

Note to paragraph (d)(7): combustible cases include propellant containers for mortar systems and artillery charges, consumable case sets that include both combustible and inert parts and components, and their parts such as closure tabs and interfaces.

This change would more clearly describe the range of articles that DDTC appears to be intending to capture in this paragraph, and would simplify the classification of their parts and components which are inherently for military end use.

#### **4. Address conflict with companion rule 83 FR 24166**

The proposed rule is in conflict with the companion Commerce Department proposed rule, 83 FR 24166, Docket No. 111227796-5786-01, RIN 0694-AF47. This leaves items transferred from the USML to the CCL potentially without a controlling ECCN.

Esterline recommends DDTC coordinate with BIS to resolve this conflict.

The BIS proposed rule states:

Category III of the USML, entitled “Ammunition/Ordnance,” encompasses ammunition for a wide variety of firearms that may have military, law enforcement or civilian applications. Ammunition that has only or primarily military applications would remain on the USML as would parts, production equipment, “software” and “technology” therefor.

The State Department proposed rule states with respect to USML Category III:

Additionally, paragraph (c), which controls production equipment and tooling, will be removed and placed into reserve. The articles currently covered by this paragraph will be subject to the EAR.

In effect, the BIS proposed would receive specific production and test equipment for conventional ammunition into ECCN 0B505, while the State Department proposed rule would move all production and test equipment for ammunition and ordnance to the CCL, conventional or otherwise.

ECCN 0B505 would only control equipment specially designed for the production of ammunition and ordnance that is controlled in USML Category III if it falls within the list “tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test equipment.” This list is less than the scope of production equipment that will no longer be controlled in USML Category VIII(c) by the proposed companion rule, 83 FR 24198.

Similarly, ECCN 0E505 would not control technology for the technology for equipment specially designed for the production of ordnance, or technology for the software specially designed for such equipment.

A number of the articles proposed for USML Category III by 83 FR 24198 are not conventional ammunition, and their specially designed production equipment exceeds the specific list “tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test equipment.”

For example, production of combustible ordnance requires specialized production machines that do not fall within the list “tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test equipment.” Under the proposed rules, these specialized machines would fall outside both the USML and ECCN 0B505.

### **Summary**

Thank you for the opportunity to comment on the proposed reform of USML Categories I, II, and III. Please feel free to contact me if you have any questions about the comments and recommendations provided.

Regards,



Richard R. Baldwin  
Director, Trade Compliance Technology  
Esterline Technologies Corporation



# F.A.I.R.

Firearms & Ammunition Import/Export Roundtable

July 9, 2018

Attn: Robert Monjay  
Directorate of Defense Trade Controls  
U.S. Department of State  
PM/DDTC, SA-1, 12th Floor  
2401 E Street, NW  
Washington, D.C. 20226

Subject: ITAR Amendment—Categories I, II, and III

Dear Mr. Monjay:

The purpose of this letter is to provide comments to the proposed rule to amend the International Traffic in Arms Regulations (ITAR) U.S. Munitions List (USML) Categories I, II, and III, which published in the *Federal Register* on May 24, 2018 (RIN 1400-AE30; 83 FR 24198).

The F.A.I.R. Trade Group (“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 the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the U.S. Department of State, Directorate of Defense Trade Controls (DDTC), and the Department of Commerce, Bureau of Industry and Security (BIS) to provide solutions to the concerns of F.A.I.R. members. Our membership includes importers and exporters of firearms, ammunition, and other defense and dual-use articles who rely on licenses issued by ATF, DDTC, and BIS. Many members also hold Type 07 or Type 10 licenses as manufacturers of firearms. Members provide equipment to domestic law enforcement agencies and the U.S. military who require such items to carry out their public safety and national security missions and sell the articles they import to distributors for general commercial sale. A number of our members also produce firearms and ammunition that are exported to foreign governments for their national defense, consistent with the foreign policy of the United States.

F.A.I.R. welcomes the opportunity to provide comment on the proposed revisions to USML Categories I, II, and III, and applauds the continuing efforts by DDTC and BIS to revise the USML so that its scope is limited to those defense articles that provide the United States with a critical military or intelligence advantage or are inherently for military end use, and to remove those items that are widely available in retail outlets in the United States and abroad.

Overall, the proposed revisions to USML Categories I, II, and III are a positive move to a more rational control of firearms and ammunition, and related parts, components, accessories, and attachments. The transition of certain items to the control of the Export Administration Regulations (EAR) will serve to right-size license requirements while still maintaining necessary oversight of exports of these items. Additionally, by moving such items to the EAR, many domestic

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manufacturers who do not conduct exports will be relieved of the financial burden of registering under the ITAR.

We provide the following comments for DDTC's consideration, and are available should DDTC or BIS require additional information or wish to discuss our comments further:

**1. Implementation Period.**

As DDTC notes in the proposed rule, the Department has adopted a delayed effective date of 180 days for previous rules revising entire categories of the USML and moving items to the CCL. DDTC has requested comments from industry as to whether this implementation period should be applied to the revised Categories I, II, and III.

**Recommendation: Split implementation period.** We wish to support the continued delayed effective date of 180 days for those industry members who need make changes to IT systems, technology controls plans, and other business processes necessary to implement the rule. However, there will be a number of domestic companies who, for example, do not export but manufacture firearms parts and components for firearms that transition to the EAR who will wish to immediately implement the new rules in order to be relieved of the financial burden of ITAR registration. Therefore, we recommend that DDTC allow for a split implementation period to allow those companies whose entire operations transition to the EAR to immediately shift to those controls while allowing those companies whose operations either remain under the ITAR or are now split between the EAR and the ITAR adequate time to make necessary changes to their businesses. There is precedent for a split implementation period as it was done in the *Federal Register* notice implementing of revisions to USML Category XI and corrections to USML Category VIII (See 79 FR 37536).

**2. Transition Silencers to the CCL.**

DDTC's proposed rule indicates that "[USML Category I] Paragraph (e) will continue to cover silencers, mufflers, sound suppressors, and specially designed parts and components." The proposed rule further indicates that its objective, after the proposed revisions, is to capture only those articles in USML Categories I, II, and III, that provide the United States with a critical military or intelligence advantage, or are inherently for military end use. The items proposed for transition to the EAR do not meet this standard, "including many items which *are widely available in retail outlets in the United States and abroad* [emphasis added]." Firearm suppressors (silencers) do not provide a critical military or intelligence advantage and are not inherently for military end use. Moreover, the hardware and associated technology is widely available throughout the world. Therefore, based on the litmus test identified in the proposed rule, firearm suppressors (silencers) should not be listed on the USML and should be more appropriately controlled on the CCL in the EAR.

**Recommendation: Remove firearm suppressors (silencers) from USML Category I(e) and add them as a controlled item under ECCN 0A501.**

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**3. USML Cat. III**

**(a)(7) - Ammunition for fully automatic firearms or guns that fire superposed or stacked projectiles.**

The phrase “ammunition for fully automatic firearms” should be removed entirely or revised and clarified. As drafted, this portion of the paragraph could be interpreted to capture almost every caliber of small arms ammunition as most common cartridges are suitable for use in semi-automatic and fully automatic firearms.

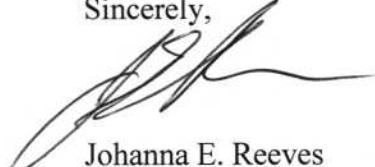
**(d)(1) Projectiles that use pyrotechnic tracer materials that incorporate any material having peak radiance above 710 nm or are incendiary, explosive, steel tipped, or contain a core or solid projectile produced from one or a combination of the following: tungsten, steel, or beryllium copper alloys.**

The use of the word “core” should be further defined. How much of the projectile is considered the core? What about projectiles that use a combination of lead and other material, such as dual core or multi core rounds popular in hunting? Furthermore, what is meant by the phrase “produced from?”

In addition to popular hunting rounds that contain multiple core materials, this classification will capture a broad range of cartridges that have been exempted from the so-called “Armor Piercing Ammunition” classification under the Gun Control Act, 18 U.S.C. 921(a)(17)(B)(i), such as .556mm (.223) SS109 and M855 “green tip” ammunition. This ammunition has been considered “sporting” for almost 30 years.

\* \* \* \* \*

F.A.I.R. thanks the Departments of State and Commerce for the opportunity to participate in the regulatory revision process. We hope that our comments provide assist the government in reducing jurisdictional ambiguities and clarifying the articles that will remain subject to the ITAR. For your information, we also provide a copy of the comments submitted in response to the BIS proposed rule. Should you have any questions, or require additional information as you review public comments received, please do not hesitate to contact me at 202-587-2709 or [execdir@fairtradegroup.org](mailto:execdir@fairtradegroup.org).

Sincerely,  
  
Johanna E. Reeves  
Executive Director

**ATTACHMENT**

**COPY OF F.A.I.R. COMMENT TO**

**BIS PROPOSED RULE (RIN 0694-AF47)**



# F.A.I.R.

Firearms & Ammunition Import/Export Roundtable

July 9, 2018

Attn: Steven Clagett  
Office of Nonproliferation Controls and Treaty Compliance  
Nuclear and Missile Technology Controls Division

Regulatory Policy Division  
Bureau of Industry and Security  
U.S. Department of Commerce, Room 2099B  
14th Street and Pennsylvania Avenue NW  
Washington, DC 20230.

Subject: RIN 0694-AF47: Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

Dear Mr. Clagett:

The purpose of this letter is to provide comments to the proposed rule to amend the *Export Administration Regulations* (EAR) to control those items identified to no longer warrant control under United States Munitions List (USML) Category I - Firearms, Close Assault Weapons and Combat Shotguns; Category II - Guns and Armament; and Category III - Ammunition/Ordnance U.S. Munitions List (USML), which the Bureau of Industry and Security (BIS) published in the *Federal Register* on May 24, 2018 (RIN 0694-AF47; 83 FR 24166).

The F.A.I.R. Trade Group ("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 the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the U.S. Department of State, Directorate of Defense Trade Controls (DDTC), and the Department of Commerce, Bureau of Industry and Security (BIS) to provide solutions to the concerns of F.A.I.R. members. Our membership includes importers and exporters of firearms, ammunition, and other defense and dual-use articles who rely on licenses issued by ATF, DDTC, and BIS. Many members also hold Type 07 or Type 10 licenses as manufacturers of firearms. Members provide equipment to domestic law enforcement agencies and the U.S. military who require such items to carry out their public safety and national security missions and sell the articles they import to distributors for general commercial sale. A number of our members also produce firearms and ammunition that are exported to foreign governments for their national defense, consistent with the foreign policy of the United States.

F.A.I.R. welcomes the opportunity to provide comment on the proposed revisions to the EAR to capture those items moving from USML Categories I, II, and III. We applaud the continuing efforts by BIS and DDTC to revise the USML so that its scope is limited to those defense articles that

provide the United States with a critical military or intelligence advantage or are inherently for military end use, and to remove those items that are widely available in retail outlets in the United States and abroad.

Overall, the proposed revisions to the EAR and USML Categories I, II, and III are a positive move to a more rational control of firearms and ammunition, and related parts, components, accessories, and attachments. The transition of certain items to the control of the EAR will serve to right-size license requirements while still maintaining necessary oversight of exports of these items. Additionally, by moving such items to the EAR, many domestic manufacturers who do not conduct exports will be relieved of the significant financial burden of registering under the ITAR.

We provide the following comments for BIS consideration, and are available should BIS or DDTC require additional information or wish to discuss our comments further:

**1. Implementation Period.**

As noted in the proposed rule, BIS has adopted a delayed effective date of 180 days for previous rules revising entire categories of the USML and moving items to the CCL. BIS has requested comments from industry as to whether this implementation period should be applied to the revised Categories I, II, and III.

**Recommendation: Split implementation period.** We wish to support the continued delayed effective date of 180 days for those industry members who need make changes to IT systems, technology controls plans, and other business processes necessary to implement the rule. However, there will be a number of domestic companies who, for example, do not engage in the business of exporting but engage in certain gunsmith activities or manufacture firearms parts and components for firearms that transition to the EAR who will wish to immediately implement the new rules in order to be relieved of the financial burden of ITAR registration. Therefore, we recommend DDTC allow for a split implementation period to allow those companies whose entire operations transition to the EAR to immediately shift to those controls while allowing those companies whose operations either remain under the ITAR or are now split between the EAR and the ITAR adequate time to make necessary changes to their businesses. There is precedent for a split implementation period as it was done in the *Federal Register* notice implementing of revisions to USML Category XI and corrections to USML Category VIII (See 79 FR 37536).

**2. Transition Firearm Suppressors (Silencers) to the CCL.**

DDTC's proposed rule indicates that "[USML Category I] Paragraph (e) will continue to cover silencers, mufflers, sound suppressors, and specially designed parts and components." The proposed rule further indicates that its objective, after the proposed revisions, is to capture only those articles in USML Categories I, II, and III that provide the United States with a critical military or intelligence advantage, or are inherently for military end use. The items proposed for transition to the EAR do not meet this standard, "including many items which *are widely available in retail outlets in the United States and abroad* [emphasis

added].” Firearm suppressors (silencers) do not provide a critical military or intelligence advantage and are not inherently for military end use. Moreover, the hardware and associated technology is widely available throughout the world. Therefore, based on the litmus test identified in the proposed rule, firearm suppressors (silencers) should not be listed on the USML and should be more appropriately controlled on the CCL in the EAR.

**Recommendation: Remove Firearm suppressors (silencers) from USML Category I(e) and add them as a controlled item under ECCN 0A501.**

**3. Use of “Combat Shotguns”.**

DDTC proposes to revise USML Category I(d) to read as follows: “\*(d) Fully automatic shotguns regardless of gauge.” This proposed revision removes the words “combat shotguns.” While we welcome this change due to the long-standing confusion over this undefined term, the words “combat shotgun” are used in the proposed revisions to the EAR, specifically in the Related Controls of proposed ECCN 0A502, which reads: “This entry does not control *combat shotguns* [emphasis added] and fully automatic shotguns. Those shotguns are “subject to the ITAR.” The Related Control to ECCN 0A502 does not go on to provide a definition for “combat shotgun.” The lack of definition and the removal of the reference in the revised USML Category I(d) causes confusion as to what type of firearm is being referenced.

**Recommendation: Remove the reference to “combat shotguns” in ECCN 0A506 and have the Related Control to reflect the language used in the ITAR.** The Related Control would read as follows: “*This entry does not control fully automatic shotguns regardless of gauge. Those shotguns are “subject to the ITAR.”*”

**4. Automated Export System.**

Currently, when exporting firearms, there is no requirement to enter serial numbers of firearms to be exported into the Automated Export System (AES). However, in the BIS proposed rule, there is a proposal to expand the data elements required as part of an AES filing for these items to include serial numbers, make, model and caliber. This requirement is overly burdensome and will exponentially lengthen the time required for filing AES entries. Contrary to the proposed rule, this is not a mere “carrying over” of existing CBP filing requirements for items transferred from the USML to the CCL. The cited reference to information Department of Homeland Security currently collects under OMB Control Number 1651-0010 (CBP Form 4457, Certificate of Registration for Personal Effects Taken Abroad) applies only to personal firearms temporarily exported. However, the proposed rule would apply to all exports of items controlled under ECCN 0A501.a or .b and shotguns with a barrel length less than 18 inches controlled under ECCN 0A502. Consequently, there is a significant change to the information being collected and to the burden hours as a result of this proposed rule.

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**Recommendation: Remove the expansion of data elements required as part of an AES filing for firearms.** The serial numbers, make, model and caliber of firearms exported, as well as the reference to the export vehicle (e.g., export license, exception) will be maintained by the exporter as part of its acquisition and disposition records required under the Gun Control Act and ATF regulations (27 C.F.R. Pt. 478, Subpart H), which are the same records currently maintained for firearm exports subject to the ITAR. Therefore, there is no loss of oversight or information by transitioning these items to the EAR and thus no need for adding data fields to AES entries. This is not required under the ITAR, and therefore should not now be required under the EAR.

5. **ECCN 0A501**

The BIS proposed rule states in “*Related Controls*” that magazines with a capacity of 50 rounds or greater are “subject to the ITAR.” However, the proposed USML Category I(h)(1) references only magazines and drums with a capacity *greater than* 50 rounds (emphasis added).

**Recommendation: Revise ECCN 0501 “Related Controls” so that the capacity round description is consistently with USML Cat. I(h)(1).**

6. **ECCN 0A501.d.**

This paragraph includes a reference to “complete breech mechanisms” with no further explanation or note to define the terms. It is unclear what would constitute a complete breech mechanism that is distinct from other parts specifically identified in paragraph .c.

**Recommendation: Revise ECCN 0A501 .d to include a definition or explanation of what constitutes a “complete breech mechanism,” and to ensure there is no redundancy with any of the parts referenced in paragraph .c.**

7. **ECCN 0A501.y.**

The proposed rule explains this paragraph would cover such items as scope mounts or accessory rails, iron sights, sling swivels, butt plates, recoil pads, bayonets, and stocks or grips that do not contain any fire control “parts” or “components.” The paragraph indeed lists such items in specifically enumerated subparagraphs .y.1 - .6. Does this mean the .y paragraph controls only those items enumerated in the following subparagraphs .1-.6, or does the umbrella language in .y. serve to capture other parts, components, or attachments that are not specifically enumerated in subparagraphs .y.1 - .6., and not elsewhere specified (such as magazines for less than 16 rounds)? In other words, does the .y. paragraph itself serve as a catch-all for “parts”, “components”, “accessories” and “attachments”?

**Recommendation: Revise paragraph .y by replacing the period at the end of the paragraph with the phrase “including” or “as follows:” so as to clarify whether .y is limited to the enumerated subparagraphs, or itself is a control paragraph in which**

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**items can be controlled.** 0A501.y would read as follows: “*Specific ‘parts,’ ‘components,’ ‘accessories’ and ‘attachments’ ‘specially designed’ for a commodity subject to control in this ECCN or common to a defense article in USML Category I and not elsewhere specified in the USML or CCL, as follows [or including]:*”

8. **ECCN 0A502.**

The proposed rule states that this ECCN would control both the shotguns currently on the USML that are to be added to the CCL (barrel length less than 18 inches) and the shotguns and the enumerated “parts” and “components” currently controlled in ECCN 0A984 (barrel length 18 inches or greater). However, the items included in the ECCN header are separated by semicolons and there is no clear statement that the parts and components listed in the header are specific to shotguns. For example, because it is not clear that the enumerated items are specific to shotguns, there could be confusion as to whether 10 round magazines are controlled in ECCN 0A502, ECCN 0A501.y., or would such items fall to EAR99?

**Recommendation:** Revise ECCN 0A502 to specify the parts and components enumerated in the ECCN header are SHOTGUN parts and components. We also recommend defining or explaining what constitutes “complete breech mechanism” (see comment for ECCN 0A501.d above).

9. **ECCN 0A505.**

The proposed rule states that ammunition parts and components would be eligible for license exception LVS with a limit of \$100 net value per shipment. This is a reduction in value compared to the ITAR license exemption currently available under 22 C.F.R. § 123.16(b)(2), which is capped at \$500. It is unclear why the transition to the EAR would result in a reduction in the license exception value limit.

**Recommendation:** Revise ECCN 0A505 to increase the value limit for the LVS license exception for ammunition parts and components in paragraph .x to \$500.

10. **ECCN 0A606.**

The DDTC proposed rule states that “the articles currently controlled in [Category II] paragraph (f), engines for self-propelled guns and howitzers in paragraph (a), will be on the CCL in ECCN 0A606.” However, there are no proposed corresponding changes to ECCN 0A606 in the BIS proposed rule.

**Recommendation:** Revise ECCN 0A606 to clearly identify that engines for self-propelled guns and howitzers are controlled therein.

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**11. § 758.10 Entry clearance requirements for temporary imports.**

The proposed rule fails to take into consideration temporary imports by nonresident aliens who are subject to ATF regulations under 27 C.F.R. § 478.115(d). Although the license exception BAG references ATF's jurisdiction with these types of imports, proposed section 758.10 is silent, except for ATF's regulation of *permanent imports* (paragraph (2)).

**Recommendation: Add language to 758.10(a)(2) carving out from the entry clearance requirements for temporary imports by nonresident aliens who temporarily import firearms under the provisions of 27 C.F.R. § 478.115(d).**

**12. § 762.2 Records to be retained.**

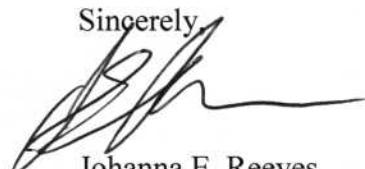
The proposed rule indicates that BIS wishes to make changes to EAR recordkeeping requirements for firearms being moved to the CCL. Specifically, BIS proposes to "add a new paragraph (a)(11) to specify the following information must be kept as an EAR record: Serial number, make, model, and caliber for any firearm controlled in ECCN 0A501.a and for shotguns with barrel length less than 18 inches controlled in 0A502." This additional recordkeeping requirement is unnecessary as it is duplicative of the information that is required to be retained in a company's ATF bound books pursuant to the Gun Control Act and ATF regulations. In other words, the information that BIS seeks to retain is already being maintained by companies under ATF rules and regulations.

**Recommendation: Remove the proposal to add paragraph (a)(11).**

\* \* \* \* \*

F.A.I.R. thanks the Departments of State and Commerce for the opportunity to participate in the regulatory revision process. We hope that our comments assist the government in reducing jurisdictional ambiguities and clarifying the articles that will remain subject to the ITAR. For your information, we also provide a copy of the comments submitted in response to the DDTC proposed rule. Should you have any questions, or require additional information as you review public comments received, please do not hesitate to contact me at 202-587-2709 or [execdir@fairtradegroup.org](mailto:execdir@fairtradegroup.org).

Sincerely



Johanna E. Reeves  
Executive Director

Enclosure: Comments to DDTC Proposed Rule (RIN 1400-AE30)

July 9, 2018

**SUBMITTED VIA FEDERAL E-RULEMAKING PORTAL**

Director of Defense Trade Controls

U.S. Department of State

[DDTCTPublicComments@state.gov](mailto:DDTCTPublicComments@state.gov)

AND

Regulatory Policy Division,

Bureau of Industry and Security,

U.S. Department of Commerce, Room 2099B

14th Street and Pennsylvania Avenue NW

Washington, DC 20230

RE: Docket Nos. DOS-2017-0046, BIS-2017-0004

**ITAR Amendment -- Categories I, II, and III and Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control under the United States Munitions List (USML)**

This comment is submitted on behalf of Giffords and Giffords Law Center (“Giffords”) in response to the Proposed Rules published by the Departments of State and Commerce on May 24, 2018 regarding the classification and administration of exports of certain firearms and ammunition. The Proposed Rules are complex and would represent a dramatic change in the regulatory structure governing firearm exports. We are concerned that the Proposed Rules may not adequately address our national security, foreign policy, international crime, or terrorism threats. In sum, we are concerned about potential loss of life. We also believe the Proposed Rules do not adequately address the need for transparency so Congress and the public may understand the impact of these Rules on potential weapons exports.

Giffords is committed to advancing common-sense change that makes communities safer from gun violence. Operating out of offices in San Francisco, New York, and Washington, DC, our staff partners with lawmakers and advocates at the federal, state, and local levels to craft and enact lifesaving gun safety laws, participate in critical gun-violence-prevention litigation, and educate the public on the proven solutions that reduce gun violence.

## THE PROPOSED RULES APPEAR DRIVEN BY THE INTERESTS OF THE GUN INDUSTRY

Even the National Rifle Association (NRA) admits that the Proposed Rules were drafted with “the goal of increasing U.S. manufacturers’ and businesses’ worldwide competitiveness.” These Rules are “designed to enhance the competitiveness of American companies in the firearms and ammunition sectors,” allowing firearms and ammunition “to be subject to a more business-friendly regulatory climate.”<sup>1</sup>

We are concerned that the Proposed Rules elevate the desire of American gun manufacturers to compete with international arms dealers over the danger that exported firearms will contribute to international gun crime and violence. The United States must not prioritize gun industry profits over human lives.

## THE PROPOSED RULES WILL DRAMATICALLY CHANGE THE LAW, RISKING NEW LOOPOLES

We are concerned that the Proposed Rules, by shifting firearms and ammunition from the United States Munitions List (USML) to the Commerce Control List (CCL), would weaken oversight over exports of these items. As even the NRA has acknowledged, “items on the USML controlled under ITAR are generally treated more strictly,” whereas regulation under the CCL “is more flexible.” The NRA has also admitted that license applications for items on the USML are subject to “more stringent vetting” than items on the CCL.<sup>2</sup>

The Departments of State and Commerce, in drafting the Proposed Rules, have made some efforts to ensure that exports of firearms and ammunition will still be subject to oversight. But the dramatic nature of the proposed changes, and the complexity of the Proposed Rules raise serious concerns about hidden loopholes. Some areas of potential concern include:

- Congressional notification and the methods for Congress to disapprove of proposed firearm exports;
- The extent to which the Commerce Department monitors the end-users of its products; and the extent to which Congress and the public have access to information about the results of this monitoring;
- The online posting of designs for the production of firearms, and their use in the 3D printing of untraceable firearms;
- Firearms training provided to foreign security forces;
- The reporting of political contributions by gun exporters and related entities;
- The Commerce Department’s bandwidth to properly oversee these exports; and
- The regulation of brokers who act as middlemen in firearms transactions, and the threat that firearms will be diverted by these middlemen to violent ends.

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<sup>1</sup>National Rifle Association, *Trump Administration’s Proposed Rulemakings a Win-Win for America’s Firearms Industry, National Security*, <https://www.nraila.org/articles/20180525/trump-administration-s-proposed-rulemakings-a-win-win-for-americas-firearms-industry-national-security>

<sup>2</sup>Ibid.

According to the State Department's Proposed Rules, "The Department of Commerce estimates that 4,000 of the 10,000 licenses that were required by the [State] Department will be eligible for license exceptions or otherwise not require a separate license under the EAR." This statement seems to directly contradict the statement in the Commerce Department's Proposed Rules that "BIS would require licenses to export, or reexport to any country a firearm or other weapon currently on the USML that would be added to the CCL by the proposed rule." The Commerce Department later clarifies, "The other 4,000 applicants may use license exceptions under the EAR or the "no license required" designation, so these applicants would not be required to submit license applications under the EAR." While we recognize that other forms of oversight may be available, this dramatic difference in the number of licenses raises our concern.

We are also particularly concerned that these changes will result in an increase in the number of untraceable firearms in circulation. As 3D printing technology becomes more widely available, the likelihood that it may be used to construct operable firearms that are exempt from serialization requirements increases. Under current law, the proliferation of 3D printed firearms is held in check by the Fifth Circuit's decision in *Defense Distributed v. U.S. Dep't of State*,<sup>3</sup> which upheld the State Department's decision that the posting of online data for the 3D printing of firearms fell within the USML. The Proposed Rules would throw that determination into question.

Inadequate gun safety laws cost human lives. When gun purchasers are not properly vetted and laws against gun trafficking are not properly enforced, guns often fall into the wrong hands and are used to perpetrate horrendous crimes and violence. The U.S. experiences this loss of life on a daily basis, with over 90 people killed each day. We do not wish to see a similar effect on an international level from the weakening of our laws regarding gun exports.

### **THIS CHANGE LACKS SUFFICIENT CONGRESSIONAL NOTIFICATION REQUIREMENTS**

We have not seen anything in the Proposed Rules that would continue Congressional notification requirements for any of the Category I firearms that are being moved to the CCL. There are several types of sales controlled under the Arms Export Control Act that require Congressional notification. Under current law, a certification must be provided to Congress prior to the granting of any license or other approval for transactions involving the export of a firearm controlled under Category I of the USML in an amount of \$1 million or more.<sup>4</sup> Congress then has the ability to enact a joint resolution prohibiting the export, which would prevent the State Department from licensing the sale. Congress generally is given 15 days or 30 days to review the transaction before a license can be granted, depending on the items being exported and the

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<sup>3</sup> 838 F.3d 451 (5th Cir. 2016).

<sup>4</sup> See 22 U.S.C. § 2776, 22 C.F.R. 123.15(a)(3).

country to which it is being exported. While there are Congressional notification requirements for certain products that are controlled under the CCL, it seems that such notification requirements would not be as broad that as under the USML.

Congress should continue to receive advance notification of transactions involving firearms and to have the opportunity to prohibit these exports when appropriate. The Proposed Rules should be strengthened to protect Congress's authority in this area.

### **THE CHANGE MAY RESULT IN LESS TRANSPARENT END-USE MONITORING**

We are concerned about a possible reduction in the monitoring of the end-users of exported firearms and publicly available information about this monitoring. The State Department currently monitors the end-users of firearm exports through its Blue Lantern program. Public reporting of Blue Lantern information is mandatory<sup>5</sup> and there are readily available statistics about the results. While the Commerce Department also conducts end use monitoring, there does not appear to be as fulsome a public reporting requirement for these end use checks as under the Blue Lantern program.

The Proposed Rules do not discuss end use monitoring of the items being moved to the CCL. It is reasonable to assume that these items will fall under the general Bureau of Industry and Security end use check program. This end use check program is not as well-publicized or as formal as the Blue Lantern program, and only a very small percentage of exported items are reviewed. If the Proposed Rules move forward, this program must be strengthened to address the need to monitor the end-users of exported firearms and provide the public with information about the results.

### **THIS CHANGE IGNORES THE MILITARY NATURE OF MANY FIREARMS**

The Proposed Rules are based on an assumption that automatic firearms are designed for and used by the military, and semiautomatic firearms are not "inherently military." This is inaccurate. Consequently, we question the President's determination that semiautomatic firearms and ammunition no longer warrant control under the USML.

In fact, members of the U.S. armed forces routinely use firearms in semiautomatic mode in combat conditions, and the designs of many semiautomatic firearms are inherently military. Assault rifles like the AR-15 were originally designed for military use. Earlier models included a selective fire option that allowed service members to switch easily between automatic and semiautomatic modes. The military included the option to fire in semiautomatic mode because military combat sometimes requires use of a firearm in

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<sup>5</sup> 22 U.S.C. §§ 2785, 2394, 2394-1a

semiautomatic mode. Shooting in semiautomatic mode is more accurate and hence more lethal.<sup>6</sup> In fact, some members of the military use the semiautomatic mode exclusively.

The fact that some gun enthusiasts “enjoy” shooting these weapons and have labeled this activity “modern sport shooting” or “tactical shooting” does not change the design or purpose of these firearms or the danger they pose in civilian hands. The horrendous rise in mass shootings our country has suffered and the frequency with which these firearms are used in these shootings testify to this danger.

Military-style semiautomatic firearms were used to perpetrate the tragedies that occurred in an elementary school in Newtown, Connecticut, at a music festival in Las Vegas, Nevada, at a workplace in San Bernardino, California, in a movie theatre in Aurora, Colorado, and at a high school in Parkland, Florida, among others. Because of the dangerous nature of these weapons, D.C. and seven states, including the populous states of California and New York, ban them.<sup>7</sup> Because of the military nature and serious lethality of these weapons; they belong on the USML.

### **THERE ARE ALTERNATIVES TO THE PROPOSED RULES THAT HAVE NOT BEEN EXPLORED**

The real concern that seems to be driving this significant change in the way the U.S. government regulates firearms exports is that firearms and ammunition manufacturers are currently required to register with the State Department and pay a registration fee. According to the NRA, “Any business that manufactures an item on the USML, or even just a part or component of such an item, also has to register with the State Department and pay an annual fee, which is currently set at \$2,250. This registration is required even if the manufacturer has no intent to ever export the items. ... Manufacturers of items on the CCL, or their parts or components, do not have to pay an annual registration fee to the Commerce Department.”<sup>8</sup>

The registration fee appears to be the NRA’s primary concern with the current system for regulating the export of firearms and ammunition. The simple solution to this problem might be to waive the fee for manufacturers who do not, in reality, export these items. Waiving the fee would relieve industry of this “burden” without undoing the important policy choices made by the State Department in the regulation of these exports or requiring the Commerce Department to “reinvent the wheel” with respect to these regulations. While we would not necessarily support this proposal (it might shift the costs of manufacturer

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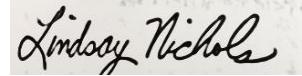
<sup>6</sup>With AR-15s, Mass Shooters Attack With the Rifle Firepower Typically Used by Infantry Troops, NY Times, Feb. 28, 2018, <https://www.nytimes.com/interactive/2018/02/28/us/ar-15-rifle-mass-shootings.html>.

<sup>7</sup> See Giffords Law Center to Prevent Gun Violence, *Assault Weapons* at <http://lawcenter.giffords.org/gun-laws/policy-areas/hardware-ammunition/assault-weapons/>.

<sup>8</sup> National Rifle Association, *supra*.

registration to the taxpayers), we urge the Administration to carefully and thoroughly consider other alternatives to the Proposed Rules.

Sincerely,



Lindsay Nichols  
Giffords Federal Policy Director

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#### **ABOUT GIFFORDS LAW CENTER**

For nearly 25 years, the legal experts at Giffords Law Center to Prevent Gun Violence have been fighting for a safer America by researching, drafting, and defending the laws, policies, and programs proven to save lives from gun violence.

# PUBLIC SUBMISSION

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**Docket:** DOS-2017-0046

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-3038

Comment on DOS-2017-0046-0001

## Submitter Information

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## General Comment

Comment on Proposed Rules on Categories i-ii-iii by Depts. of State and Commerce  
John Lindsay-Poland, Global Exchange

The below comment on the proposed rules by the Departments of State and Commerce supplements the comments submitted by the American Bar Association/Security Assistance Monitor and by Amnesty International USA, which we support. Please see the attached version for complete comment, sources, and notes.

The State Department proposed rule states that those weapons that would stay on the USML are inherently for military end use, adding that the items to be removed from the USML do not meet this standard, including many items which are widely available in retail outlets in the United States and abroad. One State Department official reportedly said: We kind of refer to it as the Walmart rule. If its like something you can buy at a Walmart, why should we have control?

The Commerce Departments description of criteria for items to be moved off of the USML concludes: Thus, the scope of the items described in this proposed rule is essentially commercial items widely available in retail outlets and less sensitive military items. (p. 4) It adds that: There is a significant worldwide market for firearms in connection with civil and recreational activities such as hunting, marksmanship, competitive shooting, and other non-military activities. However, the examples given here are not from prospective importing nations, but from the United States: Because of the popularity of shooting sports in the United States, for example, many large chain retailers carry a wide inventory of the firearms described in the new ECCNs for sale to the general public. Firearms available through U.S. retail outlets include rim fire rifles, pistols, modern sporting rifles, shotguns, and large caliber bolt action rifles, as well as their parts, components, accessories and attachments.

Retail availability in the U.S. should not be a criterion, since this is not the market to which exports treated by the

proposed rule will be directed. Moreover, the U.S. retail firearms market is qualitatively and quantitatively different from nearly every market in the world: with 4.4% of the worlds population, the U.S. comprises more than 45% of the worlds firearms in civilian possession.

In addition, the statement neglects another significant portion of the worldwide market for firearms: criminal organizations, illegal armed groups, and armed security forces that commit human rights violations.

In many countries, retail availability of all firearms is substantially limited. In Mexico, for example, there is only one retail outlet in the entire country for the legal purchase of any kind of firearm. In the vast majority countries, there is a presumption against civilians owning firearms unless certain conditions and requirements are met. (S. Parker, Small Arms Survey, 2011)

Many nations either do not permit or highly restrict civilian use of some or all types of semi-automatic firearms and high-capacity magazines proposed for removal from the USML, and so cannot be said to have any retail availability of these prohibited firearms. Within the United States, semi-automatic rifles and high-capacity magazines are prohibited for retail sale in six states and the District of Columbia. Certain types of handguns and certain calibers of firearms that are included in Category I are also prohibited and not available for retail purchase in some countries.

That purchase and possession of certain types firearms and ammunition are permitted under national legislation does not necessarily indicate that these items are either widely available or feasible for most people to obtain. Many countries deeply restrict retail availability of all firearms through licensing requirements, which are often extensive and time-consuming.

States impose limitations on the retail availability, types of firearms that may be legally purchased, and licensing process for parties seeking to purchase a firearm because they recognize that guns are not like ordinary commercial items that can be purchased at a store. In many countries, legal markets for firearms blend with illegal markets in vast grey areas of stolen and diverted weapons. The potential and actual negative consequences of the ill use of such firearms are devastating. A coherent, ethical, and politically strategic approach to firearm exports would increase controls to help reduce violent harm by both state and non-state actors that will more easily acquire them under the proposed rules.

The proposed rules do not articulate any requirement for a review by State Department experts on human rights and criminal organizations. If that is the proposers intent, the rule should state it clearly, and spell out the scope of license applications subject to such review, concurrences required, specifying from which bureaus and agencies, and the competencies of experts who shall conduct reviews.

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## Attachments

GlobalExchange comment 9july2018

**Comment on Proposed Rules on Categories i-ii-iii by Depts. of State and Commerce**  
John Lindsay-Poland, Global Exchange

The below comment on the proposed rules by the Departments of State and Commerce supplements the comments submitted by the American Bar Association/Security Assistance Monitor and by Amnesty International USA, which we support. This comment focuses on the proposed criterion of wide retail availability for firearms and munitions proposed for transfer from the USML to the Commerce Department, and includes brief comments about inter-agency review and about risks of criminal use.

The State Department proposed rule states that those weapons that would stay on the USML “are inherently for military end use,” adding that the items to be removed from the USML “do not meet this standard, including many items which are widely available in retail outlets in the United States and abroad.” (p. 5) One State Department official was quoted in a press report about the proposed rule: “We kind of refer to it as the Walmart rule. If it’s like something you can buy at a Walmart, why should we have control?”<sup>1</sup>

The Commerce Department’s description of criteria for items to be moved off of the USML concludes: “Thus, the scope of the items described in this proposed rule is essentially commercial items widely available in retail outlets and less sensitive military items.” (p. 4) It adds that: “There is a significant worldwide market for firearms in connection with civil and recreational activities such as hunting, marksmanship, competitive shooting, and other non-military activities.” (pp. 6-7) However, the examples given here are not from prospective importing nations, but from the United States:

“Because of the popularity of shooting sports in the United States, for example, many large chain retailers carry a wide inventory of the firearms described in the new ECCNs for sale to the general public. Firearms available through U.S. retail outlets include rim fire rifles, pistols, modern sporting rifles, shotguns, and large caliber bolt action rifles, as well as their ‘parts,’ ‘components,’ ‘accessories’ and ‘attachments.’” (p. 7)

The retail availability in the United States should not be a criterion, since this is not the market to which exports treated by the proposed rule will be directed. Moreover, the U.S. retail firearms market is qualitatively and quantitatively different from nearly every market in the world: the United States, with 4.4% of the world’s population,<sup>2</sup> comprises more than 45% of the world’s firearms in civilian possession.<sup>3</sup>

In addition, the statement neglects another significant portion of the “worldwide market for firearms”: criminal organizations, illegal armed groups, and armed security forces that commit human rights violations.

In many countries, the retail availability of all firearms is substantially limited. In Mexico, for example, there is only one retail outlet in the entire country for the legal purchase of any kind of firearm.<sup>4</sup> In China, firearm purchases are banned for most people, and private gun ownership is almost unheard of.<sup>5</sup> In the vast majority countries, according to one of the few studies of firearms regulations, “there is a presumption against civilians owning

firearms unless certain conditions and requirements are met.”<sup>6</sup>

Belize, Colombia, Israel, Japan, Kenya, Turkey, and United Kingdom do not permit any civilian use of some or all types of semi-automatic firearms proposed for removal from the USML, and so cannot be said to have any retail availability of these prohibited firearms.<sup>7</sup> Other nations, including Australia, Canada, Croatia, India, Lithuania, New Zealand, South Africa, Switzerland apply special restrictions to civilian possession of semi-automatic firearms, such as proof that they are needed for self-defense, and so it cannot be said that these firearms are “widely available in retail outlets” there. We emphasize that these examples are from only a selected sample of 28 countries; a full accounting of countries where there is only limited or any retail availability of semi-automatic firearms would certainly show many more.<sup>8</sup> Brazil also prohibits “assault weapons” for civilian purchase, while Chile and Colombia prohibit civilian possession of semi-automatic weapons entirely.<sup>9</sup>

Moreover, within the United States, semi-automatic rifles and high-capacity magazines such as those proposed to be removed from the USML are prohibited for retail sale in six states and the District of Columbia.

Magazines with a capacity of more than 10 rounds are not permitted for civilians in Australia.<sup>10</sup> Brazil, France, Romania, Slovenia, Spain, and Turkey do not permit purchase by ordinary civilians of high-capacity magazines.<sup>11</sup> DDTC policy has reportedly excluded export of high-capacity magazines except to military and law enforcement end users,<sup>12</sup> but nothing in the proposed rule indicates that the Department of Commerce would enact such a policy.

Certain types of handguns and certain calibers of firearms that are included in Category I are also prohibited and not available for retail purchase in some countries. In the Dominican Republic, for example, “certain firearms are considered ‘war weapons’ and can only be used by government forces, including .45 calibre pistols [and] rifles,” according a Small Arms Survey study,<sup>13</sup> while Spain prohibits civilian purchase of firearms with a caliber of 20 mm or higher, which are considered to be “designed for war use.”<sup>14</sup> More types – in some cases all types - of handguns are prohibited for civilian purchase in Belize, Canada, Colombia, Japan, Kazakhstan, the Russian Federation, the United Kingdom, and Venezuela.<sup>15</sup>

That purchase and possession of certain types firearms and ammunition are permitted under national legislation does not necessarily indicate that these items are either widely available or feasible for most people to obtain. In addition to prohibitions or restrictions on retail availability of types of firearms, many countries deeply restrict retail availability of all firearms through licensing requirements, which are often extensive and time-consuming. In India, for example, obtaining a license to acquire a firearm requires the applicant to demonstrate training in use of a gun, and often takes years.<sup>16</sup> Japan requires gun buyers to go through 12 processes before purchasing any type of firearm.<sup>17</sup>

States impose limitations on the retail availability, types of firearms that may be legally

purchased, and licensing process for parties seeking to purchase a firearm because they recognize that guns are not like ordinary commercial items that can be purchased at a store. In many countries, legal markets for firearms blend with illegal markets in vast grey areas of stolen and diverted weapons, and of private security companies. The potential and actual negative consequences of the ill use of such firearms are devastating.<sup>18</sup> A coherent, ethical, and politically strategic approach to firearm exports would increase controls to help reduce violent harm by both state and non-state actors that will more easily acquire them under the proposed rules.

Processes for gun exports reflect substantive priorities and as such are integral to policy. The National Sports Shooting Foundation (NSSF) claims that under the proposed rule, “Applications would go through the same interagency review process, including by the Defense Department and the State Department’s human rights and other experts.”<sup>19</sup> However, the proposed rules do not articulate any requirement for such a review by State Department experts on human rights and criminal organizations. If that is the proposers’ intent, the rule should state it clearly, and spell out the scope of license applications subject to such review, concurrences required, specifying from which bureaus and agencies, and the competencies of experts who shall conduct reviews.

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<sup>1</sup> David Sherfinski, “Trump officials to roll back rules on some gun exports,” *The Washington Times*, May 1, 2018, <https://m.washingtontimes.com/news/2018/may/1/trump-officials-to-roll-back-rules-on-some-gun-exp/>. It should also be noted that Walmart does not operate in more than 100 nations (see: <https://corporate.walmart.com/our-story/our-locations> and that in the United States Walmart does not sell semi-automatic assault rifles, high capacity magazines, or even (except in Alaska) handguns. See: <https://news.walmart.com/2018/02/28/walmart-statement-on-firearms-policy>.

<sup>2</sup> <https://www.census.gov/popclock/>

<sup>3</sup> Aaron Karp, *Estimating Global Civilian-Held Firearms Numbers*, Small Arms Survey, June 2018, at: <http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf>

<sup>4</sup> Kate Linthicum, “There is only one gun store in all of Mexico. So why is gun violence soaring?” *The Los Angeles Times*, May 24, 2018, <https://www.latimes.com/world/la-fg-mexico-guns-20180524-story.html>.

<sup>5</sup> Ben Blanchard, “Difficult to buy a gun in China, but not explosives,” Reuters, October 2, 2015, at: <https://www.reuters.com/article/uk-china-security-idUSKCN0RV5QV20151002>.

<sup>6</sup> Sarah Parker, “Balancing Act: Regulation of Civilian Firearm Possession,” chapter 9 in *States of Security: Small Arms Survey 2011*, Small Arms Survey, Geneva, p. 6, at: <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2011/en/Small-Arms-Survey-2011-Chapter-09-EN.pdf>.

<sup>7</sup> Parker, pp. 9-13; Law Library of Congress, *Firearms-Control Legislation and Policy*, 2013, at: <http://www.loc.gov/law/help/firearms-control/firearms-control.pdf>.

<sup>8</sup> Parker, pp. 2, 9-13.

<sup>9</sup> Lisandra Paraguassu, Ricardo Brito, “U.S. biggest source of illegal foreign guns in Brazil – report,” *Reuters*, January 10, 2018, <https://af.reuters.com/article/worldNews/idAFKBN1EZ2M3>.

David Gacs, Rachel Glickhouse, and Carin Zissis, “Gun Laws in Latin America’s Six Largest Economies,” Americas Society, January 11, 2013, <https://www.as-coa.org/articles/explainer-gun-laws-latin-americas-six-largest-economies>.

<sup>10</sup> Law Library of Congress, p. 20.

<sup>11</sup> “Overview of gun laws by nation,” at: [https://en.wikipedia.org/wiki/Overview\\_of\\_gun\\_laws\\_by\\_nation](https://en.wikipedia.org/wiki/Overview_of_gun_laws_by_nation). France: <https://www.service-public.fr/particuliers/vosdroits/F2242>. Romania: <http://www.gandul.info/reportaj/exclusiv-20-000-de-romani-s-au-inarmat-in-2011-fostul-sef-de-la-arme-din-politie-stii-cat-e-valabil-avizul-psihologic-pana-iesi-pe-usa-cabinetului-9375494>.

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<sup>12</sup> Clif Burns, “High Capacity Magazines Exported from U.S. to Norway Shooter,” *ExportLaw Blog*, July 28, 2011, at: <https://www.exportlawblog.com/archives/3315>.

<sup>13</sup> Parker, p. 8.

<sup>14</sup> Law Library of Congress, p. 219.

<sup>15</sup> Parker, pp. 9-13; Gacs, Glickhouse and Zissis.

<sup>16</sup> Rama Lakshmi, “India already had some of the world’s strictest gun laws. Now it’s tightened them,” *Washington Post*, August 1, 2016, [https://www.washingtonpost.com/world/asia\\_pacific/india-had-the-one-of-the-strictest-gun-laws-in-the-world-it-just-got-tighter/2016/08/01/affd9422-51da-11e6-b652-315ae5d4d4dd\\_story.html?utm\\_term=.f69ad52bfff](https://www.washingtonpost.com/world/asia_pacific/india-had-the-one-of-the-strictest-gun-laws-in-the-world-it-just-got-tighter/2016/08/01/affd9422-51da-11e6-b652-315ae5d4d4dd_story.html?utm_term=.f69ad52bfff).

<sup>17</sup> 1. Take a firearm class and pass a written exam, which is held up to three times a year. 2. Get a doctor’s note saying you are mentally fit and do not have a history of drug abuse. 3. Apply for a permit to take firing training, which may take up to a month. 4. Describe in a police interview why you need a gun. 5. Pass a review of your criminal history, gun possession record, employment, involvement with organized crime groups, personal debt and relationships with friends, family and neighbors. 6. Apply for a gunpowder permit. 7. Take a one-day training class and pass a firing test. 8. Obtain a certificate from a gun dealer describing the gun you want. 9. If you want a gun for hunting, apply for a hunting license. 10. Buy a gun safe and an ammunition locker that meet safety regulations. 11. Allow the police to inspect your gun storage. 12. Pass an additional background review. Audrey Carlsen and Sahil Chinoy, “How to Buy a Gun in 15 Countries,” *The New York Times*, March 2, 2018,

<https://www.nytimes.com/interactive/2018/03/02/world/international-gun-laws.html>.

<sup>18</sup> Brazil provides an important example. See Robert Muggah, “Where do Rio de Janeiro’s crime guns come from?” *openDemocracy*, August 8, 2016, <https://www.opendemocracy.net/democraciaabierta/robert-muggah/where-do-rio-de-janeiros-crime-guns-come-from>.

<sup>19</sup> Larry Keane, “Why export control reform makes security and business sense,” National Shooting Sports Foundation, July 6 2018, <https://www.nssf.org/why-export-control-reform-makes-security-and-business-sense/>.



10 July 2018

*Via Email*

Mr. Robert Monjay  
Office of Defense Trade Controls Policy  
Directorate of Defense Trade Controls  
U.S. Department of State  
2401 E Street, NW  
SA-1, 12<sup>th</sup> Floor  
Washington, DC 20037

Email: [DDTCPublicComments@state.gov](mailto:DDTCPublicComments@state.gov)

Reference: RIN 1400-AE30

Subject: International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

Dear Mr. Monjay:

Goforth Trade Advisors LLC (GTA) respectfully submits the following comments on various proposed revisions to the International Traffic in Arms Regulations (ITAR) in response to the *International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III*, 83 Fed. Reg. 101 (May 24, 2018). We greatly appreciate the Directorate of Defense Trade Controls' (DDTC) efforts in continuing to move forward with the changes envisioned by Export Control Reform. Based upon our previous government service and recent experience in assisting industry with the implementation of Export Control Reform, we would like to draw the attention of DDTC to certain issues and concerns with the proposed revisions to the ITAR.

Please see our detailed comments below.

#### **ITAR § 123.15(a)(3) – The proposed revision expands current Congressional threshold**

One commenting party expressed concern that the proposed revisions to ITAR § 123.15(a)(3) expands the scope of Congressional notification for USML Category I articles by including paragraphs (e) and (g) in the proposed revised language. The commenting party recommended the revised language read “Category I paragraphs (a) through (d).”

The current language of ITAR §123.15(a)(3) requires Congressional notification of firearms in the amount of \$1,000,000 without the designation of specific USML paragraphs. This has not been an

issue since the current USML I(j)(1) provides a definition of firearm which limits such notification to articles controlled in USML I(a) through (d). The proposed Note 2 to Category I provides a new definition for firearm that maintains the intent of the current definition. In using either definition, the inclusion of articles controlled in paragraphs (e) and (g) in ITAR §123.15(a)(3) expands the current scope of Congressional notification which only applies to firearms.

This change was addressed in the preamble to the proposed rule. If expansion was intended and this section remains unchanged, GTA recommends providing an explanation in the preamble to the final rule.

To address these concerns, GTA recommends revising the proposed language as follows:

*“(3) A license for export of defense articles controlled under Category I paragraphs (a) through (d) of the United States Munitions List, § 121.1 of this subchapter, in an amount of \$1,000,000 or more.”*

**ITAR §123.18 – The removal of this exemption requires a conforming change to ITAR §123.16(b)(7)**

One commenting party noted that the removal of the exemption at ITAR §123.18 requires a conforming change at ITAR §123.16(b)(7). The commenting party recommended placing ITAR §123.16(b)(7) in Reserve as the referenced exemption – ITAR §123.18 – has been removed and placed in reserve.

The language at ITAR §123.16(b)(7) points to the exemption at ITAR §123.18 for firearms for personal use of members of the U.S. Armed Forces and civilian employees. This proposed rule removes that exemption and places the section in reserve.

To address these concerns, GTA recommends placing ITAR §123.16(b)(7) in Reserve.

**Other Areas for Considerations for Final Rule**

GTA commends DDTC on the comprehensive review of the ITAR to identify conforming changes resulting from the proposed revisions to these USML categories. To further assist DDTC, GTA provides two additional sections of the ITAR which may require revision.

The first section is Supplement 1 to Part 126. The language in Supplement 1 refers to the current control language for USML Categories I, II and III, and several of these paragraphs have been revised or placed in Reserve due to transition the jurisdiction of the Export Administration Regulations (EAR). GTA suggests reviewing revising the language therein.

The other section is the technical data exemption at ITAR §125.4(b)(6). The current language refers to “...firearms not in excess of caliber .50 and ammunition for such weapons...” This section may not require revision however, GTA suggests a review is needed to ensure consistency with language in other areas of the ITAR.

Thank you for the opportunity to present GTA's views concerning the proposed revisions to the ITAR.

If you have any questions concerning this submission, please contact the undersigned at (703) 722-8116 ext 101 or by e-mail at [candace@goforthandexport.com](mailto:candace@goforthandexport.com).

Sincerely,

A handwritten signature in blue ink that reads "Candace M. J. Goforth". The signature is fluid and cursive, with "Candace" being the most prominent part.

Candace M. J. Goforth  
Managing Director

# PUBLIC SUBMISSION

**As of:** July 10, 2018  
**Received:** June 25, 2018  
**Status:** Posted  
**Posted:** July 09, 2018  
**Category:** NA  
**Tracking No.** 1k2-93x1-f0mz  
**Comments Due:** July 09, 2018  
**Submission Type:** Web

**Docket:** DOS-2017-0046

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-0340

Comment on DOS-2017-0046-0001

## Submitter Information

**Name:** j dubya

## General Comment

The Firearms Commerce in the United States Annual Statistical Update 2017 by The United States Department of Justice BATFE shows 1,360,023 suppressors owned by American civilians.

I own and use suppressors. I applaud anyone shooting next to me willing to navigate the red tape of suppressor ownership. A close family member that has lost his hearing from hunting since he was 5 could still be living without hearing aids if more of us sportsman had a muffler on the front of our barrels. NO 33 YEAR OLD SHOULD HAVE HEARING AIDS!

Suppressors are common and simple accessories to American gun owners and the fact that suppressor are NOT planned on being removed from the ITAR list is UNACCEPTABLE! No small business should be forced to pay ITAR fees just because that business manufactured one suppressor in a year.

Maybe businesses that want to sell their suppressors internationally should pay ITAR fees.

Maybe every income tax paying individual should pay for these ITAR fees...Every income tax paying individual is being protected from the International Traffic in Arms Regulations (ITAR). Americans are not required to pay extra for police protection just because that American requires more protection from the Police. Firefighters do not collect more taxes from an individual whose house burns down versus someone that needs their cat taken out of a tree. The firearms industry should not be required to pay for the protection of every American citizen; that protection is a burden that every American Citizen should be required to pay.

The bottom line is this:

-IF ITAR taxes are being used to keep citizens safe then we need to have citizens foot the bill.

BUT

-IF ITAR taxes are in place to deter small business owners operating withing the firearms industry then ITAR needs to be removed from the laws of this country.

# PUBLIC SUBMISSION

**As of:** July 10, 2018  
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Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-3114

Comment on DOS-2017-0046-0001

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## Submitter Information

**Name:** Jack Cook

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Kingstree, SC, 29556

**Email:** jscookjr@icloud.com

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## General Comment

As the owner of a small gunsmithing operation in rural SC I urge you to transfer control of small firearms and ammunition from the State Department to the Commerce Department. It is imperative to my business that we roll-back the horrible rules that you updated in July, 2016. Effective 22 July 2016, gunsmiths suddenly found themselves subject to the regulatory authority of the Arms Export Control Act (AECA) as administered by the State Departments Directorate of Defense Trade Controls (DDTC). Regulators suddenly determined that traditionally routine gun repair and enhancement services now constitute firearms "manufacturing" and mandatory registration of my small, home-based business under International Traffic in Arms Regulations (ITAR). Tis ITAR directive advises gunsmiths to stop what they are doing and pay up or face fines and prison! (Violations under the ITAR can bring civil penalties of \$500,000 per violation and criminal penalties of up to \$1 million per violation along with up to 20 years in prison).

These rules are terribly confusing. I submitted some very direct questions to you and have never received a reply. I developed a list of typical customer service requests that raise concern with respect to ITAR registration. Specifically, I requested your determination on these examples:

- 1) Drilling, threading and installing sling swivels on rifle forend (and buttstock) for sling and/or bipod (requires drill press and screw threading)
- 2) Fabricating replacement parts - such as firing pins for rifles and pistols (requires lathe turning, milling, grinding, and polishing)
- 3) Installation of Cominolli safety special option on Glock pistols (requires cutting of frame slot with

Foredom tool and fixture)

- 4) Rifle barrel setback - to correct headspace and service misfire issues (requires lathe and chambering reamer)
- 5) Slide and frame milling and cuts adding cocking serrations for improved handling, chamfering and dehorning for concealed carry, and enhanced eye appeal (requires mill, surface grinder)
- 6) Installation of gunsmith fit barrel - for accuracy upgrade or to address headspace issues (requires milling and/or TIG welding of hood and foot to precise fit)
- 7) Installation of scope mount on early rifles - for hunting, competitive shooting, and sporterizing (requires drilling and tapping of mounting holes)
- 8) Re-crowning barrel - to improve or repair rifle accuracy (using lathe)
- 9) Installing 1911 Beavertail - to improve comfort and aim (requires precision cutting of frame, typically with mill)
- 10) Installing Sako-style extractor on Remington Model 700 rifle - primarily for improved reliability (requires milling and drilling of rifle bolt)

The above are, I think, a typical sampling of services that might reasonably be encountered in any gunsmith practice. Under State Department export control rulings all the above would likely constitute manufacturing and are illegal under ITAR absent payment of a large export fee. I urge you to transfer administration over to the Department of Commerce.

Obviously, the ITAR fee is a significant burden on a small gunsmith shop and will be an important factor in determining the viability and directions of my planned endeavor. I am hopeful that you will properly transfer administration and governance to the Commerce Department.

Comments re: ITAR Amendment - Categories I II, and III; EAR Amendment - RIN 0694-AF47  
Jeff Abramson  
July 9, 2018

I have worked in the nonprofit sector for more than a decade in efforts to promote more responsible trade in conventional weapons and find these proposed regulatory changes to be irresponsible and dangerous. They continue the wrong-minded approach of the Trump administration to treat weapons as any other trade commodity, threatening to undermine long-term global security and true U.S. national security interests. While my comments below are as an individual concerned U.S. citizen, they are informed by my work as a senior fellow at the Arms Control Association, coordinator of a global network of professionals engaged on these issues –the Forum on the Arms Trade--, and former leader within the international Control Arms campaign that championed the creation and now implementation of the Arms Trade Treaty.

In addition to these comments, I commend to reviewers the comments by experts listed by the Forum on the Arms Trade, including: Colby Goodman, William Hartung, Christina Arabia; Adotei Akwei (on behalf of Amnesty International USA); and John Lindsay-Poland, which delve into many of these points in much greater detail.

Specific concerns include:

#### **Loss of Congressional oversight**

In 2002 Congress amended its notification threshold so that it would be informed of potential commercial sales of firearms under USML category I when they were valued at just \$1 million, as opposed to \$14 million for other major weapons sales. Such notifications have been instrumental in forestalling unwise sales, including last year to Turkey and the Philippines. No similar statutory requirement of congressional notification exists for most arms sales under the CCL, meaning Congress would lose its oversight role on these weapons.

#### **Public reporting should be improved, not weakened**

The public gains some insight into the transfer of weapons via Congressional notifications, and also through the State Department's 655 report and Blue Lantern investigations report. Those reports could provide much more detail, such as the number of specific weapons involved and other data, rather than broad categorical details (655 report). Commerce reporting provides even less data, with similar reports covering around 20 countries per year. We deserve better transparency, not worse. If this transfer of authority moves forward, the Commerce department should be required to improve its reporting.

#### **Non-sensical to no longer consider these military weapons/defense articles**

The transfer of regulatory authority to the Commerce Department is claimed to be wise because these weapons no longer “provide the United States with a critical military or intelligence advantage or, in the case of weapons, are inherently for military end use,” and further because many “are widely available in retail outlets in the United States and abroad.”

Applying this general approach--taken from the larger export reform initiation--falls apart when we are looking at firearms and their ammunition. These weapons are and should be controlled because a

significant amount of violence that occurs, including against U.S. military and law enforcement personnel, is inflicted by small arms. Research indicates that the types of weapons being transferred to Commerce control—AR-15s and AK-47 style assault rifles and their ammunition—are “weapons of choice” of drug trafficking organizations in Mexico and other Latin American countries. Many can also be easily converted to fully automatic weapons, which will remain under USML control. U.S. military members often operate their fully-automatic-capable weapons in a semi-automatic or less-than-automatic mode. Plus, many sniper rifles to be moved to Commerce control are in U.S. military use.

In addition, in many of the countries where these weapons are likely to be marketed, they are considered military weapons and tightly controlled. As currently proposed, they would also remain on the US Munitions Import List (USMIL), which is proper. Why they would therefore not remain on a similar export list is illogical.

Being commercially available in the United States is not a good indicator of whether these weapons merit the oversight of the State Department, which is better tasked with weighing non-commercial concerns. Nor is it proper to consider these weapons somehow safer than others on the USML.

#### **Upsetting norms on human rights as relates to the arms trade**

The United States maintains strong laws against the provision of arms where certain human rights abuses are of concern (even if we do not always live up to those laws). Some of those laws may not apply to items in the 500 series. And although the State Department will be consulted in licensing decisions, it is difficult to see how this new approach would strengthen the ability of DRL and others concerned about human rights to forcefully insert human rights into arms sales decisions.

At a time where the global community must make the arms trade more responsible, these proposed changes would make its largest arms dealer, the United States, appear less responsible and less concerned about the human rights implications of the arms trade.

#### **Making 3-D printing easier is dangerous**

It is unfathomable how allowing untraceable 3-D printing of firearms serves U.S.-recognized goals to combat illicit trafficking of firearms. Our country has agreed to support the Program of Action (PoA) on small arms and light weapons and the International Tracing Instrument (ITI), has signed accords on arms transfers and tracing in the Americas, and argued for why these efforts are so important. The United States also is the world’s largest donor, as I understand it, to helping countries build their ability to trace weapons, secure weapons stockpiles, and to destroy those stocks when warranted. Yet, this transfer of authority to Commerce appears to open the door to unfettered 3D printing, which threatens to undermine nearly all those efforts.

#### **Overall**

At a fundamental level, U.S. arms are not like any other commodity and should not be treated as such. These are first and foremost killing machines. The over-emphasis on economic security threatens to jeopardize higher priorities, including peace and security concerns. If more weapons flow to countries with poor human rights records, norms around responsible weapons use and transfer will be harder to build and uphold.

This analysis is built upon documents and comments currently available at  
<https://www.forumarmstrade.org/catitoiii.html>

Including:

- "[Proposed Firearms Export Changes: Key Challenges for U.S. Oversight](#)," (see also attached 14 page document), Center for International Policy, William Hartung, Colby Goodman, Christina Arabia
- Arguments against retail availability criterion ([pdf](#)), public comment by John Lindsay-Poland, Global Exchange
- "[Examples of Firearms Transferred to Commerce Under New Export Rules](#) (pdf)," Violence Policy Center, contact Kristen Rand
- "[Business with A Bang:How the Proposal to Loosen Arms Export Regulations Threatens Human Rights](#)," Nate Smith, Amnesty USA, June 15, 2018 and [Public Comment 41](#) from Adotei Akwei ([pdf](#))
- "[Trump Favors Arms Industry in Effort to Loosen Export Controls](#)," Jeff Abramson, Issue Brief, Arms Control Association, June 7, 2018.

**From:** [DDTCPublicComments](#)  
**To:** [DDTCPublicComments](#)  
**Subject:** FW: Two Gun Issue Papers  
**Date:** Tuesday, May 29, 2018 9:47:26 AM

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Mr. Koelling: Thank you very much for keeping me in the loop. I did open the proposed "Final" rule ( 146 pages if I opened the right one ?? ). It looks like most of these proposed Regs have to do with re-classification of guns and components with a lot of narrative on export/import which small, local gun smiths have nothing to do with. They just fix our guns at the local level. If these new Regs do save the Government money and time, we appreciate this effort.

Is there any way to obtain a narrative in lay person's language that just says in common language what these Regs will do and the practical effect on those of us who own guns ? I found the Regs very technical with a lot of acronyms the lay person, ( me ) will not understand.

I also noted that the date in these Regs that spoke to the date for what is an "antique" gun is incorrect. These Regs say a gun manufactured on or before 1890 is an "antique" but the Federal Law that says what is or is not an "antique" gun says any gun made on or before 1898 is an "antique" ?? Could you please change that part of the proposed Regs to be consistent with the Federal law and BATF Regs on this subject ?

I never did find in these proposed "Final" Regs the answer to my original question which was, and still is, are small business gun smiths being classified as "gun manufacturers" or not and if yes, why ?

Thanks again. I really do appreciate your working with me on this subject. Those of us who like "antique" guns will more than appreciate a change to the 1898 date and I'd sure like an answer to my original question if at all possible. - Dick Loper

**Official**  
**UNCLASSIFIED**

**Comment on Proposed Rule for “International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III”**

**RIN 1400-AE30**

**Comment on Proposed Cat. I(g) and Cat. I Note 1**

This law firm, Mark Barnes & Associates, submits this comment on behalf of our clients engaged in the manufacture of firearms and associated parts. The purpose of this comment is to request that the final rule clarifies Cat. I(g)’s applicability to parts such as machinegun barrels that are commonly used in both semiautomatic and fully automatic firearms.

The proposed Cat. I(g) would list: “Barrels, receivers (frames), bolts, bolt carriers, slides, or sears specially designed for the articles in paragraphs (a), (b), and (d) of this category.” The articles in paragraphs (a), (b), and (d) of Category I would encompass firearms that use caseless ammunition, fully automatic firearms to .50 caliber inclusive, and fully automatic shotguns. In other words, Cat. I(g) would control barrels, receivers, bolt carriers, slides, or sears (“Parts”) specially designed for fully-automatic firearms.

The proposed rule includes Note 1 to Category I which clarifies that “Paragraphs (a), (b), (d), (e), (g), (h), and (i) of this category exclude: . . . parts, components, accessories, and attachments of firearms and shotguns in paragraphs (a), (b), (d), and (g) of this category *that are common to non-automatic firearms* and shotguns. The Department of Commerce regulates the export of such items.” (emphasis added).

Aside from a sear and receiver, it is extremely rare for any part or component of a fully-automatic firearm to not be common to a non-automatic firearm. Almost all fully automatic firearms have semi-automatic variants available on the commercial market. For example, FN USA manufactures and sells to the public a semi-automatic variant of the belt fed M249 Squad Automatic Weapon (SAW) with the only distinction from the fully automatic version being the receiver and fire control group. (<https://fnamerica.com/products/rifles/fn-m249s/> “Semi-auto replica of the government-issue FN M249 SAW”). The barrel is identical to the fully automatic version. Accordingly, it would follow that a military M249 barrel would be controlled by the Department of Commerce.

Many companies will buy fully automatic firearms with destroyed receivers (“parts kits”) from the military or police departments to construct and sell semi-automatic variants to the public. These parts kits generally consist of all parts other than the receiver (which is usually cut into three parts with a torch). Additionally, Mil-spec M4 and M16 fully automatic bolt carriers as well as barrels specially designed for fully automatic fire, are often sold with and made for civilian AR-15s.

Based upon the plain reading of the proposed Cat. I Note, some clarification is needed as to whether barrels, receivers (frames), bolts, bolt carriers, slides, or sears are non-ITAR simply because they are incorporated in semi-automatic variants on the civilian market, as almost all firearms parts, especially barrels, can be common to both semi-automatic and fully automatic firearms. We think that unless a part converts a firearm to fully automatic functionality, it should be controlled by the Department of Commerce.

Should you have any questions on this comment, please do not hesitate to contact Michael Faucette at (202) 626-0085 or michael.faucette@mbassociateslaw.com.

# PUBLIC SUBMISSION

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Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-2964

Comment on DOS-2017-0046-0001

## Submitter Information

**Name:** Martha Hill

## General Comment

I am a retired person concerned about the cost shift that will happen with these changes. The new rules would transfer the cost of processing licenses from gun manufacturers to taxpayers. Registration fees that since the 1940s have been used to offset the costs to the government of tracking who is manufacturing weapons would no longer apply to manufacturers of semi-automatic weapons, and Commerce does not charge any fee for licensing. So the government i.e., taxpayers will absorb the cost of reviewing applications and processing licenses. Gun exporters that benefit from these sales should shoulder this cost.

# PUBLIC SUBMISSION

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Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

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Comment on DOS-2017-0046-0001

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## Submitter Information

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## General Comment

I oppose the DOS proposed rule on international traffic in arms regulations for US munitions list categories I, II & III. On May 24, the Trump administration proposed to make it easier to export U.S. guns and ammunition globally, even though U.S.- exported firearms are already used in many crimes, attacks and human rights violations in many other nations. Action under the rule if it is enacted will endanger lives merely to enrich munitions dealers. The Trump administration proposal applies to assault weapons and other powerful firearms, moving export licenses from the State Department to the Commerce Department. The U.S. gun lobby has advocated for these policies. The Department of Commerce estimates that the transfer of authority will increase the number of export applicants by 10,000 annually, but the Commerce Department does not have the resources to enforce export controls, even now.

The proposed rule change:

- 1.Treats semi-automatic assault rifles as non-military, despite their use by U.S. troops, their use by state and non-state groups in armed conflicts, and their prohibition for civilian possession in many countries.
- 2.Eliminates Congressional oversight for important gun export deals.
- 3.Transfers the cost of processing licenses from gun manufacturers to taxpayers.
- 4.Removes statutory license requirements for brokers, increasing risk of trafficking.
- 5.Reduces or eliminates end-use controls, such as State Depts Blue Lantern program, and by eliminating registration of firearms exporters, a requirement since the 1940s.
- 6.Enables unchecked gun production in the U.S. and exports abroad by removing the block on 3D printing of firearms.

- 7.Reduces transparency and reporting on gun exports.
- 8.Transfers gun export licensing from an agency with mission to promote stability, conflict reduction, and human rights, to an agency with mission to promote trade.

# PUBLIC SUBMISSION

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Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-3025

Comment on DOS-2017-0046-0001

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## Submitter Information

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## General Comment

I work for a company that makes military life support equipment (helmets, masks). These items are protected under ITAR / EAR regulations - so that they don't fall into the wrong hands. How can we consider GUNS (any!) to be non-military items and not controlled by ITAR? The proposed rules would eliminate Congressional oversight for important gun export deals - Congress would not longer be automatically informed about sizable sales of these weapons. On top of that, the new rules would make taxpayers pay for "licenses" via the Commerce Department- not the manufacturers via the State Department. And depending on the size of the sale- this is a lot of money. In summary: the proposed change will reduce transparency and reporting on gun exports - Congress and the public will not be aware of the total dollar value of firearms sales and where they are delivered.

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

July 5th, 2018

Secretary Mike Pompeo  
Department of State  
2201 C Street NW  
Washington, DC 20230

Secretary Wilbur Ross  
Department of Commerce  
1401 Constitution Avenue NW  
Washington, DC 20520

Dear Secretaries Pompeo and Ross:

We write to express our deep concern about proposed regulatory changes that would transfer control and licensing of exports of semi-automatic assault weapons, high capacity ammunition magazines and related military items from the Department of State to the Department of Commerce. We urge you to postpone implementation of these proposed changes until important issues can be addressed.

Under the current regulatory framework established under the Arms Export Control Act, export of items that are primarily for military use are regulated pursuant to the International Traffic in Arms Regulations administered by the State Department. Such items are included on United States Munitions List and are subject to stringent controls that are aimed at restricting access to military items to approved foreign governments. Exporters must be registered with the State Department and end-users are monitored under the Blue Lantern program, which provides inventory management control and accountability of all commercial arms sales and transfers. Transferring regulation of such military exports to the Department of Commerce would make it more likely that U.S.-origin weapons will end up in the hands of traffickers, terrorists, and cartels, and put them into global commerce.

We are also concerned that proposed rule changes will significantly reduce Congressional oversight and undermine efforts to prevent and prosecute firearms trafficking. Specifically, current regulations require Congressional notification of an intended commercial firearms sale in excess of \$1 million. By contrast, licenses issued by the Commerce Department are not notified to the Congress, or subject to prior review. In addition, the Foreign Assistance Act also prohibits sale of such defense articles to countries where governments have engaged in a consistent pattern of gross violations of internationally recognized human rights.

The volume of U.S. military small arms exports, which is already substantial, is certain to increase if regulation is moved to the Commerce Department. In the past year alone, Congress has

been notified of some \$660 million of firearms sales regulated under the United States Munitions List

The ramifications of the proposed transfer of oversight from the State Department to the Commerce Department are very serious: arms manufacturers and brokers of semi-automatic assault weapons will no longer be required to register with the State Department; training on the use of these items will no longer require a license, allowing private security contractors to train foreign militias in sensitive combat techniques without proper vetting; prosecutors will have less documentary evidence to prosecute arms dealers; and elected officials will have less say in the export of dangerous weapons.

For all these reasons, we urge you to postpone the proposed regulatory transfer until these important issues can be addressed.

Sander Levin  
Sander Levin

Eliot L. Engel  
Eliot Engel

James P. McGovern  
James P. McGovern

Norma J. Torres  
Norma J. Torres

Jamie Raskin  
Jamie Raskin

**From:** [mark.levin@mountainxs.com](mailto:mark.levin@mountainxs.com)  
**To:** [DDTCPublicComments](#)  
**Subject:** ATTN: Regulatory Change, USML Categories I, II, and III  
**Date:** Saturday, May 26, 2018 1:16:49 PM

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The proposed regulatory changes are a good step in the right direction, but do not go far enough.

I am concerned primarily with the burdensome ITAR registration requirements in 22 CFR 122.1 and onerous annual fees (\$2250 per year for Tier 1, the lowest tier!) in 22 CFR 122.3 that apply to small business “Manufacturers” of firearms, especially for those Manufacturers of “NFA” firearms (machine guns, silencers, short barreled rifled and shotguns, etc.) who do not export and which have no intention of exporting.

This fee is entirely unreasonable, especially in the context of the BATFE firearms manufacturing license fee which is \$150 for a 3-year period and the fact that a small volume NFA firearms manufacturer already is paying a \$500 per year Special Occupational Tax.

Several options could and should be considered:

- The best option would be to remove fully automatic, small caliber (12.7 mm and below) firearms and silencers from the USML – export of those items from the US certainly could be adequately controlled via the EAR control categories of the Bureau of Industry and Security in the Commerce Department and the manufacturing processes for those types of items are well known and available even in the most primitive of nations, so this is hardly sensitive technology.
- Another good option would be to offer an exemption from registration and a fee waiver for domestic NFA firearms manufacturers who do not export, or offer to export, automatic firearms and silencers, but which manufacture machine guns wholly for domestic sales. This could be done by simply adding a new exemption category in 122.1 (b). (This could be in addition to the delisting of small caliber machine guns and silencers from the USML, or as a standalone change which would address the registration and fee burden concern.)
- Finally, a third option would be to provide a greatly reduced fee, well below the current Tier 1 fee set forth in 22 CFR 122.3, for small volume non-exporting NFA firearms manufacturers. This option would help somewhat, but is not as desirable because it would still require burdensome and unnecessary ITAR registration paperwork for wholly domestic manufacturers and continue the practice of requiring fees for non-exporters, which makes no sense.

No matter what is done with ITAR registration and fees for small manufacturers and the treatment of fully automatic small caliber firearms, Silencers and similar articles should be de-regulated completely from the USML. They are now commonly used for recreational and sporting purposes in civilian use, both in the US and in many other countries, and the technology to make them is quite simple. In fact, in many countries, silencers are unregulated, even when firearms are highly restricted. And, in the past decade, numerous US states have legalized silencers for hunting.

Thank you,

**Mark Levin**  
General Manager  
Office: (303) 567-4174



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**[www.MountainXS.com](http://www.MountainXS.com)**

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## NATIONAL SHOOTING SPORTS FOUNDATION, INC.

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### **Lawrence G. Keane**

SVP Gov't & Public Affairs

Assistant Secretary & General Counsel

July 6, 2018

By E-mail:

[DDTCTPublicComments@state.gov](mailto:DDTCTPublicComments@state.gov) subject line, "ITAR Amendment – Categories I, II, and III"

By Internet:

Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov) - Docket DOS-2017-0046

By Federal Mail:

Robert Monjay  
Office of Defense Trade Controls Policy  
Directorate of Defense Trade Controls  
U.S. Department of State  
2401 E. Street, N.W.  
Washington, DC 20226

RE: Comments on Proposed Rule – International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III, 83 FR 24198 (May 24, 2018).

Dear Mr. Monjay:

The National Shooting Sports Foundation (NSSF) respectfully submits the following comments to the above-referenced Federal Register Notice. NSSF is the trade association for America's firearm and ammunition industry.<sup>1</sup> Formed in 1961, NSSF membership includes more than 12,000 manufacturers, distributors, firearms retailers, shooting ranges, sportsmen's organizations, and publishers. We seek to promote, protect, and preserve hunting and the shooting sports, and we offer the following public comments.

### **Summary of High-Level Comments**

The policy justifications for the proposed rule and the corresponding proposed rule by the Commerce Department are described well on Commerce and State Department web pages at: <https://www.bis.doc.gov/index.php/forms-documents/federal-register-notices-1/2220-cats-i-iii-myths-v-facts-posted-5-24-18/file> and <https://www.state.gov/t/pm/rls/fs/2018/282485.htm>

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<sup>1</sup> For additional information on NSSF, please see [www.nssf.org](http://www.nssf.org).

We encourage all those reviewing the proposed rules and the public comments to read these fact sheets to learn what the proposed regulatory rationalizations of U.S. controls on the export of commercial firearms and related ammunition are and, as importantly, are not. So that the policy objectives behind the proposed changes, as well as the “myths” associated with them, are knowable to all those reviewing the proposed rules, we ask the State Department to republish their essential content in the preamble to its final rule. In this way, they will be part of the official record and help inform comments on final agency decisions made regarding the proposed rules.

As better described by these fact sheets and in the preambles to the proposed rules, commercial firearms and related items that are widely available in retail outlets that are now subject to the export control licensing jurisdiction of the State Department under the International Traffic in Arms Regulations (ITAR) on its U.S. Munitions List (USML) Categories I, II, and III would be transferred to the licensing jurisdiction of the Commerce Department’s Export Administration Regulations (EAR) in a series of new and coherently organized Export Control Classification Numbers (ECCNs). These proposed rules are the logical continuation of an effort began in 2010 under the Obama Administration to modernize the administration of U.S. export control regulations “to create a simpler, more robust system that eases industry compliance, improves enforceability, and better protect America’s most sensitive technologies.” We agree with the objectives of these bipartisan and widely supported changes. The proposed changes merely align the regulations with the nature of the items at issue, thus more efficiently accomplishing the national security and foreign policy objectives of the controls. Such changes reduce unnecessary burdens for both the U.S. Government and U.S. industry.

We have reviewed the proposed rule thoroughly with our membership. Except with respect to several of our comments set forth below, most members have told us that the final versions of the rules would eventually be beneficial because they would significantly reduce the overall burden and cost of complying with controls on the export of commercial firearms and ammunition. All who responded told us that there would be an initial short-term increase in burden and cost because of the need to re-classify thousands of commodity, software, and technology line items and SKUs affected by the new rules, but that the long-term regulatory burden reduction would significantly outweigh the short-term need to adjust internal compliance programs and practices. There would also be significant short-term costs and burdens associated with the need to become familiar with the nuances of the EAR and new BIS licensing officers. However, this burden, we believe, would be largely addressed by BIS’s long-standing commitment of industry outreach and training resources, which we appreciate. We also believe that DDTC staff will continue their robust outreach and training efforts as well.

Our members understand that there would be no change to the licensing policies for end item firearms and related ammunition. If a gun required a license to export when it was regulated by the State Department then it would require a license to export when it is regulated by the Commerce Department. If an export to a particular destination or end user would have been denied or approved before, it would be denied or approved in the same manner under the new rules. Applications would go through the same interagency review process, including by the Defense Department and also the State Department’s human rights and other experts. Under the new rules, no approvals would be converted to denials or denials to approvals.

Nonetheless, most of our members, particularly the small- and medium-sized companies, believe that the changes will be economically beneficial for them because the eventual regulatory simplification and cost reductions will allow them to consider exporting when they might not have otherwise. Those that already export believe they will be able to expand sales of exports that would have otherwise been approved. They hold these views because BIS and the EAR are simply better able to regulate commercial items than are DDTC and the ITAR. This is not meant to be a slur of DDTC staff, which is excellent. It is merely a reflection of the fact that the ITAR exists to regulate the export of defense articles that provide a significant military or intelligence advantage in a “one size fits all” type approach with regulatory requirements that are more relevant to the export of a fighter aircraft than something that can be purchased at a retail outlet. The EAR exists to regulate dual-use, commercial, and less sensitive military items that warrant control, but in more tailored ways to fit the specific national security and foreign policy, including human rights, issues posed by the items.

These conclusions have been proven thousands of times through the application of similar export control reforms for other sensitive commercial or less sensitive military items that have been transferred to Commerce’s jurisdiction over the course of the last eight years. For example, under the Commerce system, there are no fees to apply for licenses. There are no redundant registration requirements for domestic manufacturers. There are no fees for registration. Such fees are bearable for large companies, but often not for small- and medium-sized companies. The license application forms are vastly simpler. Controls on less sensitive and widely available and basic parts, components, and technology are more tailored and allow for less burdensome trade with close allies through license exceptions. Sales with regular customers can be combined into fewer license applications, thus reducing overall paperwork to achieve the same policy objectives. **There are many other benefits to the proposed changes as well described in the proposed rules’ preambles, but our essential conclusion is that, particularly with the changes recommended below, they will lead to growth for U.S. companies, more jobs in the United States, and related economic benefits for the cities and states where the members reside while accomplishing the same national security and foreign policy objectives they have always had.**

Notwithstanding our overall approval of the proposed rules, we have the following comments and suggested edits that would make the rules even more efficient and consistent with the overall objectives of the effort.

### **Specific Comments**

#### **I. Proposed Changes to Brokering Provisions in ITAR Part 129**

The proposed rule would add “a new paragraph (b)(2)(vii) to §129.2 to update the enumerated list of actions that are not considered brokering [activities]. This change is a conforming change and is needed to address the movement of items from the USML to the CCL that will be subject to the brokering controls, to ensure that the U.S. government **does not impose a double licensing requirement** on the export, reexport or retransfer of such items.” (emphasis supplied). The text of the proposed exception is: “(vii) Activities by persons to facilitate the export,

reexport, or transfer of an item subject to the EAR that has been approved pursuant to a license or license exception under the EAR or a license or other approval under this subchapter.”

The policy goal of not imposing double licensing obligations – i.e., the need to get a license from both State and from Commerce for the same essential transaction – is perfect. The rationalization benefits of the reform effort and the proposed rule would, of course, be ruined if, after the regulatory change, the parties involved in the same essential transaction would need authorizations from two agencies instead of one without the reform. Indeed, State created the entire paragraph (x) concept for each of its USML categories to avoid the need to get a license from State and a license from Commerce for exports that had EAR-controlled items for use in or with ITAR-controlled items in the same shipment.

The proposed (b)(2)(vii) exception text, however, would, in most cases, not eliminate the creation of a double licensing requirement because the scope of “brokering activities” requiring registration, fee payments, and licensing under part 129 includes many types of activities that occur *before* Commerce (or State under a paragraph (x) authority) would issue a license. Such activities include, with respect to the export, reexport, or retransfer of defense services, U.S.- and foreign-origin defense articles, (i) facilitating their manufacture, (ii) financing, (iii) or insuring. With respect to their purchase, sale, transfer, loan, or lease, pre-license brokering activities include (i) soliciting, (ii) promoting, (iii) negotiating, (iv) contracting for, (v) arranging, or (vi) otherwise assisting.

Thus, for example, one wanting to *promote* or *negotiate* the possible sale of a U.S.-origin firearm that transitioned to the EAR (but which would also be identified in USMIL category I(a)) would need to go through the process of registering as a broker with DDTC, pay a registration fee, and get approval from DDTC to do so. This would be a time-consuming and expensive process – and an effort that would become completely moot under the new (b)(2)(vii) exception if and when Commerce later issued a license to the exporter to allow the export of the firearm being promoted or subject to the negotiations.

We can infer why DDTC proposed this provision, which is to ensure that it is able to review and approve brokering activities before an application is submitted because it will not necessarily know then that the license would be approved later. We recognize that brokering activities are separate controlled events from the act of exporting, reexporting, or retransferring an article. Nonetheless, we respectfully submit that for items that would become subject to the EAR (and also identified on the relevant USMIL categories), maintaining this distinction is over-cautious, creates unnecessary regulatory redundancies, and does not advance the policy objectives of the control.

First, the vast majority of licenses for the export of commercial firearms and related items are and would likely continue to be approved without issue. With respect to those licenses that are not approved, the U.S. Government would still get the final say in the act that really matters from a policy and control point of view, which is the actual shipment of the firearm or other controlled item. Thus, the double burden the proposed approach would impose does not seem warranted because the U.S. government will be able to accomplish its ultimate policy objectives at the end of the day by approving, denying, or approving with conditions the actual movement of the

firearm or related item. This would not be the case for items that would not be subject to the EAR.

**RECOMMENDATION I:** Thus, to accomplish DDTC's policy objectives without creating the possibility of authorization requirements from two agencies, we suggest that the scope of the brokering obligations over items no longer described on the USML but still described on the relevant USMIL categories (i.e., I(a)-(c), II(a), and III(a)) apply only to such items that are not "subject to the EAR." In this way, DDTC would have control over brokering activities over such items in situations where the U.S. Government would not otherwise have jurisdiction over their later reexport or transfer, such as non-U.S. origin items meeting the description of items proposed to move from USML Categories I-III that would also meet the description of items currently on the USMIL's Category I-III. (Again, for all items that are "subject to the EAR," the US government will still be able to regulate the transaction.) To accomplish this relatively simple solution, a suggested edit to the proposed exception paragraph (b)(2)(vii) is:

“(vii) Activities that would or could result in the export, reexport, or transfer of an item ‘subject to the EAR.’”

An even simpler approach would be:

“(vii) Activities that involve items ‘subject to the EAR.’”

If there were a violation of the EAR later, such as a violation of the terms of a license, then that would be prosecuted in the ordinary course. If DDTC also wanted enforcement authority over brokering violations in connection with a later export in violation of the EAR, it could insert at note along the lines of the following:

“Note to paragraph (b)(2)(vii): This exclusion from brokering activities for items subject to the EAR does not apply if the activities were part of a conspiracy to violate of the EAR.”

We are confident that DDTC and the other agencies reviewing this comment may come up with other ideas. We would be open to them so long as they would eliminate the need for parties to get both a State and a Commerce authorization for the same basic transaction. Otherwise, the new rules would largely defeat one of the primary benefits of the proposed regulatory change, which is the consolidation within the Commerce system of control over the commercial firearms and related items that no longer warrant control on the USML.

## **II. USML Category III Ammunition – Projectiles – Pyrotechnic and Steel Tipped**

The revised Category III enumerates pyrotechnic material in several subparagraphs. Subparagraph (a)(1) controls “Ammunition that **incorporates a projectile controlled in paragraph (d)(1) or (3)** of this category,” and subparagraph (d)(1) controls “Projectiles that use **pyrotechnic tracer materials** that incorporate any material having peak radiance above 710 nm or are incendiary, explosive, steel tipped, or contain a core or solid projectile produced from one

or a combination of the following: tungsten, steel, or beryllium copper alloys.” (emphasis supplied).

The revised category is specific in that it only controls ammunition or projectiles with pyrotechnic material “having peak radiance above 710 nm”. This indicates that the control is limited to tracer compositions meant for use with night vision optics rather than controlling all tracers. We agree with this approach. Bright tracers have been used for sporting purposes for years to assist shooters in targeting and marksmanship, and therefore as a dual use item are more correctly controlled on the CCL.

However, there is confusion and possible overlap of controls with regard to subparagraph (a)(6), which controls **“Ammunition employing pyrotechnic material in the projectile base and any ammunition employing a projectile that incorporates tracer materials of any type having peak radiance above 710 nm and designed to be observed primarily with night vision optical systems.”** (emphasis supplied).

The first half of this sentence does not include reference to the radiance parameter of “above 710 nm” and indicates control of **any** ammunition with pyrotechnic material in the base. Since all tracer ammunition is manufactured with “pyrotechnic material in the projectile base,” it is not necessary to designate a separate control for ammunition with pyrotechnic material in the base. And, subparagraphs (a)(1) and (d)(1) already control these articles and include the radiance parameter of “above 710 nm.”

The second half of the sentence articulates controls on “any ammunition employing a projectile that incorporates tracer materials of any type having peak radiance above 710 nm and designed to be observed primarily with night vision optical systems.” Since peak radiance above 710 nm is required for tracer ammunition to be suitable for use in night vision devices, having another control separately enumerated in (a)(6) seems redundant.

**RECOMMENDATION II.A.:** We request DDTC to review subparagraph (a)(6) for possible deletion for the reasons stated above.

Subparagraph (a)(3) controls “Shotgun ammunition that **incorporates a projectile controlled in paragraph (d)(2)** of this category, and subparagraph (d)(2) controls “Shotgun projectiles that are flechettes, incendiary, tracer, or explosive.”

Subparagraph (d)(2) does not include any reference to the parameters included in (a)(6) and (d)(1) i.e. “pyrotechnic tracer materials that incorporate any material having peak radiance above 710 nm”. Shotgun ammunition with tracer material is being produced for sporting use by a Sporting Arms and Ammunition Manufacturers’ Institute member company.

**RECOMMENDATION II.B.:** We recommend that subparagraph (d)(2) be revised to delete the word “tracer” and replace it with the phrase “that use pyrotechnic tracer materials that incorporate any material having peak radiance above 710 nm” for the reasons explained above and to make subparagraph (d)(2) consistent with the parameters in subparagraph (d)(1).

Subparagraph (d)(1) also controls “Projectiles that ..... are incendiary, explosive, **steel tipped**, or contain a core or solid projectile produced from one or a combination of the following: tungsten, steel, or beryllium copper alloys.” (emphasis supplied).

Steel tipped projectiles are used in armor piercing ammunition. Unlike the federal definition of “armor piercing ammunition,” the revised Category III does not exempt ammunition that the ATF has found is primarily intended to be used for “sporting purposes” per the below definition:

In 18 USC 918(a)(17)(A), the term “ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(B) The term “armor piercing ammunition” means—

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or (ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

(C) The **term “armor piercing ammunition” does not include** shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, **a projectile which the Attorney General finds is primarily intended to be used for sporting purposes**, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

**RECOMMENDATION II.C.:** We recommend that subparagraph (d)(1) be revised to delete the term “steel tipped.” Export controls of articles enumerated in the revised Category III should be consistent with definitions in other parts of federal law. Therefore control of steel tipped projectiles which have been determined to be intended for sporting purposes correctly belongs under the EAR.

### **III. Recommendations for Effective Date of Final Rule and Allowance for Manufacturing Registrations**

**RECOMMENDATION III.A.** NSSF recommends a 180-day effective date for the final rule. Throughout the Export Control Reform initiative and during transition from the USML to the CCL, the final rule for many other categories had an effective date of 180 days after publication. This gave exporters of those commodities sufficient time to reclassify their products and implement changes in their enterprise systems to become compliant with the EAR. The later effective date also allowed those companies to continue to obtain export licenses from DDTC without loss of business in the interim. The regulatory change for firearms and ammunition will impact many exporters and involve a significant number of export licenses. Most of these companies have had no exposure to the EAR and will require significant training and outreach to understand the new regulations. The extended effective date will allow these firearm and

ammunition exporters sufficient time to learn and implement EAR-centric processes and procedures while still continuing to do business.

**RECOMMENDATION III.B.** Although the extended period will be beneficial to exporters, it may present issues for small manufacturers and gunsmiths that do not export but are nonetheless required to register with DDTC. Some of these companies may have registration expiration dates within the period prior to the effective date, forcing them to renew a registration which would no longer be required a short time later. Therefore, we also request DDTC make allowance for registration renewal during the 180-day period by extending the expiration dates until after the effective date of the final rule.

#### **IV. Recommendation for Transition of Sound Suppressors to the CCL**

NSSF respectfully requests DDTC consider transitioning control of sound suppressors from the USML to the CCL. At a minimum, NSSF requests DDTC to reconsider the current restrictive policy and allow for commercial exports of these items. The proposed rule retains control of silencers, mufflers, and sound suppressors under USML Category I(e). The current DDTC policy restricts exports of these articles to government and law enforcement agencies only. This policy has been in place for more than 15 years, and is largely out of date with the current worldwide sale and use of suppressors for commercial, sporting and hunting purposes.

Suppressors are a simple design consisting of a casing which contains material to absorb some of the gases from escaping from behind the projectile once it leaves the barrel. Suppressors have only a very limited and specialized military utility. The benefit of a suppressor is that it muffles the sound of the shot to a certain extent. The detriment of using a suppressor is that the projectiles lose both range and penetration. And the more effective the sound suppression is, then the less effective the projectile. In fact, government and law enforcement usage of suppressors is limited to special operating units and such.

However, sporting and hunting use of suppressors has been growing for many years. The largest international commercial suppressor markets are the United Kingdom and New Zealand, with smaller markets throughout Europe. In these countries, there are restrictions on how suppressors can be used. For example, in Norway suppressors can be used for hunting only when hunters are a certain distance away from residential areas. In the UK, suppressors are used with 99% of rifles and are considered a good solution to the problem of noise pollution. There were 154,958 firearm certificates on issue by the end of March 2017, representing a total of 559,302 firearms, which is an increase of 4% compared with the previous year. In New Zealand, suppressor ownership and use is legal with no special permit required. Most .22LR rimfire rifles are sold with threaded muzzles for suppressor use. The majority of rimfire suppressors are sourced from China which sells these items for approximately US\$6.00 with an estimated landed cost of US\$10 each. Suppressors for centerfire rifles are gaining in popularity, and local production in NZ is increasing with one-third of NZ produced suppressors being exported to the UK and Europe. The average price for these centerfire suppressors is approx. US\$360.

Within the US, the sporting and hunting use of suppressors has kept to the same trend as the international markets. There are 1.4 million suppressors registered in the U.S. as of April 2017. Our source is the ATF's annual Firearms Commerce in the U.S. publication exhibit 8, page 15: <https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download> The 2017 figure is triple the number of registered suppressors as of April of 2013 which was 494,452 units. And the movement of suppressors from the USML to the CCL will have no effect on domestic registration which will still be required.

Based on the above data regarding the predominant commercial use of suppressors both in the US and overseas, and in comparison to the limited use of suppressors by select groups in the military or LE, we estimate that there are more suppressors being used now for hunting and sporting purposes than for military or law enforcement purposes. These articles can no longer be considered as having a critical military advantage with such widespread foreign availability. The only effect of restricting U.S. exports of suppressors to government or law enforcement agencies is to block U.S. manufacturers and exporters from participating in these legal and growing foreign markets. This is unfair for U.S. manufacturers who are not allowed to compete with foreign producers. If these articles are legal to own and to use commercially in the foreign country, then DDTC should allow for their export from the U.S.

In addition, there is no technology required or in use that warrants the stricter protections of the AECA. Because of the growing dual-use nature of these articles, export controls more correctly belong under the CCL. Controls on suppressors on the EAR would include both "NS" (national security) and "CC" (crime control), and licensing would still be required, but with allowance for exports intended for sporting and hunting purposes.

\* \* \*

We appreciate your consideration of our comments. We would be happy to respond to any questions or concerns, or provide additional information. I can be reached at [lkeane@nssf.org](mailto:lkeane@nssf.org).

Sincerely,



Lawrence G. Keane

**From:** [gailnorman4@gmail.com](mailto:gailnorman4@gmail.com)  
**To:** [DDTCPublicComments](#)  
**Subject:** ITAR Amendment, Categories I, II and III  
**Date:** Saturday, July 7, 2018 1:14:00 PM

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I strongly oppose the proposed rule that would move oversight from the State Department to the Department of Commerce Department of export licenses for Categories I, II, and III of the ITAR. I urge you to abandon the proposal that will make it easier to export semi-automatic weapons and ammunition, eliminate Congressional oversight of these sales, weaken end-use controls, and enable production of 3D weapons anywhere.

Gail E Norman  
142 N. Ridgeland Ave  
Oak Park, IL 60303

Sent from [Mail](#) for Windows 10

July 9, 2018

Department of State  
Bureau of Political-Military Affairs  
Department of Defense Trade Controls  
2401 E Street, N.W.  
12th Floor, SA-1  
Washington, D.C. 20522

ATTN: Ms. Sarah Heidema  
Director, Defense Trade Controls Policy

SUBJECT: RIN 1400-AE30, Request for Comments Regarding Review of USML Categories I, II, & III.

Dear Ms. Heidema:

Northrop Grumman Corporation wishes to thank the Department of State (DOS) for the opportunity to submit comments in review of USML Categories I, II, and III. In response, we provide the following recommendations:

**General:** We recommend the DOS harmonize categories and entries with those in the USMIL as best as possible. For example silencers, mufflers, and sound suppressors are USML I(e) but are USMIL I(d). Revising the USML is an opportunity for better correlation; however the proposed rule offers greater divergence.

#### **Category I:**

**Paragraph (a):** Proposed paragraph (a) controls firearms using caseless ammunition. Note 1 to Cat 1 states "...exclude: any nonautomatic or semi-automatic firearms...." We recommend the Department clarify in Note 1 whether paragraph (a) is intended to control nonautomatic or semi-automatic firearms that fire caseless ammunition. If DOS wishes to control all caseless firearms, then Note 1 to Category I will have to be amended.

**Paragraph (b):** Recommend changing text to "Fully automatic firearms to .50 caliber (12.7mm) inclusive not elsewhere described in this category." This recommendation is intended to prevent potential overlaps or confusion that may exist with proposed paragraphs (a), (c), and (d).

**Paragraph (c):** Recommend amending entry to "Firearms specially designed to integrate defense articles enumerated in Category XII (e.g. Precision Guided Firearms)." This entry should not include parts and components therefor. Specially designed parts and components of Category XII fire control systems, wind-sensing, and weapon aiming systems are not SME controlled.

**Paragraph (e):** Recommend amending entry by moving specially designed parts and components of silencers, mufflers, and sound suppressors to a new non-SME paragraph (h).

**Paragraph (h)(3):** Recommend USG add clarification language/notes to differentiate the terms “automatic targeting” in this entry as well as “automatic tracking” or “automatic firing” in paragraph (a)(3).

**Paragraph (i):** Recommend amending entry for Category I(i) to say “Technical data (see § 120.10 of this subchapter) and defense services (see § 120.9 of this subchapter) directly related to the defense articles described in paragraphs (a), (b), (c), (d), (e), (g), and (h)...” As written, Category I(i) does not cover technical data or defense services related to Category I(c) firearms.

**Category II:**

**Paragraph (a)(1):** Recommend defining “gun” as it is used in the category title, paragraph (a), but then is also enumerated in paragraph (a)(1).

**Paragraph (j)(4):** Recommend adding language on what is considered to be part of the firing mechanisms. For example, the clarification should include whether this paragraph controls electronic firing mechanisms. Recommend adding language to read: “Firing mechanisms, including electronic gun control units, for the weapons controlled in paragraphs (a) and (d) of this category, and specially designed parts and components therefor;”

**Paragraph (j)(9):** Recommend adding to the note what constitutes an independently powered ammunition handling system and platform interface components. For example: “Independently powered ammunition handling systems are external to the gun and can be powered on their own without being attached the gun.”

**Paragraph (j)(10):** Recommend revising this paragraph to clarify if the recoil systems called out are those that are attached to, or those that are built into, the cannon. Most cannon systems have the same recoil system internal to the cannon regardless of the platform it is ultimately mounted on. This will cause the recoil systems to be controlled solely due to end use platform and not due to the performance capability.

Recommended language for recoil systems to be for specific attachment to air platforms: “Recoil systems that are specially designed to mitigate the shock associated with the firing process of guns integrated into air platforms and specially designed parts and components therefor;”

In addition, we recommend the Department reconcile items covered under paragraph (j)(10) and (j)(13) to ensure no overlap in control

**Paragraph (j)(11):** Recommend adding a note clarifying the differences between paragraph (j)(9) and paragraph (j)(11) as they appear to capture the same parts and components, or recommend deleting paragraph (j)(11) if the paragraphs are redundant.

**Paragraph (j)(12):** This paragraph controls “ammunition containers/drums...specially designed for the guns and armament controlled in paragraph (a), (b), and (d).” We have received an EAR99 determination for an ammunition container that is independent of the cannon system, as have others in industry, and we do not believe it would be affected by this paragraph as those are just carrying cases for ammunition. However, in order to avoid confusion, we would recommend adding the clarifying language “ammunition containers/drums that are specially designed to attach to systems controlled in paragraphs (a), (b), and (d) of this category.”

We recommend adding additional language to clarify whether “conveyor elements” is intended to relate to large caliber ammunition or medium caliber ammunition. Medium caliber conveyor elements typically relate to feeder systems while large caliber ammunition conveyer elements typically would be seen in a naval gun system where rounds have a long distance to travel. If this language is intended to capture feeder systems, we recommend adding “ammunition feeder systems” to the control paragraph.

**Additional Subparagraph:** We recommend adding an additional subparagraph under (j) for setter coils and programmable ammunition implements. This ammunition is controlled on the USML, and some categories in (j) may control parts of this equipment; however in reviewing the proposed regulations this equipment would fall to EAR99. We recommend the following language: “systems and equipment for programming ammunition within the gun or cannon, and specially designed parts and components therefor.”

**Category III:**

**Paragraph (a):** We recommend removing the asterisk from paragraph (a), and placing asterisks next to subparagraphs (a)(1-10) as only necessary and consistent in comparison with SME items in other USML categories. For example, as written, the developmental ammunition described in subparagraph (a)(10) would be considered SME, which is inconsistent with other USML category entries for developmental defense articles funded by the Department of Defense.

**Paragraph (a)(2):** We recommend removing this paragraph. The proposed paragraph (a)(2) would take a Commerce controlled item, unlinked ammunition, and change it to an SME item when combined with a non-SME category item, as links are enumerated under paragraph (d)(9). The underlying commodity does not fundamentally change when it is incorporated into an ammunition link, it is just added for a specific function and that is to be used in a fully automatic firearm.

**Paragraph (a)(4):** We recommend revising to say “Caseless ammunition.” As written, wording could be interpreted to mean caseless ammunition manufactured with anything besides smokeless powder is Commerce controlled.

**Paragraph (a)(6):** We recommend revising this paragraph. It is unclear if the ammunition control parameters in the paragraph are based on the pyrotechnic material, the tracer materials, or the specification that this must be able to be seen by night vision optical systems. For example, there are training rounds that have tracer material, but would not have pyrotechnic material in them, and in reverse has pyrotechnic material but does not have tracer material in it. If these items are intended to be two separate items of control, recommended language is:

“Ammunition employing pyrotechnic material in the projectile base or ammunition employing a projectile that incorporates tracer materials of any type where the tracer or pyrotechnic material has a peak radiance above 710nm and is designed to be observable primarily with night vision optical systems.”

**Paragraph (a)(7):** We recommend revising to clarify whether the subparagraph is for ammunition for fully automatic firearms, and ammunition for guns that fire superposed or stacked projectiles, or whether it is for ammunition for fully automatic firearms that fire superposed or stacked projectiles, and ammunition for guns that fires superposed or stacked projectiles. As written, the subparagraph could be interpreted to cover all ammunition for fully automatic firearms, which

could take Commerce controlled ammunition and change it to an SME item if for use in a fully automatic firearm.

**Paragraph (d)(4):** Proposed paragraph (d)(4) controls projectiles not specified above for items controlled in USML Category II, and specially designed parts and components (e.g. fuzes, rotating bands, cases, lines, fins, boosters). However paragraphs III(d)(1)-(3) do not control specially designed parts and components for those projectiles. Paragraph III(d)(7) controls cartridge cases, powder bags, and combustible cases of items in Category II. Paragraph III(d)(11) controls safing, arming and fuzing components for ammunition in this category and their specially designed parts. The inclusion of specially designed parts and components in paragraph III(d)(4) adds duplicative controls on those parts also controlled in paragraph III(d)(7) and paragraph III(d)(11). We recommend deleting “specially designed parts and components” from paragraph III(d)(4).

**Paragraph (d)(6):** We recommend adding clarifying language to paragraph (d)(6) in the proposed rule to clarify if the paragraph is intended to capture all armor piecing rounds.

**Paragraph (d)(7):** We recommend revising paragraph III(d)(7) to state “Cartridge cases, powder bags, combustible cases, rotating bands, cases, liners, fins and boosters, specially designed for items controlled in USML Category II.”

**Paragraph (d)(11):** We recommend changing the wording in paragraph III(d)(11) to capture all artillery and ammunition fuzes and to delete “specially designed parts therefor” to align with bomb fuzing wording in Category IV(h)(25). Note that specially designed parts for bomb fuzes are controlled under a variety of USML Categories for electronics as well as 600 series ECCNs for electronics and parts not otherwise enumerated in USML Category IV or another 600 series. As electronic artillery fuzes and electronic bomb fuzes contain very similar technologies, the recommended change would align the jurisdiction/classification of these items. Our recommended wording for paragraph (d)(11) is “Safing, arming and fuzing components (to include target detection and proximity sensing devices) for the ammunition in this category”

#### **ITAR §123.15:**

**Paragraph (a)(3):** We recommend revising the language to state: “A license for export of firearms controlled under Category I paragraphs (a) through (d) of the United States Munitions List, 121.1 of this subchapter, in the amount of \$1,000,000 or more.” Section 36(c) of the AECA requires certification to Congress only for exports of “a firearm controlled under Category I of the USML.” The Department’s proposed revisions would extend the certification requirement to items that are not firearms, including parts, components, and accessories such as barrels, sears, and mufflers.

#### **ITAR §129.2:**

**Paragraph (b)(2)(vii):** As proposed, paragraph (b)(2)(vii) would remove from the definition of brokering activities those facilitation activities that are related to a transfer that is authorized by an EAR license, EAR license exception, or ITAR license. The carve-out would apply to items that are subject to the EAR yet that remain designated on the USMIL. We seek clarification regarding whether proposed (b)(2)(vii) would apply not only to items currently controlled in USML Categories I-III, but to all items on the USMIL that are currently subject to the EAR (i.e., to include 600 series items previously transferred to the EAR pursuant to Export Control Reform). We also recommend specifying whether the paragraph (b)(2)(vii) exclusion would apply to activities related to exports,

reexports, or transfers of an items subject to the EAR that does not require use of an EAR license or license exception (NLR).

**Paragraph (b)(2):** As currently worded, ITAR paragraph 129.1(b) specifies that the brokering activities identified in the ITAR apply to those “defense articles” identified in either the USML or the USMIL, and current ITAR paragraph 129.2(b) defines “brokering activities” with respect to “defense articles.” As proposed, ITAR paragraph 129.1(b) would specify that the brokering activities identified in the ITAR apply to “defense articles” designated in the ITAR as well as “those items” designated on the USMIL. However, DOS does not propose to amend the definition of “brokering activities” in paragraph 129.2(b), such that “brokering activities” would continue to be defined with respect to only “defense articles.” We seek clarification regarding whether DOS intends “brokering activities” to also apply to activities to facilitate the manufacture, export, permanent import, transfer, reexport, or retransfer of items designated on the USMIL.

**Administrative:** We recommend adopting a delayed effective date of 180 days for rules revising entire categories of the USML and moving items to the CCL.

Should clarification or subsequent technical discussions be necessary, please contact either Steve Headley at [james.headley@ngc.com](mailto:james.headley@ngc.com), (703-280-4806), or myself at [thomas.p.donovan@ngc.com](mailto:thomas.p.donovan@ngc.com) (703-280-4045).

Sincerely,

*Thomas P. Donovan*

Thomas P. Donovan  
Director, Export Management  
Global Trade Management

NATIONAL RIFLE ASSOCIATION OF AMERICA  
INSTITUTE FOR LEGISLATIVE ACTION  
11250 WAPLES MILL ROAD  
FAIRFAX, VIRGINIA 22030



July 6, 2018

Mr. Robert Monjay  
Office of Defense Trade Controls  
United States Department of State  
2401 E Street, Northwest  
Washington, District of Columbia 20226

Via Online Submission: <https://www.regulations.gov/docket?D=DOS-2017-0046>

Re: **Docket No. DOS-2017-0046; RIN 1400-AE30; International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III**

Dear Mr. Monjay:

I am writing on behalf of the National Rifle Association (NRA) to provide the association's comments on the above proposed rule (the proposal). With some six million dues-paying members, the NRA is America's premier defender of the civil right protected by the Second Amendment. Our members include individuals and businesses that would be directly affected by the changes in the proposal, including gunsmiths, firearm instructors, journalists and writers covering firearm technology and development, hunters, competitive shooters, and manufacturers.

The NRA is very pleased to see that the project of Export Reform has finally circled back to the place where it began, with proposed amendments to Categories I, II, and III of the U.S. Munitions List (USML). These were among the first of the changes planned for the large-scale undertaking to update export controls on dual-use items, and rightly so. The Second Amendment protects an individual right to possess and carry firearms in case of confrontation, extending to

arms in common use among the population for lawful purposes.<sup>1</sup> America boasts hundreds of millions of privately-owned firearms<sup>2</sup> and a robust “gun culture” that has produced countless books, magazine articles, videos, websites, online forums, etc., that exhaustively detail firearm technology and use. It is difficult to imagine any information about the design, development, production, manufacturing, and use of firearms that is not already within the public domain. This same information is commonly available overseas, as are the types of firearms and ammunition the proposal would move off the USML and onto the Commerce Control List (CCL). Meanwhile, the might and sophistication of the U.S. military – as well as America’s armed populace – ensure that no foreign enemy wielding the type of arms at issue in these proposed amendments to the USML could pose a serious threat to this nation’s security.

Of course, movement of commonly-available firearms and ammunition to the CCL would not leave their export unregulated. America already has one of the most well-established and closely-administered systems of regulation for commercial production and distribution of firearms and ammunition in the world, and the proposal would not change that. It is clear from the companion rulemaking published by the Commerce Department that items moving off the USML would remain closely controlled, with the necessity of export licenses remaining the norm. Foreign individuals’ access to firearms and ammunition would also remain regulated under the federal Gun Control Act and the National Firearms Act. Furthermore, the Commerce Department has long regulated exports of various shotguns, as well as their parts, components, accessories, and ammunition. Thus, it has existing knowledge of and relationships with many of the entities the proposal will affect. Those entities, in turn, will also have some familiarity with the Department’s regulatory environment and procedures.

The NRA believes that, on the whole, the proposal correctly balances the imperatives of national and global security, allocation of oversight resources, and promotion of American industry, innovation, and competitiveness. We do, however, think it could be improved in several particulars. We also believe that the timing for the implementation of the rule deserves careful consideration.

Specifically, our concerns involve the following:

- **The retention of firearm sound suppressors on the USML is contrary to the guiding principles of Export Reform and does not serve its purposes.** Suppressors should also be moved to the CCL, unless they are specifically designed for use only with firearms that remain on the USML.

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<sup>1</sup> *District of Columbia v. Heller*, 554 U.S. 570, 592, 624-25 (2008). See also *McDonald v. Chicago*, 561 U.S. 742 (2010) (Second Amendment right to keep and bear arms is fully incorporated against state and local action by virtue of the Fourteenth Amendment).

<sup>2</sup> The Small Arms Survey estimates that as of the end of 2017, there were 121 firearms for every 100 residents in the U.S., for a total of some 393.2 million guns. The program director for the Small Arms Survey Institute notes, however, that “there is no direct correlation at the global level between firearm ownership and violence.” See Edith M. Lederer, “Global survey shows more than 1 billion small arms in world, mostly owned by civilians and mostly in the U.S.,” ChicagoTribune.com, June 18, 2018, <http://www.chicagotribune.com/news/nationworld/ct-survey-small-arms-world-civilians-20180618-story.html>.

- The designation of “high capacity magazines” that would remain on the USML is based on an arbitrary number, rather than any qualitative difference in the technology or military character of the item. The governing consideration should be whether they are specifically designed for use only with firearms that remain on the USML, not their capacity.
- Where manufacturers and exporters need to implement new compliance procedures for items moving from the USML to the CCL, the final rule should have a delayed implementation date; where requirements that once pertained under the International Traffic in Arms Regulations (ITAR) have no analogues under the Export Administration Regulations (EAR), the changes should take effect immediately.

For these reasons, and as detailed below, the NRA supports the proposal but advocates for minor revisions before its publication as a final rule.

#### **I. Firearm Sound Suppressors, As Such, Do Not Meet the Prerequisites for Control on the USML Articulated by the Proposal and Therefore Should be Controlled Under the CCL.**

As noted in its supplementary information, the proposal is part of a longstanding effort to “revise the U.S. Munitions List so that its scope is limited to those defense articles that provide the United States with a critical military or intelligence advantage or, in the case of weapons, are inherently for military end use.” Whether or not sound suppressors for firearms are characterized as “weapons,” there is no plausible argument that the devices meet these standards.

A firearm sound suppressor is basically a metal cylinder surrounding internal baffles that slow and cool escaping gas to decrease the volume of the firearm’s muzzle report. The devices reduce, but do not eliminate, the sound of gunshots.<sup>3</sup> Suppressor have been commercially available since the first decade of the 1900s.<sup>4</sup> The technology necessary to produce them is simple and well-understood throughout the developed world. Detailed design, development, production, and manufacturing information for firearm sound suppressors is pervasively available in the public domain, including on the Internet.<sup>5</sup> Similar devices are used to moderate the sound of various other consumer products powered by internal combustion, including automobiles, chainsaws, and lawnmowers.

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<sup>3</sup> Glenn Kessler, “Are firearms with a silencer ‘quiet?’” WashingtonPost.com, March 20, 2017, [https://www.washingtonpost.com/news/fact-checker/wp/2017/03/20/are-firearms-with-a-silencer-quiet/?noredirect=on&utm\\_term=.301e14951dd4](https://www.washingtonpost.com/news/fact-checker/wp/2017/03/20/are-firearms-with-a-silencer-quiet/?noredirect=on&utm_term=.301e14951dd4).

<sup>4</sup> Stephen Halbrook, “Firearm Sound Moderators: Issues of Criminalization and the Second Amendment,” 46 Cumb. L. Rev. 33, 42 (2015)

<sup>5</sup> A quick web browser search will reveal numerous webpages and videos offering detailed instructions on constructing suppressors of various levels of sophistication, from products produced with lathes and other machine tools to improvised models made from such materials as PVC, flashlight tubes, oil filters, and solvent traps. There’s even a detailed suppressor schematic on the ATF’s own website: <https://www.atf.gov/file/silencer-cut-away>.

Suppressors do not provide the United States with any critical military or intelligence advantage. They are not unique to the United States and are in fact the rare type of firearm-related product that historically has been regulated more closely in this country than in a number of other countries with otherwise relatively strict gun control laws. In some foreign countries, there are no special requirements to acquire or possess firearm suppressors; in certain others, they are presumptively available to those with a firearm license.<sup>6</sup> Firearm suppressors are already in use by military forces, law enforcement agencies, and civilian firearm owners across the world. Simply put, any country sophisticated enough to produce firearms is sophisticated enough to produce firearm sound suppressors.

Firearm sound suppressors, by themselves, are harmless and cannot accurately be classified as “weapons.” They are only useful when actually attached to a firearm. Even then, they do not make the firearm any more lethal. Their primary advantage is to protect the hearing of the firearm’s user and to decrease the sound signature of firearms so their use is less noticeable and has fewer collateral effects on those in vicinity of the firearm’s discharge.

And even assuming, for the sake of argument, suppressors could be characterized as “weapons,” they are not “inherently military.” Suppressors are regulated and taxed under U.S. law,<sup>7</sup> but they are readily available to those who are legally eligible to own firearms. They are lawful for private possession in 42 states and may be lawfully used for hunting in 40 states.<sup>8</sup> Suppressors adorn the firearms of plinkers, hunters, competitors, and law enforcement officers. According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), there were 1,297,670 suppressors registered under the National Firearms Act as of February 3, 2017, with nearly 400,000 such registrations occurring in the 12 months preceding that date alone.<sup>9</sup> As previously mentioned, suppressors are also commonly used by law enforcement agencies and private firearm owners in other countries as well.

In its current form, the proposal does not differentiate between suppressors for use on firearms that would be regulated under the USML and those that would not. This could mean that firearms that would otherwise be regulated under the CCL will remain on the USML because they have integrated suppressors. It could also mean that firearm instructors would have to refrain from allowing suppressors to be used in their classes for fear of providing unauthorized “defense services.” This is contrary to the spirit and intent of Export Reform and does nothing to further U.S. or international security interests.

Given that there is no special military or national security significance to firearm sound suppressors, there is no convincing argument for retaining them on the USML. Like flash suppressors, they should be generally subject to the CCL. If they are going to be retained on the USML at all, it should only be to the extent that they are “specially designed” for the firearms

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<sup>6</sup> 46 Cumb. L. Rev. at 72-4.

<sup>7</sup> See National Firearms Act, 26 U.S.C. §§ 5801-5872; Gun Control Act, 18 U.S.C. §§ 921-931.

<sup>8</sup> American Suppressor Association, Education Webpage, <https://americansuppressorassociation.com/education/> (last visited July 6, 2018).

<sup>9</sup> Stephen Gutowski, “ATF: 1.3 Million Silencers in U.S. Rarely Used in Crimes,” FreeBeacon.com, Feb. 17, 2017, <http://freebeacon.com/issues/atf-despite-nearly-1-3-million-silencers-united-states-rarely-used-crimes/>.

that would also continue to be so controlled. Because that distinction would be difficult to administer as a practical matter, however, the best option is simply to control the general category of firearm sound suppressors under the CCL.

## **II. The Proposal’s Treatment of Magazines is Arbitrary and Capricious.**

The proposal treats magazines as “high capacity” and therefore subject to the USML if they have a capacity of greater than 50 rounds, “regardless of jurisdiction of the firearm.” It offers no explanation for this threshold. Whatever the thinking behind it may be, a 51-round magazine provides no greater critical military or intelligence advantage than a magazine of lesser capacity, nor is it any more inherently for military end use.

Magazines, whatever their capacity, are among the most simple and utilitarian of firearm-related items. In typical form, they consist of a metal box or tube with a floor plate that contains a spring with a follower at the top. A firearm that can accept a detachable magazine can accept a magazine of virtually any size. All that is necessary to create a magazine of greater capacity is a longer box and spring. Drum magazines typically utilize a cylindrical chamber and a wound spring or ratcheting mechanism to allow for greater capacity in a more compact unit, but neither configuration uses sophisticated or closely-held technology. Like firearm sound suppressors, technical data for magazines with capacities above and below 51 rounds is available in the public domain, including online, and has been since at least the early 20<sup>th</sup> Century.<sup>10</sup>

United States law does not limit the capacity of magazines for any sort of firearm available to private citizens (a handful of states, however, do impose magazine capacity limits, typically of 10 rounds). Magazines with capacities in excess of 50 rounds are readily available on the commercial market. They are used by practical shooting competitors, as well as by many gun owners who appreciate the versatility and convenience they provide. Even BB guns for the youth market that use springs or compressed air often have reservoirs that hold hundreds of rounds. While these non-powder guns obviously are not and would not be defense articles under the proposal, their capacity demonstrates the fact that marksmen of all types appreciate the ability to operate their guns without frequent reloading.

Demonstrating the arbitrary nature of controlling magazines based on their capacity is the fact that they can easily be clipped, taped, or otherwise attached to one another, with reloads accomplished in mere moments.

As with sound suppressors, it makes no sense that a given curriculum of firearm instruction that would otherwise be uncontrolled under the proposal could potentially be re-characterized as a “defense service” if it happened to involve a “large capacity” magazine.

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<sup>10</sup> See, e.g., European Patent Office Patent No. 8172, “A New or Improved Cartridge Magazine for Small Arms and Machine Guns,” Accepted March 6, 1919 (providing detailed specifications for a drum-type magazine), available at <https://worldwide.espacenet.com/publicationDetails/originalDocument?CC=GB&NR=191508172A&KC=A&FT=D&ND=3&date=19190306&DB=EPDOC&locale=> (last visited July 6, 2018).

For these reasons, we recommend that firearm magazines be controlled under the CCL. If they are controlled under the USML at all, it should only be to the extent they “specially designed” solely for firearms that remain on the USML.

**III. The Final Rule Should Take Effect Immediately to the Extent Requirements Are Eliminated and Phase in Other Changes to Allow Regulated Entities Time to Adapt.**

When the final rule governing Categories I, II, and III of the USML is published, certain changes should take effect immediately, while others should be phased in to allow regulated entities time to adapt.

Changes that merely eliminate requirements altogether should take effect immediately. For example, there is no justification for continuing to make “manufacturers” of articles that would be moved off the USML register with the Department of State.

On the other hand, where control of an item changes from the USML to the CCL, necessitating new procedures by the regulated entity, implementation of the final rule’s effective date should be delayed to allow for new compliance systems to be established.

Licenses granted under the ITAR should also be grandfathered for all outstanding transactions.

The NRA does not have any specific recommendations for a timeline of implementation for enforcing new requirements and procedures. We will defer to the entities whose day-to-day operations will be directly affected by the changes in the final rule.

**Conclusion**

The NRA is very pleased to see Export Reform finally turn its attention to Categories I, II, and III of the USML. The proposal charts a positive course that will contribute to national security, enhance the competitiveness of U.S. businesses, and benefit ordinary gun owners by mitigating the potential for the ITAR to burden innocent conduct that does not implicate national security. We hope you will take the suggestions offered herein seriously to further promote the worthy goals of this effort, and we appreciate the opportunity to provide input.

We have also included our submission on the Bureau of Industry and Security’s companion rulemaking and incorporate those comments herein by this reference.

Sincerely,



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NRA-ILA

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July 6, 2018

Regulatory Policy Division  
Bureau of Industry and Security  
United States Department of Commerce  
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Washington, District of Columbia 20230

Via Online Submission: <https://www.regulations.gov/document?D=BIS-2017-0004-0001>

**Re: Docket No. BIS-2017-0004; RIN 0694-AF47; Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML)**

Greetings:

I am writing on behalf of the National Rifle Association (NRA) to provide the association's comments on the above proposed rule (the proposal). With some six million dues-paying members, the NRA is America's premier defender of the civil right protected by the Second Amendment. Our members include individuals and businesses that would be directly affected by the changes in the proposal, including gunsmiths, firearm instructors, journalists and writers covering firearm technology and development, hunters, competitive shooters, and manufacturers.

The NRA is very pleased to see that the project of Export Reform has finally circled back to the place where it began, with proposed amendments to Categories I, II, and III of the U.S. Munitions List (USML). These were among the first of the changes planned for the large-scale undertaking to update export controls on dual-use items, and rightly so. The Second Amendment protects an individual right to possess and carry firearms in case of confrontation, extending to

arms in common use among the population for lawful purposes.<sup>1</sup> America boasts hundreds of millions of privately-owned firearms<sup>2</sup> and a robust “gun culture” that has produced countless books, magazine articles, videos, websites, online forums, etc., that exhaustively detail firearm technology and use. It is difficult to imagine any information about the design, development, production, manufacturing, and use of firearms that is not already within the public domain. This same information is commonly available overseas, as are the types of firearms and ammunition the proposal would regulate under the Commerce Control List (CCL). Meanwhile, the might and sophistication of the U.S. military – as well as America’s armed populace – ensure that no foreign enemy wielding the types of arms at issue in these proposed regulations could pose a serious threat to this nation’s security.

Of course, movement of commonly-available firearms and ammunition to the CCL would not leave their export unregulated. America already has one of the most well-established and closely-administered systems of regulation for commercial production and distribution of firearms and ammunition in the world, and the proposal would not change that. It is clear from the proposal that items moving off the USML would remain closely controlled, with the necessity of export licenses remaining the norm. Foreign individuals’ access to firearms and ammunition would also remain regulated under the federal Gun Control Act and the National Firearms Act. Furthermore, the Commerce Department has long regulated exports of various shotguns, as well as their parts, components, accessories, and ammunition. Thus, it has existing knowledge of and relationships with many of the entities the proposal will affect. Those entities, in turn, will also have some familiarity with the Department’s regulatory environment and procedures.

The NRA believes that, on the whole, the proposal correctly balances the imperatives of national and global security, allocation of oversight resources, and promotion of American industry, innovation, and competitiveness. We do, however, think that it could be improved in several particulars. We also believe that the timing for the implementation of the rule deserves careful consideration.

Specifically, our concerns involve the following:

- **§ 740.9 Temporary imports, exports, reexports, and transfers (in-country) (TMP) and § 758. 10 Entry clearance requirements for temporary imports – The use of the Automated Export System (AES) is impractical and inappropriate for private travelers exporting a personal firearm they temporarily imported into the U.S. for**

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<sup>1</sup> *District of Columbia v. Heller*, 554 U.S. 570, 592, 624-25 (2008). See also *McDonald v. Chicago*, 561 U.S. 742 (2010) (Second Amendment right to keep and bear arms is fully incorporated against state and local action by virtue of the Fourteenth Amendment).

<sup>2</sup> The Small Arms Survey estimates that as of the end of 2017, there were 121 firearms for every 100 residents in the U.S., for a total of some 393.2 million guns. The program director for the Small Arms Survey Institute notes, however, that “there is no direct correlation at the global level between firearm ownership and violence.” See Edith M. Lederer, “Global survey shows more than 1 billion small arms in world, mostly owned by civilians and mostly in the U.S.,” ChicagoTribune.com, June 18, 2018, <http://www.chicagotribune.com/news/nationworld/ct-survey-small-arms-world-civilians-20180618-story.html>.

**lawful purposes.** The current system, which relies upon the ATF Form 6NIA, should be maintained without modification for such persons.

- **§ 740.14 Baggage (BAG) and § 758.1 The Electronic Export Enforcement (EEI) filing to the Automated Export System (AES) – The use of the AES is impractical and inappropriate for private travelers temporarily exporting a personal firearm for lawful purposes.** The current system, which relies upon the CBP Form 4457, should be maintained without modification for such persons until such time as U.S. Customs and Border Protection engages in a public rulemaking process to resolve the current problems.
- **§ 758.1 The Electronic Export Enforcement (EEI) filing to the Automated Export System (AES) and § 762.2 Records to be retained – Expanding the data elements necessary for AES filings would exacerbate the problems for private travelers temporarily exporting a personal firearm and violate the spirit of Congressional prohibitions against federal firearm registries.** Private travelers temporarily exporting personal firearms should continue to be able to use the CPB Form 4457 without the firearm's information being captured by a federal database.
- **Where manufacturers and exporters need to implement new compliance procedures for items moving from the USML to the CCL, the final rule should have a delayed implementation date; where requirements that once pertained under the International Traffic in Arms Regulations (ITAR) have no analogues under the Export Administration Regulations (EAR), the changes should take effect immediately.**

For these reasons, and as detailed below, the NRA supports the proposal but advocates for revisions before its publication as a final rule.

## I. The AES System is Impractical and Inappropriate for Use by Private Travelers.

### A. The AES requirement was introduced without sufficient or accurate notice to the public.

The International Traffic in Arms Regulations historically had included an exemption under 22 CFR §123.17(c) that allowed U.S. persons to temporarily export without a license up to three nonautomatic firearms and not more than 1,000 cartridges therefor. This exemption was geared toward hunters, sportsmen, competitors, and others who travel overseas with firearms to be used for sporting and other lawful purposes.

In 2011, DDTC published a Federal Register notice of proposed rulemaking entitled International Traffic in Arms Regulations: Exemption for Temporary Export of Chemical Agent Protective Gear.<sup>3</sup> The supplementary information to that rulemaking focused on amendments to 22 CFR §123.17 pertaining to “the temporary export of chemical agent protective gear for

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<sup>3</sup> 76 Fed. Reg. 16353 (March 23, 2011).

exclusive personal use . . . .” It also mentioned that “an exemption for firearms and ammunition is clarified by removing certain extraneous language that does not change the meaning of the exemption.”<sup>4</sup>

In fact, the proposed change to the firearms and ammunition exemption was a material and substantial change to the status quo. It would require for the first time that “the individual must . . . present the Internal Transaction Number (ITN) from submission of the Electronic Export Information in the Automated Export System per § 123.22(b)” to use the exemption.<sup>5</sup>

But because the notice only printed the amendments to 22 CFR §123.17 and omitted the existing text of that section, it was not clear from the face of that notice what the context of this new requirement was. The notice’s inaccurate portrayal of the change as a mere “clarification” further contributed to obscuring the significance of this new language. Thus, the new requirement for temporary firearms and ammunition exports went largely unnoticed by relevant stakeholders.

The final rule was published on May 2, 2012.<sup>6</sup> Its supplementary information included a similarly inaccurate description of the firearm exemption amendment. “Section (c)(3) is revised to remove what is in practice extraneous language,” it stated.<sup>7</sup> “Subject to the requirements of (c)(1)–(3), the exemption applies to all eligible individuals (with the noted exceptions). Thus, while the text is revised, the meaning of (c)(3) is not changed.”<sup>8</sup>

Unlike the notice for the proposed rule, however, the notice of the final rule included the full text of subsection (c), which made clear the AES filing requirement pertained to those claiming the licensing exemption for temporary firearm and ammunition exports. Of course, it was by then too late for stakeholders to object to these changes, as the rule had been finalized.

For three years, the changes to 22 CFR §123.17 as they pertained to temporary firearm and ammunition exports appeared to be ignored and unenforced by the federal government. Then, in 2015, U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) suddenly changed their websites to indicate the AES filing requirements would be enforced against travelers temporarily exporting firearms and ammunition, with penalties that could include seizure of improperly declared items and criminal prosecution.<sup>9</sup>

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 16354.

<sup>6</sup> Amendment to the International Traffic in Arms Regulations: Exemption for Temporary Export of Chemical Agent Protective Gear, 77 Fed. Reg. 25865-01 (May 2, 2012).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See NRA-ILA, “Rule Change May Devastate International Travel for Hunters and Shooters,” <https://www.nraila.org/articles/20150320/rule-change-may-devastate-international-travel-for-hunters-and-shooters> (March 20, 2015).

B. The AES was not designed for use by private persons for non-business purposes.

The AES was designed around the needs of commercial exporters and government officials, not private travelers. As CBP's "Introduction" to the AES states:

*During AES development, a Trade Resource Group convened regularly. To ensure that all voices were heard, the group was comprised of large and small exporters, carriers, freight forwarders, port authorities, and non-vessel operating common carriers (NVOCC). At the trade's request, separate coalitions for exporters and software vendors were formed.<sup>[10]</sup>*

It continues, "Whatever aspect of the export community you represent - exporter, carrier, freight forwarder, port authority, service center, non-vessel operating common carrier, consolidator - AES has advantages for you."<sup>[11]</sup> Nowhere does this summary recognize that private individuals would also have to navigate a system designed by and for industry compliance specialists.

Individuals attempting to use the AES will need to have compatible hardware and software systems or to enlist the services of an authorized agent. Those who do not wish to purchase or write their own software, or hire someone to complete the filing process for them, have the option of using AESDirect, an online version administered by the U.S. Census Bureau.

That agency, in turn, has a webpage with various resources to acquaint users with the intricacies of the system.<sup>[12]</sup> Browsers can start, for example, with the 39-page *AESDirect User Guide*<sup>[13]</sup> or with any of the one-hour-plus webinars that cover various aspects of the system.

Navigating the filing process requires individuals to create an account and then fill in data fields with various codes that are neither intuitive nor easily reconcilable with the context of an individual traveling with his or her own private property. For example, the system requires the parties to an export to be identified, with required fields that include the U.S. Principal Party in Interest, which must be identified by "Company Name" and an acceptable ID type. Likewise, the Ultimate Consignee also must be specified, again with reference to "Company Name" and an authorized form of identification.

Nowhere does the User Guide or the screens of the system itself explain how these categories are supposed to translate for private individuals declaring temporary exports of their

<sup>10</sup> U.S. Customs and Border Protection, "AES: An Introduction," <https://www.cbp.gov/trade/aes/introduction> (last visited July 6, 2018).

<sup>11</sup> *Id.*

<sup>12</sup> U.S. Census Bureau, "ACE AESDirect – Resources," [https://www.census.gov/foreign-trade/aes/aesdirect/transitiontoace.html?eml=gd&utm\\_medium=email&utm\\_source=govdelivery](https://www.census.gov/foreign-trade/aes/aesdirect/transitiontoace.html?eml=gd&utm_medium=email&utm_source=govdelivery) (last visited July 6, 2018).

<sup>13</sup> Available at <https://www.census.gov/foreign-trade/aes/aesdirect/AESDirect-User-Guide.pdf> (last visited July 6, 2018).

own property. Such persons are not just an afterthought in the system's design. Rather, it appears that the design has not thought of them at all.

The acceptable forms of identification, for example, are an Employer Identification Number (EIN), a Dun and Bradstreet Number, or a foreign passport number (if the foreign entity is in the U.S. at the time the goods are purchased or obtained for export). U.S. individuals making temporary exports cannot use their own passport numbers, nor can they use their Social Security numbers.<sup>14</sup>

Using AESDirect, moreover, requires an individual to apply for an account with the Secure Data Portal of the Automated Commercial Environment. The application for an ACE Exporter Account<sup>15</sup> requires users to list "Corporate Information," including an EIN and Company Name.

The Internal Revenue Service (IRS) is responsible for issuing EINs. The IRS website that explains the process for applying online clearly states: "Employer Identification Numbers are issued for the purpose of tax administration and are not intended for participation in any other activities."<sup>16</sup> The online application requires the applicant to identify the "legal structure" associated with the EIN. None of the available options corresponds with a private individual who simply wishes to make an AES filing. The applicant then must specify why he or she is requesting an EIN, with the limited menu choices again offering no option for the private AES filer. Finally, the applicant must certify under penalties of perjury that he or she has "examined this application, and to the best of my knowledge and belief, it is true, correct, and complete."<sup>17</sup>

Private individuals using the online application form, in other words, must make a false certification to the IRS about their business need for an EIN as a prerequisite to complying with the legally-mandated AES filing requirement. These individuals are also potentially creating an expectation with the IRS that they are creating a business that should have associated tax filings.

C. The relevant agencies have been aware of the problems private individuals have using the AES, and there has been no apparent progress in resolving them.

In 2015, representatives of the NRA – as well as representatives of hunting and firearm industry associations – met with officials from CBP, the Census Bureau, the Department of

<sup>14</sup> See U.S. Customs and Border Protection, "Change in Automated Export System (AES) exporter ID filing requirement," [https://help.cbp.dhs.gov/app/answers/detail/a\\_id/1145/kw/EIN%20number%20needed%20for%20export](https://help.cbp.dhs.gov/app/answers/detail/a_id/1145/kw/EIN%20number%20needed%20for%20export) (last visited July 6, 2018).

<sup>15</sup> Available at [https://ace.cbp.dhs.gov/acexpub/acexpub\\_Apps/ExporterAccountApplication/expForm.php](https://ace.cbp.dhs.gov/acexpub/acexpub_Apps/ExporterAccountApplication/expForm.php) (last visited July 6, 2018).

<sup>16</sup> IRS, "Apply for an Employer Identification Number (EIN) Online," <https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online> (last visited July 6, 2018).

<sup>17</sup> See IRS Form SS-4, available at <https://www.irs.gov/pub/irs-pdf/fss4.pdf> (last visited July 6, 2018). Note the PDF of the SS-4 has options for "Other (specify)" not available on the IRS's online application form. It does not, however, indicate that EINs may be obtained solely for AES filing purposes.

Homeland Security (DHS), and ICE to discuss the above problems.<sup>18</sup> These discussions emphasized the need for a simple, straightforward, and legal means for private travelers to comply with their AES filing requirements. The discussions also touched on concerns about creating a federal firearm registry via AES filings (a topic that is explored below in greater depth).

Shortly after that meeting, and after additional intervention from members of Congress, CBP announced that it would return to the status quo practice of using the paper CBP Form 4457 to track firearms for temporary export.<sup>19</sup> In this procedure, travelers report to a CBP office during their trip or beforehand at a Port of Entry and present the firearms (and ammunition, if applicable) to be recorded on the 4457. Upon return to the U.S., the traveler will declare the property, which can be checked, if necessary, against the 4457 to ensure the same firearms that left the country have returned. The ATF has also indicated that this procedure will satisfy the re-importation of firearms under its importation jurisdiction.<sup>20</sup>

We understand that this remains the procedure for temporary firearm exports by private travelers to the present day and that the AES filing requirement is not being enforced against these individuals.

Between 2015 and the present, NRA representatives have had repeated contacts with officials from CBP and the Census Bureau to inquire about any changes or updates to the above-described state of affairs. To date, we have neither seen nor heard of any evidence that the AES system has been in any way modified to alleviate the problems it presents for private travelers. Our review of the applicable websites during the preparation of these comments confirms this impression. The AES remains a complex application geared toward the needs of industry and government, not private persons traveling with their own property for non-business purposes.

**D. BIS should omit the AES filing requirement for private persons temporarily exporting their own firearms and ammunition for lawful purposes and codify the Form 4457 procedure.**

The NRA is pleased to see that BIS' current proposal is handling the AES issue in a much more transparent and forthright manner than the 2012 DDTC rulemaking that introduced it in the first place. The background information included with the proposal acknowledges:

*BIS is aware that U.S. Customs and Border Protection (CBP) has temporarily suspended the requirement to file EEI to the AES for personally-owned firearms and ammunition that are “subject to the ITAR” being exported under 22 CFR 123.17(c), due to*

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<sup>18</sup> See NRA-ILA, “You Can’t Get There from Here: Obama Administration Shrugs Off Woes of International Travelers,” [<sup>19</sup> See, e.g., P.J. Reilly, “U.S. Government withdraws confusing new gun rules for traveling hunters,” LancasterOnline, April 27, 2015, \[https://lancasteronline.com/news/local/u-s-government-withdraws-confusing-new-gun-rules-for-traveling/article\\\_e2991fcc-ecec-11e4-8e21-3b622f277d23.html\]\(https://lancasteronline.com/news/local/u-s-government-withdraws-confusing-new-gun-rules-for-traveling/article\_e2991fcc-ecec-11e4-8e21-3b622f277d23.html\).](https://www.nraila.org/articles/20150417>You-can't-get-there-from-here-obama-administration-shrugs-off-woes-of-international-travelers</a> (April 17, 2015).</p>
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<sup>20</sup> See 27 C.F.R. § 478.115(a).

*operational challenges related to implementation. ... Whether and how BIS includes this requirement in a final rule would be based on whether CBP is able to update its processes, and other agencies as needed, to allow for individuals to easily file EEI in AES by the time a final rule is published. If CBP is not able to do so, then the final rule may direct exporters to continue to use CBP's existing process, which is the use of the CBP Certification of Registration Form 4457, until a workable solution is developed or CBP suggests an alternative simplified solution for gathering such information for temporary exports of personally-owned firearms and ammunition.*

As explained above, the CBP and the other relevant agencies have not updated their processes to allow for individuals to easily file Electronic Export Information in the AES. Given that they are aware of the issues, have had more than three years to fix them, and have made no discernable progress in that direction, there is no reason to believe they will do so by the time the proposal is published as a final rule.

The NRA is unaware of any compelling security need to change the status quo. The very fact that the systems have not been updated to address the outstanding issues would seem to indicate CBP and DHS agree. Simply put, there has been no urgency to facilitate AES filings by private travelers. The Form 4457 procedure has proven to be a workable system both before and since the 2012 rule change, and it can continue to suffice for the near term.

The paper Form 4457 also serves an important function for some U.S. travelers to foreign countries that require a valid “firearm license” from visitors’ home countries. Neither the U.S. government nor most U.S. states generally license the acquisition or simple possession of firearms, especially long guns. But foreign officials in these countries have historically accepted the Form 4457 as fulfilling this requirement.

It is also relevant that BIS has throughout the relevant time period always allowed for the temporary export of shotguns and shotgun shells under its jurisdiction via the baggage exemption of 15 C.F.R. § 740.14 without requiring a declaration to be filed in the AES. Indeed, that exemption currently does not specifically require the use of the Form 4457 procedure, either. Codifying the Form 4457 procedure would therefore help promote consistency and understanding across the different agencies involved in enforcing the nation’s export rules and with the traveling public. The president’s determination that certain additional firearms and ammunition no longer warrant control under the USML more strongly argues in favor of BIS adopting its own procedures for their temporary export than for importing procedures from the ITAR into the EAR.

CBP can also issue its own rulemaking on procedures for temporary exports by private travelers, should the state of play change with respect to the practical and technological issues of the AES. The issue could then be fully vetted in its own right. There is no reason, however, to inject this thorny issue into the larger project of Export Reform. It is not necessary nor helpful to the objectives of Export Reform, and it would perpetuate a problem one solution to which has already been identified (i.e., the paper Form 4457 procedure).

**E. Private travelers exporting a personal firearm they temporarily imported into the U.S. for lawful purposes should not be required to use AES for this purpose.**

The same problems that arise from requiring U.S. persons to file declarations through the AES to take advantage of the BAG exemption apply to requiring foreign visitors traveling to the U.S. with their own firearms to use the AES to avail themselves of the TMP exception. This is not necessary under the current version of 15 C.F.R. § 740.9, and it should not be added to that section or to § 758.1.

Currently, foreign visitors traveling to the U.S. with their own firearms must apply for an import permit from the Bureau of Alcohol, Tobacco, Firearms & Explosives using ATF Form 6NIA. The individual will also have to substantiate his or her eligibility to possess a firearm in the United States as a non-U.S. person (for example, by obtaining a hunting license from a U.S. state). The travelers must then declare their firearms at the border, provide CBP officials with any required documents, and maintain the required documents during the duration of their stay. Customs officials in the country of re-importation can use the ATF Form 6NIA to confirm that the individual is returning with the same firearms that were brought to the U.S.

We are unaware of any attempt on DDTC's part to enforce a requirement that foreign visitors (including from Canada) declare the "export" of firearms they temporary brought to the U.S. for lawful purposes through the AES when the visitor returns home. Indeed, it is difficult to understand how doing so would contribute to national security. Thanks the Second Amendment and America's unique commitment to individual liberty, the U.S. has by far the largest civilian stock of firearms in the world.<sup>21</sup> Given the ready availability of firearms in the U.S. as compared to the rest of the world, there is little chance that America's interests are seriously threatened by foreign visitors bringing their own lawfully obtained guns into the country. At the very least, they are not threatened enough to impose a bureaucratic requirement for private foreign travelers that has already proven unworkable for their U.S. counterparts.

For these reasons, we urge BIS to omit from §§ 740.2 and 758.10 the AES declaration requirement as applied to private foreign travelers temporarily bringing personal firearms into the U.S. Foreign hunters and competitive shooters help contribute to the U.S. economy, and these proposed changes would discourage them from doing so. Meanwhile, reports of foreign travelers committing crimes in the U.S. with firearms they lawfully brought with them are vanishingly rare.

**II. **The expanded data elements necessary for AES filings exacerbate the problems for private travelers forced to use the system and violate the spirit of Congressional prohibitions against federal firearm registries.****

The proposal would "expand the data elements required as part of an AES filing for [firearms transferred from the USML] to include serial numbers, make, model and caliber," including for those wishing to use the BAG and TMP exemptions. This makes the previously mentioned problems with AES filing that much worse. It also runs counter to the spirit of clearly

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<sup>21</sup> Lederer, *supra* note 2.

established Congressional policy against using bureaucratic record-keeping requirements to establish firearms registries.

Firearm registries have long been anathema to gun owners as a tool that can be used to target them for discrimination and for the eventual seizure of their firearms. History is rife with examples of tyrants who used civilian disarmament to further their despotic ends,<sup>22</sup> and America's own Revolutionary War began in earnest after a British raid on Colonial arms caches. Against this backdrop, federal gun control laws have consistently maintained a policy against national registries of the sorts of common arms with which Americans typically exercise their Second Amendment rights.<sup>23</sup>

Congress, in enacting the Gun Control Act of 1968 (GCA), specifically declined to create a federal firearm registry, despite the urging of President Lyndon B. Johnson to do so.<sup>24</sup> Both the House and the Senate voted down proposals to require registration of guns as the legislation made its way through Congress.<sup>25</sup> As Sen. James McClure later stated,

*The central compromise of the Gun Control Act of 1968—the sine qua non for the entry of the Federal Government into any form of firearms regulation was this: Records concerning gun ownership would be maintained by dealers, not by the Federal Government and not by State and local governments.*<sup>[26]</sup>

Congress then amended the GCA in 1986 to prohibit any rule or regulation enacted under its auspices from using the records that federal firearm licensees must keep to establish “any system of registration of firearms, firearms owners, or firearms transactions or dispositions ....”<sup>27</sup>

When the Brady Handgun Violence Protection Act of 1993<sup>28</sup> created the authority for the National Instant Criminal Background Check System (NICS), Congress took pains to ensure the system would not circumvent the GCA’s policy against firearm registration. The Act states that if the NICS determines receipt of a firearm would not be in violation of law, it shall “destroy all records of the system with respect to the call (other than the identifying number and the date the

<sup>22</sup> See, e.g., STEPHEN HALBROOK, GUN CONTROL IN THE THIRD REICH, DISARMING THE JEWS AND “ENEMIES OF THE STATE” (Independent Inst. 2013).

<sup>23</sup> The National Firearms Act, 26 U.S.C. §§ 5801-5872, requires federal registration of limited categories of arms, but to the extent it covers firearms, those guns— which include machineguns, short-barreled shotguns, short-barreled rifles, and non-sporting firearms greater than .50 caliber – are comparatively rare among the U.S. civilian firearm stock.

<sup>24</sup> See Lyndon B. Johnson, “Remarks Upon Signing the Gun Control Act of 1968,” Oct. 22, 1968, available at <http://www.presidency.ucsb.edu/ws/?pid=29197> (last visited July 6, 2018).

<sup>25</sup> 114 Cong. Rec. H22267 (daily ed. July 19, 1968); 114 Cong. Rec. S27420-421 (daily ed. Sept. 18, 1968).

<sup>26</sup> 131 Cong. Rec. S9163-64 (July 9, 1985).

<sup>27</sup> 18 U.S.C. § 926(a).

<sup>28</sup> Pub. L. No. 103-159, 107 Stat. 1536 (1993).

number was assigned) and all records of the system relating to the person or the transfer.”<sup>29</sup> Section 103(i) of the Act contains additional prohibitions against the use of the system to create a federal firearms registry:

*No department, agency, officer, or employee of the United States may—*

- (1) *require that any record or portion thereof generated by the system established under this section may be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or*
- (2) *use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions except with respect to person, prohibited by section 922 (g) or (n) of title 18, United States Code State law, from receiving a firearm.*<sup>[30]</sup>

Beginning in 1979, the annual appropriations bills that funded the ATF and its predecessor agency prohibited the Department of Justice from centralizing the records of federal firearm licensees (FFLs), until the prohibition was made permanent in 2011.<sup>31</sup> Also made permanent in that 2011 appropriations bill was another rider that prohibited the ATF from compiling a searchable registry of gun buyers’ names from business records transferred to the agency by FFLs who ceased doing business.<sup>32</sup> A third provision in the same bill permanently created a 24-hour deadline for the destruction of identifying information on those who successfully undergo a NICS check.<sup>33</sup>

Even Obamacare contains a number of provisions that prohibit information collected under its authority from being used to create firearm registries.<sup>34</sup>

Meanwhile, there is no express authority in the enabling act under which this rulemaking is promulgated for BIS to collect and retain detailed information on the firearms owned by law-abiding Americans. Yet BIS is proposing to compel Americans to enter identifying information about themselves and their firearms into a federal database as a precondition of engaging in lawful travel with firearms. Individuals forced to comply with this requirement are given no assurances about how the information will be retained or protected or whether it will be available to other entities, and if so, under what circumstances. This clearly runs contrary to the spirit of congressional policy governing the handling of firearm owner information.

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<sup>29</sup> 18 U.S.C. 922(t)(2)(C).

<sup>30</sup> 107 Stat. at 1542.

<sup>31</sup> Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609 (2011).

<sup>32</sup> 125 Stat. 552, 610.

<sup>33</sup> *Id.* at 632.

<sup>34</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, 884-5 (2010).

The *de facto* federal firearm registry that would be created by forcing private gun owners to make detailed declarations about themselves and their firearms via the AES is another argument in favor of retaining the current procedure utilizing the paper Form 4457. That procedure vindicates the government's legitimate interest in monitoring the firearms that move and in out of the country but does not require the government to maintain a central registry of firearm owner information.

Going forward, any further attempt to automate the information private travelers must provide about their personal firearms should include express privacy provisions. At a minimum, these should prevent the dissemination or transfer of the information to other entities and require its complete destruction once CBP has verified that the firearms which were temporarily exported have been returned to the U.S.

For all these reasons, the NRA objects to the proposal's use of expanded data elements for private travelers seeking to utilize the BAG or TMP exceptions and urges that those requirements be omitted from the final rule.

### **III. The Final Rule Should Take Effect Immediately to the Extent Requirements Are Eliminated and Phase in Other Changes to Allow Regulated Entities Time to Adapt.**

When the final rule governing Categories I, II, and III of the USML is published, certain changes should take effect immediately, while others should be phased in to allow regulated entities time to adapt.

Changes that merely eliminate requirements altogether should take effect immediately. For example, there is no justification for continuing to make "manufacturers" of articles that would be moved off the USML register with the Department of State.

On the other hand, where control of an item changes from the USML to the CCL, necessitating new procedures by the regulated entity, implementation of the final rule's effective date should be delayed to allow for new compliance systems to be established.

Licenses already granted under the ITAR should also be grandfathered for all outstanding transactions.

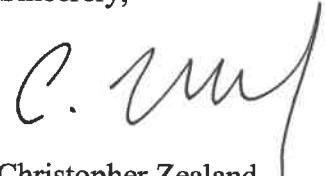
The NRA does not have any specific recommendations for a timeline of implementation for enforcing new requirements and procedures. We will defer to the entities whose day-to-day operations will be directly affected by the changes in the final rule.

### **Conclusion**

The NRA is very pleased to see Export Reform finally turn its attention to Categories I, II, and III of the USML. The proposal charts a positive course that will contribute to national security, enhance the competitiveness of U.S. businesses, and benefit ordinary gun owners by mitigating the potential for export regulations to burden innocent conduct that does not implicate national security. We hope you will take the suggestions offered herein seriously to further promote the worthy goals of this effort, and we appreciate the opportunity to provide input.

We have also included our submission on the Directorate of Defense Trade Control's companion rulemaking and incorporate those comments herein by this reference.

Sincerely,



Christopher Zealand  
Senior Research Attorney  
NRA-ILA

# PUBLIC SUBMISSION

<b>As of:</b>	July 10, 2018
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**Docket:** DOS-2017-0046

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-0049

Comment on DOS-2017-0046-0001

## Submitter Information

**Name:** Patrick Hiller

## General Comment

Dear Ladies and Gentlemen,

I oppose the proposed rule for the following reasons:

1. The proposed rule treats semi-automatic assault rifles as non-military. But many state and non-state groups in importing countries use semi-automatic rifles in armed conflicts, causing enormous damage. Regarding wide retail availability of firearms, about which comment has been requested, many countries, including Mexico, prohibit civilian possession of semi-automatic rifles and handguns, as well as of any larger caliber firearm. Six U.S. states, the District of Columbia, and several large retail chains also prohibit retail sale of semi-automatic assault rifles.
2. The proposed rule would eliminate Congressional oversight for important gun export deals. Congress will no longer be automatically informed about sizable sales of these weapons. That will limit its ability to comment on related human rights concerns, as it recently did on the Philippines and Turkey.
3. National brokering laws are a weak link in the chain of efforts to curtail trafficking of small arms and light weapons. The switch from State to Commerce will mean that the brokers and financiers who arrange shipments of semiautomatic firearms will no longer have a statutory requirement to register and obtain a license, increasing risk of trafficking. That will make it easier for unscrupulous dealers to escape attention.
4. The rule reduces end-use controls for gun exports. It would eliminate the State Departments Blue Lantern program for gun and ammunition exports, which carries out hundreds of pre-license and post-shipment inspections and publicly reports on them. It also would move license approval out of the department that compiles the U.S. Governments information on human rights violations, reducing the ability to effectively deny weapons licenses to international human rights violators.
5. End-use controls are weakened by eliminating registration of firearms exporters, a requirement since the 1940s.
6. The rule enables unchecked gun production in the U.S. and exports abroad by removing the block on

3D printing of firearms. When Defense Distributed founder Cody Wilson posted online instructions for 3D-printing weapons, the State Department successfully charged him with violating arms export laws, since his open-source posting made it possible for anyone with access to a 3D printer, anywhere, to produce a lethal weapon. The Commerce Department is unlikely to make the same argument once those weapons are transferred to their control. Unless corrected, the new regulations run the risk of effectively condoning and enabling 3D printing of firearms in the U.S. and around the globe. By effectively eliminating many means to detect firearms, background checks on domestic sales and end-use controls on international exports for such weapons, this change could generate many preventable tragedies.

7. The Commerce Department does not have resources to enforce export controls, even before the addition of 30,000 firearms export licenses as a result of this rule predicted by Commerce. The BIS's enforcement office, with no staff in Latin America, Africa, or many other parts of the world, is not equipped to take the same level of preventive measures for end-use controls. Moreover, the State Department has developed extensive data, expertise and institutional relations to implement the Leahy Law for security assistance, which can serve as a critical foundation in both pre-license and post-shipment checks to control and verify end uses and end users. Commerce does not have these resources.

8. The proposed change will reduce transparency and reporting on gun exports.

9. This rule would transfer gun export licensing to an agency the Commerce Department - whose principle mission is to promote trade. Firearms, both assault weapons and non-semi-automatic weapons, are uniquely and pervasively used in criminal violence around the world. Controlling their export should be handled by the State Department, which is mandated and structured to address the potential impacts in importing nations on stability, human security, conflict, and human rights.

10. Firearms are used to kill a thousand people every day around the world in acts of organized crime, political violence, terrorism, and human rights violations. Research indicates that the types of weapons being transferred to Commerce control, including AR-15, AK-47, and other military-style assault rifles and their ammunition, are weapons of choice for criminal organizations in Mexico and other Latin American countries that are responsible for most of the increasing and record levels of homicides in those countries. The export of these weapons should be subject to more controls, not less.

# PUBLIC SUBMISSION

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**Docket:** DOS-2017-0046

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-0074

Comment on DOS-2017-0046-0001

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## Submitter Information

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## General Comment

Amendments to the International Traffic in Arms Regulations are very welcome. As a Type 01 Federally Licensed Firearms dealer, our company has been waiting for this change to happen for several years. It will allow us to expand our operations into manufacturing and export, which will potentially make it possible for us to create new jobs and new opportunities for workers within our company, as well as the various vendors that supply us.

On the other hand, several proposed changes fall short of what we were expecting.

Why are suppressors not being placed on the CCL? These are in common use throughout the United States and in Europe. In some European countries, silencers are not regulated at all, or much less regulated than in the US. Put suppressors on the CCL in order to stimulate innovation among US-based manufacturers. This makes even more sense if suppressors are eventually removed from the National Firearms Act, which is quite possible in the future.

Although automatic weapons are no longer in common use by civilians, this is only due to the Hughes Amendment of the Firearm Owners Protection Act of 1986. This amendment has never been challenged, but is certainly unconstitutional.

It makes no sense to continue leaving firearm technologies that have been around for over 100 years under ITAR. This appears to be a political decision rather than a logical one. Move common automatic weapons to the CCL.

Due to their heavily-regulated nature, automatic firearms will be still difficult to export. Leaving them under ITAR will only hurt the US, as it will continue to constrain less well-heeled small arms manufacturers, who might develop the next Thompson SMG, M1 Garand, or M16. Does no one wonder why automatic firearm technology has been at a standstill essentially for over 60 years?

All of Category I should be moved to the CCL. Items of likely greater concern fall under Category II and Category III. The revisions to those sections will of course depend on the items enumerated in the changes.

As a Type 01 FFL, we are looking forward to these reforms in order to acquire a Type 07 license. Because we are a small concern, the ITAR fee has been a barrier to entry for us. We will still feel constrained by the omission of suppressors and commonly-available automatic weapons from these changes, however. If these had been placed on the CCL, we would have become a Type 07/SOT. Under the current proposal, an 07/SOT will be required still to pay the ITAR fee.

These rules have always been complex, so simplification and clarification are appreciated. Those who would violate them will do it despite these regulations, however. The only companies that benefit from any remaining complex technologies not moved to the CCL are those with the capital and resources to hire entire compliance departments at the expense of productive activity. The time and money wasted complying with ITAR could be so much more effectively used for the development of new technologies and new jobs for Americans.

Nonetheless, these changes are certainly welcome, and will go a long way to help make the American defense industry more competitive in the worldwide defense article marketplace.

As a domestic violence prevention advocate, I know full well the toll gun violence takes on women across the world. Abusers' use of firearms to threaten, control, injure, and kill knows no borders or boundaries. I oppose the proposed rule for the following reasons:

1. The proposed rule treats semi-automatic assault rifles as "non-military." But many state and non-state groups in importing countries use semi-automatic rifles in armed conflicts, causing enormous damage. U.S. troops use rifles in semi-automatic mode an overwhelming amount of the time. Regarding wide retail availability of firearms, about which comment has been requested, many countries prohibit civilian possession of semi-automatic rifles and handguns, as well as of any larger caliber firearm. Six U.S. states, the District of Columbia, and several large retail chains also prohibit retail sale of semi-automatic assault rifles. Many semi-automatic rifles are also easily converted to fully automatic firearms. Because military-style assault rifles clearly have substantial military utility, transfer of these firearms to Commerce Department control is inconsistent with the statutory framework enacted by the Congress to regulate the export of arms.
2. The proposed rule would eliminate Congressional oversight for important gun export deals. Congress will no longer be automatically informed about sizable sales of these weapons. That will limit its ability to comment on related human rights concerns, as it recently did on the Philippines and Turkey.<sup>i</sup> Congressional action in 2002 required sales of firearms regulated by the US Munitions List valued at \$1 million or more be notified to Congress. Items moved to Commerce control would no longer be subject to such notification. In a September 15, 2017, letter, Senators Benjamin Cardin, Dianne Feinstein, and Patrick Leahy explicitly noted that this move would violate Congressional intent and effectively eliminate Congress' proper role.
3. The new rules would transfer the cost of processing licenses from gun manufacturers to taxpayers. Registration fees that since the 1940s have been used to offset the costs to the government of tracking who is manufacturing weapons would no longer apply to manufacturers of semi-automatic weapons, and Commerce does not charge any fee for licensing. So the government -- i.e., taxpayers -- will absorb the cost of reviewing applications and processing licenses. Gun exporters that benefit from these sales should shoulder this cost.
4. National laws for brokers and financiers who arrange firearm shipments are a weak link in the chain of efforts to curtail trafficking of small arms and light weapons. There is good reason for concern that firearms brokers will no longer be subject to US brokering law. Although Commerce states it will retain rules on brokering for a State Department list that includes assault rifles, there is no statutory basis for brokers of these weapons to register and obtain a license, increasing the risk of trafficking. That will make it easier for unscrupulous dealers to escape attention.<sup>ii</sup>
5. The rule reduces end-use controls for gun exports. It would eliminate the State Department's Blue Lantern program for gun and ammunition exports, which carries out hundreds of pre-license and post-shipment inspections and publicly reports on them. It also would move license approval out of the department that compiles the U.S. Government's information on human rights violations, reducing the ability to effectively deny weapons licenses to international human rights violators. End-use controls also are weakened by eliminating registration of firearms exporters, a requirement since the 1940s. Registration of exporters allows the State Department to check an exporter's history whenever a manufacturer or broker requests a license for a particular gun export sale. But the transfer of licensing to Commerce will remove new exporters and brokers of these firearms from the State Department database, weakening enforcement against arms trafficking.
6. The rule enables unchecked gun production in the U.S. and exports abroad by removing the block on 3D printing of firearms. When Defense Distributed founder Cody Wilson posted online instructions for 3D-printing weapons, the State Department successfully charged him with violating arms export laws, since his open-source posting made it possible for anyone with access to a 3D printer, anywhere, to produce a lethal weapon. The Commerce Department is

unlikely to make the same argument once those weapons are transferred to their control. Unless corrected, the new regulations run the risk of effectively condoning and enabling 3D printing of firearms in the U.S. and around the globe. By effectively eliminating many means to detect firearms, background checks on domestic sales and end-use controls on international exports for such weapons, this change could generate many preventable tragedies.

7. The Commerce Department does not have resources to enforce export controls, even before the addition of 10,000 firearms export license applicants as a result of this rule predicted by Commerce.<sup>iii</sup> The BIS's enforcement office, with no staff in Latin America, Africa, or many other parts of the world, is not equipped to take the same level of preventive measures for end-use controls. Moreover, the State Department has developed extensive data, expertise and institutional relations to implement the Leahy Law for security assistance, which can serve as a critical foundation in both pre-license and post-shipment checks to control and verify end uses and end users. Commerce does not have these resources.
8. The proposed change will reduce transparency and reporting on gun exports. The rule would eliminate Congressional and public awareness of the total amount (dollar value and items) of firearms sales authorizations and deliveries around the world, since the Commerce Department annual reports currently only cover about 20 countries.
9. This rule would transfer gun export licensing to an agency – the Commerce Department - whose principle mission is to promote trade. Firearms, both assault weapons and non-semi-automatic weapons, are uniquely and pervasively used in criminal violence around the world. Controlling their export should be handled by the State Department, which is mandated and structured to address the potential impacts in importing nations on stability, human security, conflict, and human rights.
10. Firearms are used to kill a thousand people every day around the world in acts of organized crime, political violence, terrorism, and human rights violations. Research indicates that the types of weapons being transferred to Commerce control, including AR-15, AK-47, and other military-style assault rifles and their ammunition, are weapons of choice for criminal organizations in Mexico and other Latin American countries that are responsible for most of the increasing and record levels of homicides in those countries.<sup>iv</sup> The export of these weapons should be subject to more controls, not less.

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<sup>i</sup> "US lawmakers balk at arms sales to Saudi Arabia, Turkey and Nigeria," *DefenseNews*, Sept. 26, 2017, <https://www.defensenews.com/congress/2017/09/26/us-lawmakers-balk-at-arms-sales-to-saudi-arabia-turkey-and-nigeria/>

<sup>ii</sup> "Arms Dealer Faces New Charges," *New York Times*, Aug. 23, 2010, <https://www.nytimes.com/2010/08/24/us/24arms.html>

<sup>iii</sup> Department of Commerce Budget in Brief FY2017, p. 57, <http://www.osec.doc.gov/bmi/budget/FY17BIB/AllFilesWithCharts2.pdf>

<sup>iv</sup> Ongoing resource on "Cross Border Gun Trafficking: An Ongoing Analysis of the Types of Firearms Illegally Trafficked from the United States to Mexico and Other Latin American and Caribbean Countries as Revealed in U.S. Court Documents," by the Violence Policy Center, <http://www.vpc.org/indicted/>

July 3, 2018

U.S. Department of State  
Directorate of Defense Trade Controls  
PM / DDTC, SA-1 12th Floor  
2401 E Street, NW  
Washington, DC 20522  
*Via: [www.regulations.gov](http://www.regulations.gov)*

**Subject:** Raytheon Company Comments on USML Categories I, II, and III  
**Ref:** 83 Fed. Reg. 24198 (May 24, 2018)  
**Docket ID:** DOS-2017-0046

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On May 24, 2018 the Department of State, Directorate of Defense Trade Controls (“DDTC”) requested comments from the public on the proposed rule to amend United States Munitions List (“USML”) Categories I, II, and III. Below please find comments from Raytheon.

## **USML Category II**

Raytheon strongly supports the addition of Note 2 to paragraph (a) and the Note to paragraph (j)(9) because they help distinguish Category II items from items more appropriately controlled in other USML Categories. Regarding Note 2 to paragraph (a), we recommend the modifications underlined below to utilize the same language from Category VII (i.e. add the words “and trailers”) to direct that guns and armament when affixed to trailers that are armed or are specially designed to be used as a firing or launch platform to deliver munitions or otherwise destroy or incapacitate targets are otherwise controlled under Category VII. Directly similar to the concept currently embodied in the Note 2 to paragraph (a), we recommend that language be added to this Note to clearly indicate that active protection systems specifically defined in categories associated with the carrier are controlled under those other categories.

Note 2 to paragraph (a): Guns and armament when integrated into their carrier (e.g., ships, ground vehicles and trailers, or aircraft) are controlled in the category associated with the carrier. Similarly, guns and armament when integrated into an active protection system described in the category associated with the carrier are controlled in the active protection system category associated with the carrier. Self-propelled guns and armament are controlled in USML Category VII. Towed guns and armament and stand-alone guns and armament are controlled under this category.

Regarding the Note to paragraph (j)(9), we recommend the following modification (underlined below) to continue the drive for clarity:

Note to paragraph (j)(9): For weapons mounts specially designed for ground vehicles, see Category VII. For weapons mounts specially designed for vessels, see Category VI.

## **Brokering**

The conforming change proposed for 22 C.F.R. § 129.1(b) improves readability. The proposed language for 22 C.F.R. § 129.2(b)(2)(vii) appears to provide a broad carve-out to the brokering activities definition. It would be helpful for DDTC to clarify whether this language was intended to convey that any ITAR or EAR approval for the items in question is sufficient to meet this criteria and that the approvals do not have to list the specific consignees or end users as the future export, reexport, or transfer. If this was not what was intended, then the proposed language for 22 C.F.R. § 129.2(b)(2)(vii) should be modified to indicate this, such as (additions underlined):

- (vii) Activities by persons to facilitate the export, reexport, or transfer of an item subject to the EAR that has been approved pursuant to a license or license exception under the EAR or a license or other approval under this subchapter involving only parties approved under that license or other approval.

## **Effective Date**

Raytheon strongly supports using a delayed effective date of 180 days as has been done for other USML to CCL transitions. Such transitions require updates to IT systems, policies, processes, and training which require time to complete. Based on experiences in performing these tasks during previous transitions, the full 180 days is necessary.

We appreciate the ability to comment and thank you for your partnership.

\* \* \*

# PUBLIC SUBMISSION

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Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-1144

Comment on DOS-2017-0046-0001

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## Submitter Information

**Name:** RedLion York

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Fort Collins, 80525

**Email:** redyork@gmail.com

**Phone:** 9702215929

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## General Comment

Howdy,

Switching the responsibility for overseeing weapons sales from the State Dept to the Commerce Dept is a bad idea for these reasons:

- a) It would eliminate the State Departments Blue Lantern program, in place since 1940, which carries out hundreds of pre-license and post-shipment inspections and publicly reports on them.
- b) It would remove licensing requirements for brokers, increasing the risk of trafficking.
- c) It would remove the State Departments block on the 3D printing of firearms. When Defense Distributed founder Cody Wilson posted online instructions for how to 3D print weapons, the State Department successfully charged him with violating arms export laws, since his open-source posting made it possible for anyone with access to a 3D printer, anywhere, to produce a lethal weapon. The rule switch would remove this block, effectively enabling 3D printing of firearms in the U.S. and around the globe.

The world is dangerous enough. We don't need this change.



July 9, 2018

Via <http://www.regulations.gov>

Office of Defense Trade Controls Policy  
Department of State  
[DDTCTPublicComments@state.gov](mailto:DDTCTPublicComments@state.gov)

Regulatory Policy Division,  
Bureau of Industry and Security,  
U.S. Department of Commerce,  
Room 2099B,  
14th Street and Pennsylvania Avenue NW,  
Washington, DC 20230.

**Re: Safari Club International Comments on Proposed Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories, I, II and III, Docket RIN 1400 AE30, DOS-2017-0046; and Proposed Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML), RIN 0694-AF47, Docket No. 111227796-5786-01.**

Dear Sirs:

Safari Club International (SCI) submits these comments in support of the U.S. Department of State's proposed amendments to the International Traffic in Arms Regulations (ITAR) to revise Categories I, II, and III of the U.S. Munitions List (USML) to describe more precisely the articles warranting export and temporary import control on the USML. SCI also supports the Department of Commerce, Bureau of Industry and Security's proposed determination that these items no longer warrant control under the U.S. Munitions List (collectively referred to as "proposed regulations").

SCI does not support the proposed regulations' finalization and implementation of a modified procedure for the temporary export of firearms and ammunition by individuals who wish to travel outside the U.S. for recreational hunting and shooting purposes. The procedure requires travelers to use the Automated Export System (AES) to register their personal firearms and ammunition. This is an inappropriate and unworkable system for the individual who wishes to temporarily export his/her firearms. As an alternative, SCI requests that the proposed regulations be modified so that they delete the AES registration requirement and formalize and codify the Form 4457 process to ensure its consistency and use by all Customs and Border Protection (CBP) officials.

July 9, 2018

Page 2 of 6

## Safari Club International

Safari Club International, a nonprofit IRC § 501(c)(4) corporation, has approximately 50,000 members worldwide, many of whom are U.S. residents who travel with their firearms for hunting and recreational shooting around the world. They are individuals, not businesses, who seek only to bring their own property with them when they travel and return to the U.S. with that same property. Their activities are legal and are regulated by the countries they visit to hunt and shoot.

### The Origin of the AES Registration Requirement

The export of firearms is controlled under the ITAR, which is administered by the U.S. Department of State, Directorate of Defense Trade Controls (DDTC). ITAR regulations have historically included an exemption under 22 CFR §123.17(c) allowing U.S. persons to temporarily export without a license up to three nonautomatic firearms and not more than 1,000 cartridges. This exemption is widely used by hunters and other sportsmen, who travel overseas with firearms to be used for sporting and other legal purposes. To use the exemption, the U.S. person must declare the firearms and/or ammunition to CBP, carry the firearms as part of their baggage, and not transfer ownership while abroad.

In 2011, DDTC published a Federal Register notice of proposed rulemaking that principally revised the exemption related to personal protective equipment, but also included a requirement that those traveling with firearms register through the Automated Export System (AES): “The person. . . presents the Internal Transaction Number from submission of the Electronic Export Information in the Automated Export System per §123.22 of this subchapter....” 76 Fed. Reg. 16353, 163534 (Mar. 23, 2011).

The system required those registering to provide an Employer Identification Number (EIN), available only to commercial enterprises. The registration system also involved procedures far too complicated and burdensome than necessary for individuals seeking only to travel with their personal equipment. Because the registration system imposed registration obligations that would have forced hunters and shooters to make false representations to the Internal Revenue Service, jeopardized their ability to obtain permits to import the wildlife they successfully hunted, and imposed burdensome obligations unnecessary and inappropriate for non-commercial importers, CBP agreed to postpone the implementation of the registration requirements and to continue the use of Form 4457 as the mechanism to facilitate temporary firearms export. Even that solution presented problems. Due to the inconsistencies in the way that CBP personnel issued the forms, U.S. residents have encountered difficulties in taking their firearms to foreign countries (e.g. South Africa) that attribute much greater significance to Form 4457 than does the U.S.

### Collection of Data Through AES Registration is Inappropriate

Without good reason, the proposed regulations would reactive the AES registration requirement for individuals seeking to temporarily export their firearms and ammunition.

Consistent with the ITAR requirements previously applicable to temporary exports of the firearms and associated ammunition covered by this rule, [Bureau

July 9, 2018

Page 3 of 6

of Industry and Security (“BIS“)] is proposing to modify § 758.1 of the EAR to make clear that exporters would continue to be required to file Electronic Export Enforcement (EEI) to the Automated Export System (AES) for transactions involving such firearms and associated ammunition that are otherwise authorized pursuant to License Exception BAG.

83 Fed. Reg. 24174. The purpose of the registration system is not to facilitate the temporary export and reimport of firearms and ammunition. According to CBP, the collection of export data through the registration is designed to help with the “compilation of the U.S. position on merchandise trade” and is an “essential component of the monthly totals provided in the U.S. International Trade in Goods and Services (FT900) press release, a principal economic indicator and a primary component of the Gross Domestic Product.” <https://www.census.gov/foreign-trade/aes/aesdirect/AESDirect-User-Guide.pdf>

The government has no need to collect this data. The data, provided by individuals who wish to temporarily export and then re-import the same personally owned equipment, has nothing to do with the “U.S. position on merchandise trade” or the “Gross Domestic Product.”

The only purpose for the collection of data from individual hunters who travel with their firearms is likely to enable the government to maintain records on these individuals and their legal activities abroad. In the proposed regulations, the BIS acknowledges that the intention of the AES filing system was to “track such temporary exports of personally-owned firearms and ammunition.” SCI strongly opposes this attempt to “follow” and retain records of the individuals who travel with their firearms for hunting purposes. These individuals have taken no actions meriting the government’s desire or need to collect and maintain data on their activities. The government should remove the requirement to collect such data.

### **The Proposed Regulations Recognize Flaws in the Registration System**

The proposed regulations provide the public with the opportunity to comment on whether CBP has been able to remedy the problems identified when CBP first attempted to activate and implement the new requirement. The drafters also condition the reactivation of the AES registration requirement on CBP’s success in remedying the problems that plagued the introduction:

Whether and how BIS includes this requirement in a final rule would be based on whether CBP is able to update its processes, and other agencies as needed, to allow for individuals to easily file EEI in AES by the time a final rule is published. If CBP is not able to do so, then the final rule may direct exporters to continue to use CBP’s existing process, which is the use of the CBP Certification of Registration Form 4457, until a workable solution is developed or CBP suggests an alternative simplified solution for gathering such information for temporary exports of personally-owned firearms and ammunition. BIS will also take into consideration any public comments submitted on this aspect of the proposed rule regarding imposing an EEI filing requirement in AES, as well as

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comments on the current practice of using the CBP Form 4457, as well as any other suggestions on alternative approaches for tracking such information.

83 Fed. Reg. 24174. AES registration should not be required as CBP has not remedied the problems that plagued the initial attempted implementation of the system.

### **The AES Registration System Requires Individuals to Provide False Information to the Internal Revenue Service**

The AES registration system continues to require persons temporarily exporting firearms or ammunition to present “the Internal Transaction Number from submission of the Electronic Export Information in the Automated Export System.” The AES system requires an EIN before a user can submit any data. The Census Bureau administers the AES system, and their website still includes the following FAQ:

**The Internal Revenue Service (IRS) site states that an Employer Identification Number (EIN) is for use in connection with business activity only. It further states, do not use your EIN in place of a Social Security Number. The information provided by the Census Bureau and the IRS is conflicting.**

The IRS publication titled “Understanding Your EIN” which is located on their webpage (<http://www.irs.gov/pub/irs-pdf/p1635.pdf> [external link]) states that "...Employer Identification Number (EIN) is for use in connection with business activity only, do not use your EIN in place of a Social Security Number".... However, for the purposes of registering or filing in the AES you can and should use your EIN. While it is not specifically stated, an EIN can be obtained for government reporting purposes when a person does not own a business."

<https://www.census.gov/foreign-trade/regulations/ssnfaqs.html>. The Census Bureau site expressly tells individual exporters to ignore the IRS’s instructions and to misrepresent themselves as businesses, in order to obtain an EIN. The IRS site contains no instructions providing such an exception.

The Census guidelines instruct individuals to select “Sole Proprietorship” as the “type of legal structure applying for an EIN,” which is explained by IRS as: “sole proprietor includes individuals who are in business for themselves, or household employers.” The individual is further required to select “started a new business” as the reason why the sole proprietor is requesting an EIN. For an individual seeking to travel overseas with their firearms, this information is confusing, false and entered only to obtain the EIN.

As nothing has changed to remedy this problem since the AES registration requirement was originally imposed, the regulations should not include this requirement.

### **The AES Registration System is Designed for Commercial Operations and Is Overly Complicated for the Individual Exporter**

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Despite the years that have passed since CBP's attempt to require individuals to register through the AES system for the temporary export of their firearms, the agency has not made meaningful progress in reducing the overly complicated process for registration. The system is designed for businesses whose repeated use of the system merits the time and patience required for registration. The online AES Direct Users' Guide (which contains no reference to individuals, temporary export, or firearms) is a 39-page manual that an individual would be required to learn in order to register with the system. The registration mechanism is unnecessarily burdensome and complicated for the private individual who does not wish to participate in commercial trade but merely wants to temporarily take his own firearm with him outside the U.S. for a recreational hunt or shoot.

### **Individuals Identifying Themselves as a Commercial Enterprise Could Jeopardize Their Ability to Import Legally Hunted Animals**

The requirement that individual hunters obtain an EIN, recognized by the IRS for business purposes only, could potentially jeopardize the ability of hunters to import some sport-hunted trophies from abroad. The U.S. Fish and Wildlife Service (FWS) prohibits the importation of many sport-hunted species for commercial purposes. A hunter who registers as a business for the purpose of leaving the country and exporting the firearms he plans to use to hunt outside the United States, risks the FWS prohibiting the hunter from importing his trophies and otherwise penalizing the hunter.

### **The AES Registration System Does Not Replace the Use of Form 4457**

As mentioned above, the proposed regulations did not intend the AES registration requirement to replace CBP Form 4457 for the temporary export and reimport of personally owned firearms. Even with the AES registration requirement, temporary exporters of firearms and ammunition will still need to obtain and complete Form 4457 and display it upon re-entry into the U.S. to prove that they did not acquire the firearms abroad. Because (1) the AES registration requirement and its purpose of tracking the activities of law-abiding hunters and recreational shooters are neither necessary nor appropriate for the temporary export activities of hunters and shooters, and (2) these individuals will continue to need to obtain and display Form 4457, the logical solution would be to abandon the AES registration requirement, retain the Form 4457 practice, and improve the mechanisms for issuing the latter.

### **Future Use of Form 4457 Needs to Reflect the Greater Significance of the Document Outside the U.S.**

While CBP has used Form 4457 as primarily a mechanism for determining whether the firearm being imported into the U.S. is the same property the individual exported when he or she left the country, other governments attribute greater significance to the document.

South Africa, for example, treats the form as a pseudo license of a U.S. resident traveling with a firearm. South African police have conditioned import of firearms into their country on the U.S. resident's possession of what South Africa considers to be a valid Form 4457. In 2017, this led

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to problems for hunters traveling to South Africa when the CBP began issuing Form 4457s with already expired expiration dates. Although CBP explained that the agency attributes little meaning to the form's expiration date, South African officials considered the forms expired and prohibited hunters from entering the country with their firearms due to the apparent expired appearance of the forms.

The problem was exacerbated by different offices of CBP issuing different versions of the form, which also did not match the form available from CBP's website. After representatives of SCI and other organizations engaged in numerous discussions on the issue with CBP personnel, CBP adopted a temporary solution of issuing new forms with a future expiration date. CBP needs to adopt a more permanent solution that addresses the significance of the form in other countries, such as issuing forms without any expiration date.

**SCI's Recommended Resolution and Revision of the Proposed Rules**

SCI recommends that the drafters delete the AES registration requirement entirely for individuals and make it clear that registration is not required for those who wish to temporarily export their firearms from the United States. No tracking of the legal activities of these hunters and shooters should be conducted and no compilation of data about these individuals should be permitted. Instead, the drafters should formally codify the use of Form 4457 for individuals and should identify a single consistent standard for the form that contains no date that could be interpreted or misinterpreted by anyone as an expiration date.

Thank you for the opportunity to comment on these proposed regulations, and in particular to advocate for the removal of a process that should not be applied to individuals who wish only to temporarily export their firearms in order to engage in legal activities outside of the United States. If you have any questions or need anything further, please contact Anna Seidman, Director of Legal Advocacy Resources and International Affairs, [aseidman@safariclub.org](mailto:aseidman@safariclub.org).

Sincerely,



Paul Babaz  
President, Safari Club International

# PUBLIC SUBMISSION

**As of:** July 10, 2018  
**Received:** July 09, 2018  
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**Tracking No.** 1k2-946o-2whj  
**Comments Due:** July 09, 2018  
**Submission Type:** Web

**Docket:** DOS-2017-0046

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-3131

Comment on DOS-2017-0046-0001

## Submitter Information

**Name:** Robert Menendez

## General Comment

We support the Export Control Reform Initiative reforms that have been implemented to date. These changes have rationalized and streamlined a cumbersome and opaque U.S. Munitions List (USML) in ways that make it more useful for American exporters and make non-militarily-sensitive exports easier to process and more competitive internationally.

However, the Department of State has published draft regulations that would remove small arms, light weapons, and associated equipment and ammunition from Categories I, II, and III of the International Trafficking in Arms Regulations, to be subject instead to the Commerce Control List (CCL) of the Department of Commerce. This will result in less rigorous oversight of the export of these deadly weapons.

Small arms and associated ammunition are uniquely lethal; they are easily spread and easily modified, and are the primary means of injury, death, and destruction in civil and military conflicts throughout the world. As such, they should be subject to more not less rigorous export controls and oversight. We strongly oppose any changes to Categories I, II, and III that do not adequately reflect the life-and-death impact such changes will have, including by maintaining congressional oversight over these sales before export. Specifically, combat rifles, including those commonly known as sniper rifles should not be removed from the USML, nor should rifles of any type that are U.S. military-standard 5.56 (and especially .50) caliber. Semi-automatic firearms should also not be removed, and neither should related equipment or ammunition or associated manufacturing equipment, technology, or technical data.

The Arms Export Control Act (AECA) enables congressional review of exports of these articles to ensure that they comport with U.S. foreign policy goals and values. Congress took action in 2002 to ensure that the sale and export of these weapons would receive close scrutiny and oversight, including by amending the AECA to set a lower reporting threshold (from \$14 million to \$1 million) specifically for firearms on the USML. Moving such firearms from the USML to the CCL, as is being proposed, would be directly

contrary to congressional intent, made clear in 2002, and would effectively eliminate congressional oversight of exports of these weapons.

Congressional oversight has proven important on multiple occasions. Over the last several years, the Executive branch has considered and proposed sales to countries and foreign entities that have engaged in human rights abuses and atrocities. In May 2017, for example, the Administration sought to sell semi-automatic pistols to the bodyguard unit of President Erdogan of Turkey, despite the fact that members of that unit had viciously attacked peaceful protestors near the Turkish Embassy in Washington, DC. The sale was only halted because congressional notification was required by law. In addition to the proposed Turkey sale, State proposed the export of 27,000 automatic rifles to the Philippine National Police in August 2016, some members of which have been credibly alleged to have committed extrajudicial killings as part of President Dutertes so-called war on drugs, which has targeted mostly low-level drug users.

The Departments of State and Commerce have noted that State will still review the sales for human rights concerns if licensing is moved to the CCL. However, as demonstrated by the above examples, State has at times fallen short of its responsibility to prioritize such concerns in its consideration of such sales. Therefore, while we oppose this transfer of licensing authority to the Department of Commerce, we will also seek to ensure that congressional oversight is maintained if the proposal is implemented.

SEN. ROBERT MENENDEZ

Ranking Member, Committee on Foreign Relations, U.S. Senate

BENJAMIN L. CARDIN

United States Senator

DIANNE FEINSTEIN

United States Senator

# SAAMI®

SPORTING ARMS AND AMMUNITION MANUFACTURERS' INSTITUTE, INC.  
SINCE 1926

July 6, 2018

By E-mail: [DDTCPublicComments@state.gov](mailto:DDTCPublicComments@state.gov) subject line, "ITAR Amendment – Categories I, II, and III"

By Internet: Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov) - Docket DOS-2017-0046

Directorate of Defense Trade Controls  
U.S. Department of State  
2401 E. Street, N.W.  
Washington, DC 20226

REFERENCE: Proposed Rule – International Traffic in Arms Regulations: U.S. Munitions List  
Categories I, II, and III,

Dear Sir:

The Sporting Arms and Ammunition Manufacturers' Institute (SAAMI) respectfully submits the following comments to the above referenced Federal Register notice of proposed rulemaking 83 FR 24198, dated May 24, 2018. SAAMI is an association of the nation's leading manufacturers of firearms, ammunition and components, and an American National Standards Institute (ANSI) accredited standards developer. SAAMI was founded in 1926 at the request of the federal government and tasked with creating and publishing industry standards for safety, interchangeability, reliability and quality, coordinating technical data and promoting safe and responsible firearms use.

As the organization responsible for creating manufacturing standards for the firearm and ammunition industry, SAAMI is uniquely qualified to provide technical expertise on this matter. We have reviewed the proposed rule, and agree in general with the transition of the majority of firearms and ammunition to the Commerce Control List. Export controls of commercial firearms and ammunition which are not inherently military, have no critical military or intelligence advantage, and have predominant commercial applications correctly belong under the Export Administration Regulations (EAR).

We would like to raise the following points regarding several items enumerated in the revised Category III — Ammunition and Ordnance and ask for revision or reconsideration.

## Pyrotechnic Tracer Materials

1. Subparagraph (a)(1) controls "Ammunition that incorporates a projectile controlled in paragraph (d)(1) or (3) of this category," and subparagraph (d)(1) controls "Projectiles that use pyrotechnic tracer materials that incorporate any material having peak radiance

above 710 nm or are incendiary, explosive, steel tipped, or contain a core or solid projectile produced from one or a combination of the following: tungsten, steel, or beryllium copper alloys.”

Subparagraph (a)(6) controls “**Ammunition employing pyrotechnic material in the projectile base** and any ammunition employing a projectile that incorporates tracer materials of any type having peak radiance above 710 nm and designed to be observed primarily with night vision optical systems”.

By including the peak radiance parameter of “above 710 nm”, we note DDTC’s intention to control only tracer compositions that emit primarily in infrared which are for use with night vision devices. Such dim tracers, with infrared wavelengths from 710 nm to 1 millimeter, burn very dimly but are clearly visible through night vision equipment. This differentiates from bright tracers, which are the most common type of tracer, or subdued tracers, both of which can overwhelm night vision devices, rendering them useless.

Small arms tracer ammunition that includes pyrotechnic material below peak radiance of 710 nm has been sold commercially for sporting purposes for many years. For example, it is used as a training aid for marksmanship proficiency. We agree with the proposed rule which would maintain control on the USML of dim tracer ammunition with peak radiance above 710nm.

However, we wish to comment on the following:

- a. In subparagraph (a)(6) the radiance parameter of “above 710 nm” is not applied to the first part of the control sentence. As currently written, the phrase “ammunition employing pyrotechnic material in the projectile base” would be interpreted to include all tracer ammunition because the radiance parameter “above 710 nm” is not present in the phrase. Also, pyrotechnic tracer material is only employed in the projectile base, and therefore it is not necessary to enumerate a separate control specifying “pyrotechnic material in the projectile base”.
- b. We note some overlap in controls in subparagraphs (a)(1) and (a)(6). Subparagraph (a)(1) controls ammunition with projectiles controlled in subparagraph (d)(1) which includes “projectiles that use pyrotechnic tracer materials that incorporate any material having peak radiance above 710 nm”, i.e. tracer projectiles. Subparagraph (a)(6) controls “...any ammunition employing a projectile that incorporates tracer materials of any type having peak radiance above 710 nm” which is already controlled in (a)(1) with reference to (d)(1). The only differentiation we note would be reference to ammunition “designed to be observed primarily with night vision optical systems”.

**RECOMMENDATION:** We recommend subparagraph (a)(6) be revised to delete the phrase “ammunition employing pyrotechnic material in the projectile base”. First, it is not necessary to articulate pyrotechnic material in the projectile base, and deletion of this phrase would remove the confusion that (a)(6) controls all ammunition with pyrotechnic

material including that with peak radiance below 710 nm. Second, the phrase is redundant since such ammunition with pyrotechnic material is controlled under (a)(1). We also request DDTTC to provide clarification on which articles would be individually controlled under subparagraphs (a)(1) and (a)(6) since both control ammunition with pyrotechnic/tracer projectiles with a radiance parameter intended for use with night vision devices.

2. Subparagraph (a)(3) controls “Shotgun ammunition that incorporates a projectile controlled in paragraph (d)(2) of this category”, and subparagraph (d)(2) controls “Shotgun projectiles that are flechettes, incendiary, tracer, or explosive.”

We note that this paragraph does not include the parameter “pyrotechnic tracer materials that incorporate any material having peak radiance above 710 nm”. A SAAMI member company is currently producing shotgun ammunition with tracer projectiles for commercial use.

**RECOMMENDATION:** We reiterate our comments above regarding tracer ammunition, and recommend subparagraph (d)(2) be revised as follows: “Shotgun projectiles that are flechettes, incendiary, explosive, or that use pyrotechnic tracer materials that incorporate any material having peak radiance above 710 nm.” This change would make subparagraph (d)(2) consistent with the parameters in subparagraph (d)(1).

### **Non-metallic Cases**

Subparagraph (a)(5) lists “Ammunition, except shotgun ammunition, based on non-metallic cases, or non-metallic cases that have only a metallic base, which result in a total cartridge mass 80% or less than the mass of a brass- or steel-cased cartridge that provides comparable ballistic performance.” Subparagraph (d)(8) controls “Non-metallic cases, including cases that have only a metallic base, for the ammunition controlled in paragraph (a)(5) of this category.”

This control would include plastic cartridge cases that fit the mass parameters shown. Polymer-cased ammunition (PCA) is currently sold to consumers in the commercial market, and is increasing in popularity. It is considered an alternative to reduce cost and weight in ammunition. This type of ammunition has a significant benefit to the environment and to firearm ranges by reducing both waste and the environmental impact and footprint of hunters and shooters. Controlling PCA under the ITAR would hinder further technological development in this area.

We recommend that control for non-metallic ammunition be removed from the USML and transitioned to the CCL to be controlled with similar metallic cartridge ammunition. Non-metallic cased ammunition is in development by several SAAMI members for sporting and hunting purposes. PCA meets SAAMI specifications for ballistic performance. Revised Category III should only include articles which are inherently military, and PCA does not meet that definition. New ECCN 0A505 on the CCL will control metallic cartridge ammunition (e.g. .308 Winchester) regardless of whether it is used in semi-automatic rifles for sporting use, or in

full-automatic rifles for military use. Therefore, controls for non-metallic cartridges should be the same. To effect this change, we recommend deletion of subparagraphs (a)(5) and (d)(8).

### **Primers**

Subparagraph (d)(10) controls "Primers other than Boxer, Berdan, or shotshell types."

This description appears to except all primers used by SAAMI members. We believe DDTC's intent here is to control tubular primers used in medium or large caliber ammunition, which SAAMI members do not use in the manufacture of ammunition for sporting arms. We suggest that the designation of primer types could be simplified. Boxer, Berdan, shotshell and muzzleloading percussion caps are all called "cap type" primers by the Department of Transportation, and are classified as UN 0044, "Primers, cap type." We recommend DDTC consider using this description to define primers which would not be controlled on the USML.

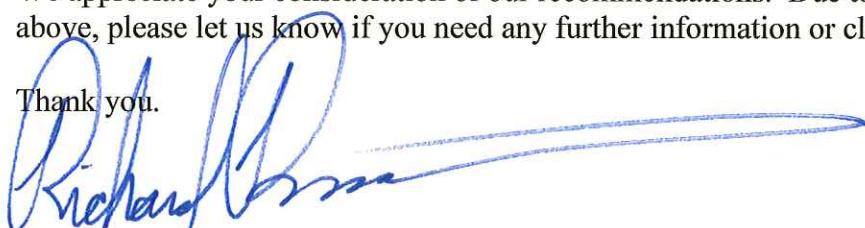
### **Technical Data**

Subparagraph (e) controls technical data and defense services directly related to the defense articles enumerated in paragraphs (a), (b), and (d) of this category.

This exemplifies the need to make the changes we recommend above regarding pyrotechnic tracer material and non-metallic cases. Technical data related to these items is already in the public domain and well-known. Therefore, it should not be controlled on the USML.

We appreciate your consideration of our recommendations. Due to the technical nature of the above, please let us know if you need any further information or clarification for your review.

Thank you.

A handwritten signature in blue ink, appearing to read "Richard Patterson". The signature is fluid and cursive, with "Richard" on the left and "Patterson" on the right, connected by a flourish.

Richard Patterson  
Executive Director

30 June 2018

To: DDTCPublicComments@state.gov  
Office of Defense Trade Controls Policy, Department of State  
and  
Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of  
Commerce, Room 2099B, 14<sup>th</sup> Street and Pennsylvania Avenue NW, Washington DC  
20230

Subject: ITAR Amendment - Categories I II, and III  
EAR Amendment - RIN 0694-AF47

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I am writing to submit comments on the proposed changes to ITAR (USML) and EAR (CCL) recently published in the Federal Register. I write in a personal capacity but the views expressed are informed by my research, policy analysis, and teaching as a professor at the University of Michigan, Gerald R. Ford School of Public Policy.

By way of a few introductory remarks, I am familiar with the complexities of US arms export laws and policy, as well as the regulatory framework. There is a legitimate need for periodic updates of the USML and—in view of the labyrinth of entangled laws, regulations, and agencies involved in the current system—I am supportive of the reform initiative. I am generally more concerned about keeping weapons out of the hands of those who would misuse them than in making them easier to procure, but that end is not at odds with the objective of putting in place a single control list and a single administrative agency. The reform effort has not progressed to that point, however, and I am wary about these proposed regulatory changes as an interim step. I will also add that I have been following the export control reform project since it was announced in 2009 and this is the only time I have felt the need to express concerns about the proposed changes. That is largely due to the particular, complete and recognizable, weapons that are being considered for change.

**1. I urge you to delay the effective date of the proposed changes until the Government Accounting Office or the Library of Congress has publicly reported to the Congress their impact on numerous statutes referring to “defense articles.”**

If enacted, the changes would have implications for several provisions of law. From my reading of both sets of proposed regulations, I am not reassured that the implications have been fully considered. The USML is formally defined in the AECA (22 USC 2778) as a definitive list of defense articles,<sup>1</sup> and from a quick search of US statutes the term “defense article” appears in some 45 sections,<sup>2</sup> in many instances (but

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<sup>1</sup> 22 USC 2778(a)(1).

<sup>2</sup> Office of the Law Revision Counsel, United States Code, <http://www.uscode.house.gov>.

not always) explicitly linked to the USML. In addition, several provisions of the AECA itself are explicitly linked to an item's presence on the USML (without necessarily referring to "defense articles"). On a separate statutory track, the Foreign Assistance Act was recently amended to include CCL 600 series items as defense articles, along with all items contained on the USML [22 USC 2304.(d)(2)(C)], but the legislation did not anticipate the new 500 series so there is likely a gap there with regards to Congressional intentions. To complicate things further, the US Munitions Import List (USMIL) makes liberal use of the term "defense article," defined as articles on the USMIL—which currently include the same items that are slated to lose the "defense article" designation that extends from inclusion on the USML – so that items designated as defense articles on the USMIL will not be considered defense articles for purposes of export.<sup>3</sup>

It is very challenging to sort out the tangle. Some of the instances where terms and definitions are at variance may not prove significant, but others may have far-reaching implications. Due to the disparate definitions and linkages, the proposal to remove specified firearms from the USML raises some important questions about the continuing applicability of provisions of law that refer to "defense articles," a term that currently encompasses such firearms. In numerous situations the current statutory treatment of non-automatic firearms would be altered – or at least become ambiguous—as a result simply of moving these weapons from Category I of the USML to the 500-series on CCL. Statutory provisions that could be affected by the proposed change range from Export-Import Bank financing of defense article sales to human rights conditionality on security assistance, to the provisions for third-party transfer of grant-supplied defense articles, and various reports to Congress. (See references in the footnote below.<sup>4</sup>) In some cases, the law in question is not directly linked to arms exports, but the relevant statute refers to defense articles and links the definition to items on the USML. In this way, removing specified firearms from the USML is likely to have a host of unintended and unanticipated repercussions.

Further, if semi-automatic weapons and other non-automatic firearms are removed from the USML it will impact the ability of law enforcement to charge weapons traffickers with violating the AECA as was done in several of the cases cited in a recent report from the Department of Justice on export enforcement.<sup>5</sup>

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<sup>3</sup> 27 CFR 447.11 and 27 CFR 447.21.

<sup>4</sup> The numerous places where the meaning of "defense article" would be called into question by the proposed rules include:

- Export-Import Bank financing of defense article sales, including multiple end use considerations and other conditions (12 USC 635);
- Requirement to give Congress notice of commercial firearms sales of \$1,000,000 or more (22 USC 2776)
- Annual report to Congress on military assistance, and specifically on transfers of USML Category I firearms (22 USC 2415)
- Provisions for supplying defense articles on a grant-basis, and multiple restrictions (22 USC 2314)
- Conditions for third-party transfer of defense articles provided on a grant basis (22 USC 2314)
- Certification of end use as a condition of sale or lease of defense article (22 USC 2753)
- Post-delivery verification of credible reports of misuse of weapons (22 USC 2753)
- Brokers of items included on the USML are required to register and activity must be licensed; exporters of USML items must identify all consignees and freight forwarders in license application (22 USC 2778)

<sup>5</sup> Department of Justice, "Summary Of Major U.S. Export Enforcement, Economic Espionage, And Sanctions-Related Criminal Cases," January 2018, <https://www.justice.gov/nsd/page/file/1044446/download>.

As Acting Assistant Secretary for Political-Military Affairs Tina Kaidanow explained to the House Foreign Affairs Committee last June,<sup>6</sup> the US arms export architecture is very complex and involves what her predecessors have described as “cradle to grave” oversight of exported US *defense articles*. Removing that designation *defense article* from weapons that are not fully automatic has the effect of detaching them from the US Munitions List and the regulatory framework built around it: there may well be significant unintended consequences.

In the event that consideration of the proposals is not delayed, I would recommend several other changes to the proposed ITAR and EAR revisions.

**2. Retain existing USML I(a) and (d) unchanged; retain the existing coverage of USML II(a) unchanged; delete proposed 0A501.a and .b; and limit proposed 0A502 to renumbering existing 0A984.**

My concern here is based on principle and definition. Several of the weapons that would be moved to CCL are military-style weapons that are either used in battlefield situations or are substantially comparable to weapons as used in battlefield situations – including semi-automatic assault rifles and bolt-action sniper rifles. All of USML I(a), I(d), and II(a) are currently designated “significant military equipment” due to “their capacity for substantial military utility or capability,” per the ITAR definition.<sup>7</sup> The prevalence of armed extremists and insurgents who depend on weapons currently included in USML Categories I and II makes the military utility or capability of these weapons as relevant as ever. Due to their size and long shelf life, firearms are easily diverted and resold on black markets around the world. The Department of Justice’s January 2018 summary of major US export enforcement cases noted above includes recent smuggling of semi-automatic assault rifles (and other firearms) to Dominican Republic, the Gambia, Russia via Latvia, Thailand and other destinations. In addition, the report documents the case of two men in Georgia attempting to export firearms to a range of international on the dark net, and another similar case from Kansas.<sup>8</sup>

While the US military may not derive great advantage from most of these weapons, they still have the military utility and capability of threatening the lives and welfare of many people around the world. It is in the interest of the US and American citizens to keep the tightest control on them. Indeed, it is for that very reason that the same weapons being proposed for removal from the US Munitions List are expected to remain on the US Munitions *Import* List, where their entry into the US will remain tightly controlled. It is also for that reason that a growing number of states are imposing limitations on the retail availability of these weapons and many retailers are voluntarily removing them from their shelves. They should remain where they are, on the USML.

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<sup>6</sup> “Foreign Military Sales: Process and Policy,” testimony from Tina S. Kaidanow, Acting Assistant Secretary, Bureau of Political-Military Affairs, Statement Before the Subcommittee on Terrorism, Nonproliferation and Trade, House Foreign Affairs Committee, June 2017. <https://www.state.gov/t/pm/rls/rm/2017/271928.htm>.

<sup>7</sup> 22 CFR 120.7 at <https://www.gpo.gov/fdsys/pkg/CFR-2004-title22-vol1/pdf/CFR-2004-title22-vol1-sec120-7.pdf>.

<sup>8</sup> Department of Justice, op. cit..

**3. Before proposed regulatory changes are adopted, an opinion should be obtained from the Department of Justice concerning the legality of applying ITAR brokering restrictions to exports of firearms transferred from the USML to the CCL. Furthermore, Congress and the public should be informed as to how the proposed arrangements will address the risk of diversion.**

There are several reasons to be concerned about the proposed rules pertaining to brokering. From their origin in the 1930s, a major intent of efforts to regulate arms exports has been to curtail illicit and undesirable trafficking in weapons. In the 1980s and 1990s, illicit flows of small arms flooded international markets, with calamitous effects in every region of the world. The rate of flow may have slowed since the 1990s, but as the 2018 Justice Department report attests, the efforts to supply contraband firearms are very much alive in our own time. From a global perspective, brokering laws are considered a weak link in the regulatory apparatus, to the extent that in the 1990s there was some talk of negotiating an international treaty focused entirely on arms brokering. Provisions written into US law around that time were considered some of the strongest in the world. With the transfer of specified semi-automatic and non-automatic weapons to CCL, the brokering laws would no longer be applied to these weapons (or would be applied only in a much-weakened version) and they would not be available to law enforcement for prosecution purposes.

**My specific concerns with the proposal to apply existing AECA/ITAR brokering rules to items intended for transfer to the CCL are twofold, related to the dubious statutory underpinnings of the proposed rule change and to its practical implications.**

(a) The first concern is a matter of statutory coherence and proper statutory authority. The brokering clauses of the AECA require commercial brokers involved in the transfer of defense articles to register with the State Department and apply for their transactions to be licensed (22 USC 2778).<sup>9</sup> The AECA brokering provisions are explicitly linked to defense articles on the USML (and by implication, ITAR). Because the proposed changes to ITAR and CCL would remove specified non-automatic and semi-automatic firearms from the USML, on the face of it, it would seem that commercial brokers of these items would be released from ITAR registration and brokering requirements. To prevent this outcome, the State Department proposes a patch, by asserting that the AECA brokering provisions will also apply to the US Munitions *Import* List (which, as noted above, will continue to include the items that—for export purpose—are deemed no longer to warrant control under the USML). The intended effect is that brokers wanting to *export* items included on the list of items controlled as defense articles for *import* (but not for export) will be subject to the rules pertaining to the export of such items. The logic is convoluted at best, and it raises questions about the statutory grounding for requiring brokers who are exporting items “no longer warranting control under USML” to register with the State Department and comply with related ITAR requirements. Given the complexity of the issue and the risks associated with brokering activities, it would seem advisable and prudent to seek a legal opinion within the Executive Branch to ensure that the provisions of the AECA pertaining to brokers—including the registration requirement-- can be applied

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<sup>9</sup> Per 22 USC 2778 (b)(1)(A)(i), “...every person (other than an officer or employee of the United States Government acting in official capacity) who engages in the business of brokering activities with respect to the manufacture, export, import, or transfer of any defense article or defense service designated by the President under subsection (a)(1), or in the business of brokering activities with respect to the manufacture, export, import, or transfer of any foreign defense article or defense service (as defined in subclause (IV)), shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations.

robustly to all involved in the wide range of brokering activities associated with the *export* of items on the US Munitions Import List.<sup>10</sup> Such a legal opinion should be obtained and considered before the regulatory changes are adopted.

(b) The second issue about brokering rules relates to the practical effects of the numerous proposed changes to ITAR section 129. It is hard to imagine, in the first place, the steps by which the licensing of a transaction will be handled by Commerce and any brokering aspects (including completion of information required by 22 CFR 129.6) will be handled by State. It boggles the mind to consider how this might actually amount to a time-saving simplification of rules. I am primarily concerned about the proposed amendment 129.2(b)(2)(vii), however, which appears to negate the controls on brokering for transactions subject to EAR and open a significant loophole for unscrupulous brokers. If I have understood the proposed changes to Section 129.2 correctly, if a Michigan-based retail sports outlet licensed to sell firearms in the US wanted to sell, say, AR-15 semi-automatic rifles to clients in another country, then so long as the Michigan retailer could secure approval via the BIS licensing process, the various parties involved in shipment, financing, and possibly transshipment would be exempt from any registration and approval requirements. Nor would they necessarily be known to licensing and enforcement agents based in the Commerce Department. What in this scenario would deter an unknown and independent handler from diverting the weapons to unauthorized end-users? I would like to assume that government officials in the State and Commerce Departments have thought through the implications of the proposed rules as they might be bent for nefarious purpose as well as their service for industry cost and convenience, but the published rules do not provide assurance in that regard. **More clarification is needed about how the brokering regulations will be applied, how the inter-agency process will be managed, and the extent to which the proposed arrangements for registering and licensing brokers involved in acquiring, financing and transporting exported firearms will address the risk of diversion to non-authorized end-users.** One effect of transferring non-automatic firearms from the USML to the CCL is to remove them from the remit of the State Department's Blue Lantern program, which otherwise might be engaged to make post-shipment checks. It is not clear whether Commerce has a comparable program or what resources it will assign to monitoring the commerce in semi-automatic firearms.

#### 4. Amend proposals for EAR Section 734.

BIS has indicated that items moving “to the CCL would be subject to existing EAR concepts of jurisdiction and controls related to ‘development’ and ‘production,’ as well operation, installation, and maintenance ‘technology.’” This approach would appear to give rise to the possibility of widespread and openly sanctioned circulation of open source, non-proprietary instructions for using computer-aided design (CAD) files to produce via 3D-printing technology, or text files to produce via CNC milling the firearms removed from USML. Until now, this development has been blocked in the courts via application of ITAR provisions requiring export license. **Either the Department of Commerce should clarify that it views any software instructions for producing controlled firearms already to be within the ambit of the EAR, or EAR Section 734.7 should be amended to bring circulation of open-source, non-proprietary CAD and other electronic files under EAR control - possibly by establishing that electronic files for producing functional firearms are subject to EAR control as production technology.**

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<sup>10</sup> When questions arose in 1996 as to the authority of the President to restrict munitions imports under the AECA, the Office of Legal Counsel in the Justice Department was asked to provide an opinion. A similar request for opinion is warranted here. See [https://www.justice.gov/sites/default/files/olc/opinions/1996/02/31/op-olc-v020-p0049\\_0.pdf](https://www.justice.gov/sites/default/files/olc/opinions/1996/02/31/op-olc-v020-p0049_0.pdf).

## **5. Amend provisions for License Control – Crime Control**

Shotguns controlled under 0A502 are subject to the Crime Control because they are not controlled by Wassenaar. It is not evident, however, why items 0A501a are controlled for Regional Security but not Crime Control, as firearms are a main element of crime control equipment used by police and security forces. Moreover, federal statutes explicitly prohibit the export of crime control equipment to police and security forces in countries whose governments have a consistent pattern of gross violations of internationally recognized human rights, with exceptions requiring Presidential certification. **To bring the proposed regulations into alignment with provisions of the Foreign Assistance Act [22 USC 2304(a)(2), which makes explicit reference to crime control equipment under the aegis of the (expired) Export Administration Act], items in 0A501A should be subject to Crime Control.**

## **6. Include information from enhanced reporting on certain firearms exports in annual 655 Report.**

Enhanced reporting of items in the 501 series is potentially one bright spot in the proposed regulations. Several proposed changes are welcome, including: proposed changes in EAR part 748 requiring information about required import licenses; proposed changes in reporting mandated in EAR part 758; the required use of EEI filing for 0A501.a firearms; and the proposed recordkeeping requirement in part 762.

If the proposed rules are ultimately accepted, the information provided to the Wassenaar Arrangement and the UN Register of Conventional Arms will provide more granular information about US commercial exports of firearms, which seemingly could be included without significant additional effort in the annual 655 report mandated by the Foreign Assistance Act, 22 USC 2415.

## **7. The balance of costs and benefits significantly favors industry over the taxpayer.**

The two sets of proposed rules include calculations of expected costs and benefits of the changes. Having invested several hours parsing the proposed rules, I suspect that one major benefit of the changes will accrue to the attorneys who help clients wend their way through federal regulations. The registration system as it was initially set up was intended to pay for itself, via modest registration and licensing fees that covered the costs of recording and updating information on US arms manufacturers and reviewing details for proposed transactions. In some sense, it has been a fee-for-service arrangement. The proposed changes significantly alter that approach with regards to firearms proposed for transfer to the CCL.

Except for the presumably few brokers unable to qualify for the firearms registration exemption outlined in proposed changes to ITAR section 129.2, no registration or license fees will be collected. Some of the transactions may be straightforward, but the workload promises to be substantial, with 4000-10,000 applications and virtually every 0A501 transaction subject to at least regional security controls, with no license exceptions available. **Whereas under the current system fees paid by industry and brokers help offset the costs of processing the license applications, under the proposed system the expenses associated with reviewing license applications will be charged to the taxpayer.** In the current political environment where government hiring is anathema, unless a streamlined new process delivers extraordinary returns, it is difficult to imagine how the tally could come out in the taxpayer's favor without

significant sacrifice of quality control. With respect to firearms exports, taxpayers and the public at large should be concerned about pressures to cut corners that could result in authorization of irresponsible transfers. **In my view as a taxpayer, the ITAR fee structure is yet one more reason for retaining non-automatic and semi-automatic firearms on the USML, and should these weapons ultimately be transferred to the CCL, I urge public officials at the Commerce Department to explore charging a service fee for processing export license applications.**

### Conclusion

I appreciate the opportunity to comment on these rules. I am disappointed, however, that by and large they downplay the lethality of the weapons currently controlled in ITAR categories I and III. I realize that these documents were prepared for a different purpose than the materials posted to inform the global public about US government programs and policy, but **the difference between the tone and emphasis of the proposed rules and the public presentation of US policy on the export of small arms and light weapons over the past twenty years is striking.** By contrast to the public statements and documents, including the 2017 Congressional testimony by a State Department official, the emphasis in these regulations is on reducing transaction costs for industry rather than promoting the public good, including national security and public safety.

In response to public comments on the proposed regulatory changes, I hope that the Departments of State and Commerce will reconsider the proposal to transfer any complete weapons from the USML to CCL. In the event that the proposed regulations go forward substantially unchanged, I can only hope that other countries will tighten and strictly enforce their own import restrictions to reduce the risk of diversion and misuse.

Thank you,

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# PUBLIC SUBMISSION

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**Docket:** DOS-2017-0046

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-0481

Comment on DOS-2017-0046-0001

## Submitter Information

**Name:** Tiffany Hiranaka

## General Comment

I am writing this comment in support of the this proposed rule. I feel that this proposed rule will be very beneficial to the U.S. I support this proposed rule for a few different reasons. I feel that if the ITAR and EAR imposes license requirements on exports and reexports, there will be a better handle of all items on the U.S. Munitions List (USML). Having a better handle on this situation could help to keep weapons and ammunition out of the hands of people who should not posses those items. This will also help the government to maintain the list of all individuals that holds a license, ensuring that applications are correctly completed, and the proper background checks are conducted prior to issuing the license.

Another things that I support about this proposed rule is the requirements of Section 38(b)(1)(A)(ii). The requirements to this section will ensure that all business owners engaged in brokering activities are registered and licensed with the Arms Export Control Act (AECA). I feel that this is another benefit of the proposed revision because it ensure that all business are properly registered to conduct such brokering activities. I feel that this is important because our government will be able to closely maintain all business conducting such activities. This will ensure that these items dont get into the hands of groups or individuals that should not possess them.

I think that this rule will greatly impose on businesses and individuals If adopted. I think that businesses may feel that this is another way for government to charge them for something else. This in turn may cause businesses to shut down due to the costs being greater than the profits. Although this may cost people more, I feel that it would have a better regulation over all of the items on the USML that are imported and exported. This will also impact individuals who hunt for recreation purposes. This will make it a little more challenging for them to attain weapons and ammunition. Again, although these proposed change will affect business and individuals, I feel that the benefits outweighs the costs. Making this a rule that I feel should be passed, not to make things more difficult for people; but to ensure the safety of others.

United Lens Company  
259 Worcester Street  
Southbridge, MA 01550  
July 9, 2018

## Response to Request for Comments

83 FR 24166

RIN 0694-AF47

Emailed to [DDTCTPublicComments@state.gov](mailto:DDTCTPublicComments@state.gov)

United Lens Company is a small, build-to-print (or “job shop”) manufacturer of optical elements designed and used by its customers in a wide array of end-use applications—including military hardware. We would like to offer the following comments in strong support of *keeping* items controlled by the USML:

### General Comments on Costs of Compliance

The supplementary statement *Categories I-III Rules Myths versus Facts* released on May 24, 2018 suggests that the spirit of this rule change may be in order to alleviate licensing and other fees incurred by small business owners when exporting hardware controlled by the USML.

*“Myth: Even after this change, small U.S. gunsmiths will continue to be burdened by registration and requirement fees.”*

*Fact: Most gunsmiths are not required to register as manufacturers under the International Traffic in Arms Regulations (ITAR) today. Commerce does not have a registration requirement for manufacturers and exporters of the items under its jurisdiction. Therefore, small gunsmiths who do not manufacture, export, or broker the automatic weapons and other sensitive items that remain on the USML will no longer need to determine if they are required to register under the ITAR, but they may still be required to comply with Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) licensing requirements.”*

Whether intentional or otherwise, this statement seems to make a key implication: businesses that *do* export products and who will stand to benefit *most* from this reform either: (a) are the design authority on their exported product lines, and are easily able to identify how their products are controlled, or (b) are *not* the design authority but have a single or very few key product lines which they consistently manufacture. It is important to point out that businesses that find themselves in scenario (a) are not necessarily small ones, especially when it comes to military hardware.

Alternatively, job shops like United Lens Company fabricate products *without* the benefit of having design authority. Since each new part number brings another analysis to determine its classification, ITAR controlled items are an eventuality we have to remain prepared for. In point of fact, our eligibility as a vendor sometimes relies on our ability to make ITAR controlled exports, which is in direct disagreement with the following supporting argument (also from *Myths Versus Facts*):

*“As a result, foreign manufacturers will enjoy a greater opportunity to source from small U.S. companies. This is good for: U.S. manufacturing, the defense industrial base, security of supply to the U.S. military, and interoperability with allies, to name but a few benefits.”*

In our experience, the most common requirements flowed down to us from our military customers are: (1) the letter validating our registration with the DDTC and (2) a signed statement insuring a cybersecurity policy as outlined by NIST Special Publication 800-171. Failure to produce these documents would mean compromising our eligibility as a vendor to these types of customers. Ultimately, registration costs and licensing are inextricably linked to the requirements of our customer base and the particular type of build-to-print production work that we—and other fabricators—perform.

We believe that this reform is unsuited to change the circumstances of these costs, particularly when it comes to its most significant cost driver: mitigating risk. Most directly, the potential fees that may be incurred from an export violation easily represent what would be considered our highest cost for maintaining our export or military-related business. In a day-to-day context, this cost is represented by the care required to insure correct classification and shipment of parts—because in these circumstances, we bear the primary responsibility as the exporter, and therefore the primary risk.

### **“Mitigating Risk” and Proposed ECCN OA504**

As a build-to-print manufacturer, our process of mitigating those violation risks means working diligently to collect what information we can from purchasing agents or other representatives of our customers. At its most challenging, the information we receive from these individuals can be somewhat lacking or subject to outright debate over the interpretation of the CFR, especially when navigating the very technical language of the Commerce Control List. The simplest cases are those where we can identify a clear military application substantial enough to license and ship a product controlled by the USML, just by way of a *layperson* representative of our customer filling out an End-User Statement.

Since our business is focused on the fabrication of optical elements, the proposed ECCN OA504 for “Optical sighting devices” is of particular concern. For example, consider a hypothetical scenario where United Lens Company (or any other third party American manufacturer) is enlisted to fabricate a single optical component for installation into a Specter DR (Dual Role) Combat Sight<sup>1</sup>. This product comes in a number of configurations and is fabricated outside of the United States by Raytheon ELCAN--our customer for the purposes of this example. Although we are not responsible for the fully assembled product, we first must learn or otherwise determine the classification of that product in order to correctly classify the element we are fabricating.

To further expand on this scenario, the appointed representatives at our Canadian customer have determined that this would be an appropriate circumstance to classify their Specter DR product under OA504, and have sent an End User Statement and Purchase Order directing us to follow suit. In order to confirm their decision, we would observe that the Specter DR products are specifically designed to combine multiple combat requirements into a single, versatile weapon sight, and to this effect it has a number of features:

- With magnifications available up to 6x, does this qualify under proposed OA504.a “Telescopic sights”?
- Being swappable to low magnification and including a selectable “red dot”, does this qualify under proposed OA504.c “Reflex or ‘red dot’ sights”?
- Since these products also have a reticle, do they qualify under OA504.d “Reticle sights”?

What is most important here is this: as the exporter of this theoretical component, we would need either *agree* with our customer’s determination outright, or--more responsibly--make an effort to make sure the determination is accurate. If we agree with their decision AND are able to support it with reasonable evidence, then the component fabricated for these products would surely fall into OA504.g subcategory: “Lenses, other optical elements and adjustment mechanisms for articles in paragraphs .a, .b, .c, .d, .e or .i”. Based on our experience, the average customer representative is not necessarily able to provide guidance regarding the interpretation of specific language used in a subcategory, or the

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<sup>1</sup> To the best of our knowledge at this time, United Lens Company does not fabricate any component relevant to the production of any of the ELCAN Specter products.

language of “Specially Designed”—a ‘prime’ defense contractor like Raytheon could, perhaps, but they represent a minority of our export customers. These conversations are especially difficult if our customers are not the design authority themselves—circumstances where we end up three or more degrees separated from the producers or authority on the final product. In this sense, the complexity of the Commerce Control List can pose difficulties not just to third-party contractors like United Lens, but also to those enlisting their services.

In order to understand the preferred, alternative (and USML-oriented) approach we cite a recent<sup>2</sup> compliance seminar by the Massachusetts Export Center. At this event Timothy Mooney, Senior Export Policy Analyst, fielded a question regarding suppressors falling under ITAR control; to oversimplify Mr. Mooney’s response, he suggested that the very obvious military nature of the silencer is what maintained their position on the USML. This provides a much more straightforward litmus test for classifying our previous example of a Specter DR Combat Sight: the product’s ability to switch “between CQB (close combat battle mode) and precision ranged fire mode – in the blink of an eye”<sup>3</sup> is difficult to picture as something the average deer hunter truly requires, so we could more easily assume the product is controlled on the USML.

The proposed rule notice, page 24166, states that:

*“The review was focused on identifying the types of articles that are now controlled on the USML that are either (i) inherently military and otherwise warrant control on the USML or (ii) if of a type common to nonmilitary firearms applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and are almost exclusively available from the United States. If an article satisfies one or both of those criteria, the article remains on the USML.”*

The proposed rule, as written, will likely place an undue burden on small American build-to-print manufacturers like ourselves, who are producing parts and components for high-grade military equipment. It seems that it would reduce the burden on small businesses like ours, foreign parties and prime contractors sourcing from those businesses, as well as the State Department, if (a) all “inherently military” articles were maintained under the original categories of the USML, or (b) these articles were reclassified into another appropriate place within the USML intended to catch items where the above “litmus test” would identify “inherently military” items that would otherwise be missed or difficult to accurately place under the CCL. It would greatly benefit our business to keep items under the USML for the reasons outlined above and as such we oppose the proposed rule. However, if the proposed rule is adopted, it is particularly important that we are able to provide clear justification and documentation to our international customers for the classification of a final product either under the USML or the appropriate category or subcategory of the CCL. The most likely avenue to obtain that documented justification will continue to be the pursuit of Commodity Jurisdictions for many of these circumstances..

## Further Notes

On possible political interpretations of these comments: these comments are submitted *purely* to outline the difficulties of the Commerce Control List when it comes to third party, job shop-like manufacturers and their export obligations. We do not believe our comments will have any impact on the availability of these products inside the United States—especially considering that our chosen

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<sup>2</sup> Hosted in Boston on June 14<sup>th</sup>, 2018

<sup>3</sup> Raytheon website, Accessed July 9, 2018: [https://www.raytheon.com/capabilities/products/dualrole\\_ws/](https://www.raytheon.com/capabilities/products/dualrole_ws/)

example is a weapons sight that we have *assumed* is ITAR controlled, yet still commercially available for purchase within the United States.

On cost-oriented policy that *has* benefitted United Lens Company: the fact that registration with the DDTC has a cost “floor” for companies that use less than ten licenses a year is something we believe has been a huge benefit to our small business—we have never actually exceeded this limit. If the spirit of export reform is cost, we would suggest that further developing this “sliding scale” approach to registration and license costs in order to subsidize small businesses may be an effective strategy.

For comments or questions, please feel free to contact the undersigned at [mlannon@unitedlens.com](mailto:mlannon@unitedlens.com).

Sincerely,

Maxwell Lannon  
Director of Engineering  
Export Control Officer

## **COMMENTS OF THE VIOLENCE POLICY CENTER TO THE U.S. DEPARTMENT OF STATE**

### **RE: ITAR Amendment—Categories I, II, and III**

#### **SUBMITTED VIA EMAIL**

The Violence Policy Center (VPC) is a national non-profit educational organization working to reduce gun violence through research, public education, and advocacy. The VPC has a particular expertise in researching and monitoring the gun industry and we regularly issue reports and analyses regarding the industry and its products. The VPC has also done extensive research on cross-border gun trafficking.

The VPC has serious concerns regarding the rules proposed by the U.S. Departments of Commerce and State to transfer non-automatic and semi-automatic firearms and ammunition, as well as parts and related defense services currently controlled by Category I, II, or III of the U.S. Munitions List under the International Traffic in Arms Regulations (ITAR), to the control of the Export Administration Regulations (EAR). The proposed transfer would significantly weaken controls on small arms and ammunition and will result in a higher volume of export sales with less transparency and oversight. The ability to prosecute violations will also be impaired. The changes will enhance the risks that lethal weapons widely used for military purposes will end up in the hands of criminal organizations, human rights abusers, and terrorist groups.

The proposed rules treat semi-automatic assault rifles as “non-military.” But many state and non-state groups in importing countries use semi-automatic rifles in armed conflicts, causing enormous damage. U.S. troops use rifles in semi-automatic mode an overwhelming amount of the time. VPC research clearly demonstrates that the types of semi-automatic rifles, handguns, sniper rifles, large-capacity ammunition magazines, receivers, and other parts subject to the new rules are the types of weapons and accessories preferred by cross-border gun traffickers.<sup>1</sup> Moreover, many of the sniper rifles subject to the transfer are in use by military forces.<sup>2</sup> One particularly problematic rifle is the 50 caliber anti-armor sniper rifle that is capable of downing

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<sup>1</sup> *An Ongoing Analysis of the Types of Firearms Illegally Trafficked from the United States to Mexico and Other Latin American and Caribbean Countries as Revealed in U.S. Court Documents*, Violence Policy Center: <http://www.vpc.org/indicted/>.

<sup>2</sup> “5 Sniper Rifles That Can Turn Any Solider into the Ultimate Weapon: 5 guns no one wants to go to war against,” *The National Interest*, March 11, 2018: <http://nationalinterest.org/blog/the-buzz/5-sniper-rifles-can-turn-any-soldier-the-ultimate-weapon-24851>.

aircraft on take-off and landing and can pierce light armor.<sup>3</sup> In addition, these rifles have been identified as a national security threat by a number of experts and entities.<sup>4</sup>

The devastation that semi-automatic firearms equipped with large-capacity ammunition magazines can inflict is demonstrated by their common use in mass shootings in the United States.<sup>5</sup>

Regarding whether the items described in the proposed rules are widely available in commercial outlets, an issue about which comment has been requested, many of the items are rapidly becoming less available in the United States. Six U.S. states and the District of Columbia prohibit retail sale of semi-automatic assault rifles. Eight states and the District of Columbia ban large-capacity ammunition magazines. Several large retail chain stores have acted to stop the sales of semi-automatic firearms and large-capacity ammunition magazines. For example, Walmart does not sell semi-automatic assault weapons. The store does not sell handguns, except in Alaska. They also do not sell large-capacity ammunition magazines.<sup>6</sup>

Other large retail outlets, such as Dick's Sporting Goods, have recently acted to stop the sales of semi-automatic assault weapons (which the gun industry euphemistically calls "modern sporting rifles"). Dick's is even destroying its unsold inventory of assault weapons.<sup>7</sup> Finally, many countries prohibit civilian possession of semi-automatic rifles and handguns and the trend is toward prohibiting such weapons. For example, Norway is moving to ban semi-automatic firearms as of 2021. In 2011, Norway experienced one of the worst mass shootings outside of the U.S. The shooter used a Sturm Ruger Mini-14 semi-automatic rifle and a Glock semi-automatic handgun to kill 69 people at a youth camp. Both of these weapons are examples of those that will be transferred to Commerce's control under the proposed rules.

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<sup>3</sup> For more information on the capabilities of 50 caliber sniper rifles, see the Violence Policy Center's resource page: <http://www.vpc.org/regulating-the-gun-industry/50-caliber-anti-armor-sniper-rifles/>.

<sup>4</sup> *National Security Experts Agree: 50 Caliber Anti-Armor Sniper Rifles Are Ideal Tools for Terrorists*, Violence Policy Center, 2005: [http://www.vpc.org/fact\\_sht/snipersecurityexperts.fs.pdf](http://www.vpc.org/fact_sht/snipersecurityexperts.fs.pdf).

<sup>5</sup> See, for example, Violence Policy Center list of mass shootings involving high-capacity ammunition magazines: [http://www.vpc.org/fact\\_sht/VPCshootinglist.pdf](http://www.vpc.org/fact_sht/VPCshootinglist.pdf).

<sup>6</sup> Walmart Statement on Firearms Policy, accessed on July 3, 2018:  
<https://news.walmart.com/2018/02/28/walmart-statement-on-firearms-policy>.

<sup>7</sup> "Dick's Sporting Goods plans to destroy all the assault rifles it pulled off its shelves," CNN, April 19, 2018:  
<https://www.cnn.com/2018/04/19/us/dicks-sporting-goods-guns-trnd/index.html>.

Many semi-automatic rifles are also easily converted to fully-automatic firearms. Because military-style assault rifles clearly have substantial military utility, transfer of these firearms to Commerce Department control is inconsistent with the statutory framework enacted by the Congress to regulate the export of arms.

The rules will enable the production and distribution of 3D-printed firearms. When Defense Distributed founder Cody Wilson posted online instructions for 3D-printed firearms, the State Department successfully charged him with violating arms export laws since his open-source posting made it possible for anyone with access to a 3D printer, anywhere, to produce a lethal weapon. The Commerce Department is unlikely to take similar action once such weapons are transferred to their control. Unless corrected, the new regulations run the risk of effectively condoning and enabling 3D printing of firearms in the U.S. and around the globe. This change alone could generate many preventable tragedies while changing the landscape of firearm manufacture, distribution and regulation.

The proposed rules would revise License Exception BAG to allow U.S. citizens and permanent resident aliens temporarily leaving the U.S. to take up to three non-automatic and semi-automatic firearms and up to 1,000 rounds of ammunition for such firearms for personal use while abroad (License Exception BAG). Currently, BAG applies only to non-automatic firearms. The proposed rules create a new exception for semi-automatic firearms and also revise the current rule to allow nonresident aliens leaving the U.S. to take firearms “accessories,” “attachments,” “components,” “parts,” and ammunition controlled by OA501 or OA505, provided that these were lawfully brought into the U.S.

The revision to the License Exception BAG is highly problematic considering that semi-automatic weapons can inflict catastrophic damage. If such a weapon is stolen or lost, there will little that can be done to recover the weapon. It will also be much easier for smugglers to take advantage of these exceptions to facilitate trafficking.

No justification is offered for changes to the current BAG framework. As described previously, semi-automatic weapons are prized by criminal organizations and the proposed change is likely to increase the risk of crime and violence.

The proposed rules would eliminate Congressional oversight for important gun export sales. Congress will no longer be automatically informed about sizable sales of these weapons. This change will limit the ability of Congress to comment on related human rights concerns, as it recently did on the Philippines and Turkey. In 2002, Congress acted to require it be notified of sales of firearms regulated by the U.S. Munitions List valued at \$1 million or more. Items moved to Commerce’s control would no longer be subject to such notification. In a September 15,

2017, letter, Senators Ben Cardin, Dianne Feinstein, and Patrick Leahy explicitly noted that this move would violate congressional intent and effectively eliminate congressional oversight.<sup>8</sup>

The rules reduce end-use controls for gun exports. It would eliminate the State Department's Blue Lantern program for gun and ammunition exports, which carries out hundreds of pre-license and post-shipment inspections and publicly reports on them. It also would move license approval out of the department that compiles the U.S. Government's information on human rights violations, reducing the ability to effectively deny weapons licenses to international human rights violators. End-use controls also are weakened by eliminating registration of firearms exporters, a requirement since the 1940s. Registration of exporters allows the State Department to check an exporter's history whenever a manufacturer or broker requests a license for a particular gun export sale. But the transfer of licensing to Commerce will remove new exporters and brokers of these firearms from the State Department database, weakening enforcement against arms trafficking.

Gun manufacturers are extolling the new rules as an opportunity for increased profits in a climate of declining domestic sales.<sup>9</sup> At the same time, the new rules would transfer the cost of processing licenses from gun manufacturers to taxpayers. Registration fees that since the 1940s have been used to offset the costs to the government of tracking weapons production would no longer apply to manufacturers of semi-automatic firearms. The government and taxpayers will absorb the cost of reviewing applications and processing licenses. Gun exporters that benefit from these sales should shoulder this cost.

## **CONCLUSION**

The proposed rules would transfer gun export licensing to an agency – the Commerce Department – the principal mission of which is to promote trade. Firearms are uniquely and pervasively used in criminal violence around the world. Controlling their export should be handled by the State Department, which is mandated and structured to address the potential impacts in importing nations on stability, human security, conflict, and human rights.

Firearms are used to kill a thousand people every day around the world in acts of organized crime, political violence, terrorism, and human rights violations. Research indicates that the

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<sup>8</sup> Letter to Secretary of State Rex Tillerson, September 15, 2017.

<sup>9</sup> "Trump State Department Looks to Stream Line Firearms Exports & Open US Markets," *Ammoland*, May 15, 2018: <https://www.ammoland.com/2018/05/trump-state-department-looks-to-stream-line-firearms-exports-open-us-markets/#axzz5KDSk0Jdz>.

types of weapons being transferred to the Commerce Department's control – including AR-15, AK-47, and other military-style assault rifles such as 50 caliber sniper rifles as well as their ammunition – are weapons of choice for criminal organizations in Mexico and other Latin American countries and are responsible for most of the increasing and record levels of homicide in those countries. The rules are certain to increase the volume of exports of these firearms. The export of these weapons should be subject to more controls, not fewer.

The proposed rules would significantly weaken export controls and oversight of many military firearms highly prized by terrorists, drug-trafficking organizations, and common criminals. Semi-automatic assault rifles, high-capacity ammunition magazines, sniper rifles (especially 50 caliber sniper rifles), and high-caliber firearms should remain on the United States Munitions List (USML).

The requirement that Congress be notified of all sales of former and USML-controlled firearms of more than \$1 million should be retained.

The provision authorizing license-free exports of semi-automatic rifles by citizens and legal permanent residents should be removed.

Respectfully submitted,

Kristen Rand  
Legislative Director  
Violence Policy Center  
1025 Connecticut Ave NW  
Suite 1210  
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By E-mail: [DDTCPublicComments@state.gov](mailto:DDTCPublicComments@state.gov) subject line, "ITAR Amendment – Categories I, II, and III"

Robert Monjay  
Office of Defense Trade Controls Policy  
Directorate of Defense Trade Controls  
U.S. Department of State  
2401 E. Street, N.W.  
Washington, DC 20226

RE: Comments on Proposed Rule – International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III, 83 FR 24198 (May 24, 2018).

Dear Mr. Monjay:

Vista Outdoor Inc., (Vista) is a leading global designer, manufacturer and marketer of consumer products in the growing outdoor sports and recreation markets. We serve these markets through our diverse portfolio of well-recognized brands that provide consumers with a range of performance-driven, high-quality and innovative products, including sporting ammunition and firearms, outdoor products, outdoor cooking solutions, outdoor sports optics, hydration systems, golf rangefinders, and accessories. We serve a broad range of end consumers, including outdoor enthusiasts, hunters and recreational shooters, professional athletes, as well as law enforcement and military professionals.

The majority of Vista brands exported that require BIS or DDTC authorizations are: Federal Premium®, CCI®, Speer ®; Firearms: Savage Arms™, Bushnell®, BLACKHAWK!®, Night Optics®, all which will be directly impacted by the proposed rules changes. As requested in the proposed rule contained in Federal Register Notice, 83 FR 24198, May 24, 2018, Vista respectfully submits the following comments:

### **Specific Comments**

#### **I. USML Category III Ammunition – Projectiles –Steel Tipped**

The revised Category III enumerates **projectiles, specifically, sub paragraph (d)(1)** controls "Projectiles that ..... are incendiary, explosive, steel tipped, or contain a core or solid projectile produced from one or a combination of the following: tungsten, steel, or beryllium copper alloys."

The revised Category III does not exempt ammunition that the ATF has found is primarily intended to be used for "sporting purposes" per the below definition:

In 18 USC 918(a)(17)(A), the term “ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(B) The term “armor piercing ammunition” means—

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

(C) The term “**armor piercing ammunition**” does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

Comment: We recommend that subparagraph (d)(1) be revised to delete the term “steel tipped.” Export controls of articles enumerated in the revised Category III should be consistent with definitions in other parts of federal law. Therefore control of steel tipped projectiles which have been determined to be intended for sporting purposes correctly belongs under the EAR.

## **II. Recommendations for Effective Date of Final Rule**

Throughout the reform effort and during transitions of items from the USML to the CCL, the final rules for other categories had an effective date of 180 days after publication.

Comment: Vista recommends a 180-day effective date for the final rule.

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Thank you for the consideration and opportunity to provide comments to the proposed rules. Vista commends the joint effort among the Directorate of Defense Trade Controls, Bureau of Industry and Security, and the other reviewing agencies in this endeavor and we look forward to the final rules being released.

Vista would be happy to respond to any questions or concerns, or provide additional information, please contact Julia Mason via phone (571) 343-7005 or via email at [itoshootingsports@vistaoutdoor.com](mailto:itoshootingsports@vistaoutdoor.com).

Sincerely,  
Vista Outdoor Inc.

Julia Mason  
Director, International Trade Operations  
Vista Outdoor Inc.

# PUBLIC SUBMISSION

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**Docket:** DOS-2017-0046

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories I, II, and III

**Comment On:** DOS-2017-0046-0001

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

**Document:** DOS-2017-0046-0021

Comment on DOS\_FRDOC\_0001-4527

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## Submitter Information

**Name:** WILLIAM HANGEN

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## General Comment

I support the proposed rule as written, but with a few minor changes:

1) the referenced magazine capacity restriction of 50 rounds should be doubled, to 100 rounds. There are several magazine manufacturers in the United States producing magazines of greater than 50 rounds that would benefit from this change, and such manufacture and enabling technology for magazines greater than 50 rounds is found worldwide. Limiting this magazine capacity to 50 rounds does not protect any special US or allied military advantage, but magazines of greater than 50 rounds are commonly found worldwide. Drum type magazines for the Kalashnikov family of weapons are a prime example.

2) the proposed rule does not address sound suppressors. Sound suppressors are readily available in the US and overseas, and the technical know-how to produce them is found worldwide. There are a plethora of US manufacturers fabricating sound suppressors that would benefit from this rule change, and the use of sound suppressors does not confer any special US or allied military advantage. Inclusion of sound suppressor deregulation would benefit US manufacturing interests without harming our military position.

Thank you for your time and attention regarding this matter. Have a great day!

William A. Root  
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June 27, 2018

US Department of State  
Bureau of Political Military Affairs  
Directorate of Defense Trade Control  
[DDTCPublicComments@state.gov](mailto:DDTCPublicComments@state.gov)  
<http://www.regulations.gov>

Re: ITAR Amendment—Categories I, II, and III DDTC

Greetings:

These are comments on the Department of State's proposed rule to amend the International Traffic in Arms Regulations (ITAR) and categories I, II and III of the US Munitions List (USML). 83 Federal Register 24166, May 24, 2018.

## **Background**

The ITAR amendment should be revised to better support the rule of law.

The Arms Control and Disarmament Act, at 22 USC 2551, declares:

An ultimate goal of the United States is a world ... in which the use of force has been subordinated to the rule of law ...

No profession is more closely identified with the rule of law than the police profession. Peace officers are the street-level keepers of the law, all over the world. If the United States is committed to "subordinating the use of force to the

rule of law”, it must protect the environment in which peace officers do their work. When armed gangs can overpower local peace officers, local communities become war zones where the rule of law is subordinated to the use of force.

We fail to protect peace officers when we put highly destructive weapons in the hands of civilians who target the police.

The ITAR amendment, as proposed, will make it easier to put firearms in the hands of civilians and armed gangs that are superior to those carried by local peace officers, thus threatening the rule of law in local communities. In several parts of the world, armed gangs are impairing the rule of law, and their activities cross borders. Notorious examples of the adverse effects of firearm proliferation can be seen in Africa and the Middle East, as well as closer to home – in Central America and Mexico, with adverse effects along the southern border of the United States.

See: Alec MacGillis, “*America's Wild-West Gun Laws Are Helping Fuel The Border Crisis: The Unwanted Traffic Between The US And Central America Goes Both Ways*” (New Republic, July 21, 2014), <https://newrepublic.com/article/118759/nra-and-gun-trafficking-are-adding-fuel-border-migrant-crisis>

Robert Muggah and Steven Dudley, Op-Ed: “*The Latin American Gun Leak*”, (Los Angeles Times, January 16, 2015), <http://www.latimes.com/opinion/op-ed/la-oe-muggah-arming-latin-america-20150118-story.html>

“*Attacks against Peacekeepers*” (United Nations OHCHR, May 2017), <https://www.ohchr.org/Documents/Countries/CF/Mapping2003-2015/Factsheet7-EN.pdf>

“*Attacks against civilians and MINUSCA peacekeepers in the town of Bangassou in the Central African Republic*” (Office of the Spokesperson for the UN Secretary-General, May 14, 2017) <https://www.un.org/sg/en/content/statement/2017-05-14/statement-attributable-spokesman-secretary-general-attacks-against>

Alex Yablon, “*American Guns Drive the Migrant Crisis that Trump Wants to Fix with a Wall*” (Trace, May 25, 2017) <https://www.thetrace.org/2017/05/gun-trafficking-central-america-immigrant-crisis-trump-wall/>

Jonathan Blitzer, “*The Link Between America's Lax Gun Laws and the Violence That Fuels Immigration*” (New Yorker, March 22, 2018),

<https://www.newyorker.com/news/news-desk/the-link-between-americas-lax-gun-laws-and-the-violence-that-fuels-immigration>

See: “*Clear and Present Danger: National Security Experts Warn about the Danger of Unrestricted Sales of 50 Caliber Anti-Armor Sniper Rifles to Civilians*” (Violence Policy Center, July 2005), <http://www.vpc.org/studies/50danger.pdf>

ITAR should focus more attention on the security needs of local communities where firearms are proposed to be exported.

The Department of State is liberalizing its rules on firearm exports partly because the Department of Defense has determined that so-called semi-automatic firearms are of diminished importance in military conflicts. DoD’s determination may well be valid, but it misses the point. Military analysts worry, as they should, about the impact of weapons on the battlefield. But evaluating the impact of firearms on the battlefield gives short shrift to the security needs of civilian communities. To support the rule of law we must consider the impact of firearms on public safety, peace officer safety, crime control, and the prevention and management of civil disturbances. Firearms that “no longer warrant control” by the military may nonetheless overwhelm police patrols and threaten the rule of law in local communities.

ITAR should not treat the US firearms market as the global standard. The United States is proposing to liberalize its rules on firearm exports grounded partly on the false premise that firearms are “widely available in retail outlets ... abroad.” That is not true. The US firearms market is unique. Mexico, for example, has more restrictive gun laws than the United States.

See: Topher McDougal, David A. Shirk, Robert Muggah and John H. Patterson, “*The Way of the Gun: Estimating Firearms Traffic Across the US-Mexico Border*” (Trans-Border Institute, University of San Diego, March 2013), [https://igarape.org.br/wp-content/uploads/2013/03/Paper\\_The\\_Way\\_of\\_the\\_Gun\\_web2.pdf](https://igarape.org.br/wp-content/uploads/2013/03/Paper_The_Way_of_the_Gun_web2.pdf)

Zachary Elkins, Tom Ginsburg & James Melton, “*US Gun Rights Truly Are American Exceptionalism*”, (Bloomberg, March 7, 2013), <https://www.bloomberg.com/view/articles/2013-03-07/u-s-gun-rights-truly-are-american-exceptionalism>

The United States risks alienating friendly foreign nations by projecting its permissive domestic gun laws abroad.

The Department of State has access to information about what kinds of weapons are typically carried by patrol officers in foreign countries. The Department has the wherewithal to judge whether a firearm proposed for export is likely to outmatch the firearms carried by local police forces. The Department should use that knowledge -- and make that judgment -- as it evaluates firearm export applications.

In evaluating the suitability of firearm exports, the ITAR should set a maximum limit on the destructive potential of firearms exportable to civilians. Firearms with muzzle energies higher than, for example, 5,000 Joules should be barred from export to non-government end-users. (In ballistics, muzzle energy, commonly expressed in Joules or foot-pounds, is a measure of the destructive potential of a firearm or cartridge.) The risk that a firearm poses to life and property – and the danger it poses to police officers -- depends rather more on the firearm's destructive potential and rather less on whether the firearm is automatic, semi-automatic, non-automatic, not-fully-automatic, or over- or under .50-caliber.

Highly destructive weapons should be off-limits for export to civilians. Whatever short-term economic benefit those exports may generate is outweighed by the risk those weapons pose to the safety of peace officers and the rule of law. No firearm with a muzzle energy of 5,000 J belongs on a street anywhere in the world.

### **Policy Recommendations**

The following changes should be incorporated in ITAR:

1. Applications for firearm export licenses should be denied when the firearm proposed for export is of such destructive potential as to threaten the safety of local law enforcement officers.
2. Prohibit exports of firearms with muzzle energies less than 5,000 J, to civilian end-users, world-wide, if the firearm is likely to outmatch weapons carried by local peace officers or otherwise impair the efforts of peace officers to control crime and civil disturbance.
3. Prohibit export of firearms with muzzle energies above 5,000 J to civilian end-users world-wide.

## **Technical Language**

The recommendations above may be translated into the ITAR framework using the technical language below.

(1)

22 CFR 120.4

Add a Note 3 to 22 CFR 120.4 as follows:

FOR FIREARMS AND AMMUNITION, PERFORMANCE CAPABILITY INCLUDES DESTRUCTIVE POTENTIAL, AS MEASURED BY MUZZLE ENERGY, COMMONLY EXPRESSED IN JOULES OR FOOT-POUNDS.

(2)

22 CFR 121.1, Category I

Add Note 3 to Category I of 22 CFR 121.1 as follows:

(a) SUBJECT TO (b) AND (c), APPLICATIONS FOR ITEMS CONTROLLED UNDER THIS CATEGORY WILL GENERALLY BE CONSIDERED FAVORABLY ON A CASE-BY-CASE BASIS UNLESS THERE IS CIVIL DISORDER IN THE COUNTRY OR REGION OR UNLESS THERE IS EVIDENCE THAT THE GOVERNMENT OF THE IMPORTING COUNTRY MAY HAVE VIOLATED INTERNATIONALLY RECOGNIZED HUMAN RIGHTS. THE JUDICIOUS USE OF EXPORT CONTROLS IS INTENDED TO DETER THE DEVELOPMENT OF A CONSISTENT PATTERN OF HUMAN RIGHTS ABUSES, DISTANCE THE UNITED STATES FROM

SUCH ABUSES AND AVOID CONTRIBUTING TO CIVIL DISORDER IN A COUNTRY OR REGION.

(b) A LICENSE APPLICATION FOR A FIREARM OR AMMUNITION WITH MUZZLE ENERGY OF 5,000 JOULES (3,688 FOOT-POUNDS) OR MORE, OR ASSOCIATED EQUIPMENT, SHALL BE DENIED TO NON-GOVERNMENT END-USERS.

(c) A FIREARM, AND AMMUNITION, WITH MUZZLE ENERGY LESS THAN 5,000 JOULES (3,688 FOOT-POUNDS), AND ASSOCIATED EQUIPMENT, MAY BE APPROVED TO NON-GOVERNMENT END-USERS UNLESS THE FIREARM WOULD TEND TO OUTMATCH WEAPONS NORMALLY CARRIED BY LAW ENFORCEMENT OFFICERS ON ROUTINE PATROL IN THE AREA WHERE THE WEAPON WOULD BE AUTHORIZED FOR USE OR OTHERWISE IMPAIR THE EFFORTS OF LAW ENFORCEMENT OFFICERS IN THE AREA TO CONTROL CRIME AND CIVIL DISTURBANCE.

(3)

22 CFR 121.1, category II

Add a Note 3 to category II of 22 CFR 121.1, paragraph (a), as follows:

(a) SUBJECT TO (b) AND (c), APPLICATIONS FOR ITEMS CONTROLLED UNDER THIS CATEGORY WILL GENERALLY BE CONSIDERED FAVORABLY ON A CASE-BY-CASE BASIS UNLESS THERE IS CIVIL DISORDER IN THE COUNTRY OR REGION OR UNLESS THERE IS EVIDENCE THAT THE GOVERNMENT OF THE IMPORTING COUNTRY MAY HAVE VIOLATED INTERNATIONALLY

RECOGNIZED HUMAN RIGHTS. THE JUDICIOUS USE OF EXPORT CONTROLS IS INTENDED TO DETER THE DEVELOPMENT OF A CONSISTENT PATTERN OF HUMAN RIGHTS ABUSES, DISTANCE THE UNITED STATES FROM SUCH ABUSES AND AVOID CONTRIBUTING TO CIVIL DISORDER IN A COUNTRY OR REGION.

(b) A LICENSE APPLICATION FOR A FIREARM OR AMMUNITION WITH MUZZLE ENERGY OF 5,000 JOULES (3,688 FOOT-POUNDS) OR MORE, OR ASSOCIATED EQUIPMENT, SHALL BE DENIED TO NON-GOVERNMENT END-USERS.

(c) A FIREARM, AND AMMUNITION, WITH MUZZLE ENERGY LESS THAN 5,000 JOULES (3,688 FOOT-POUNDS), AND ASSOCIATED EQUIPMENT, MAY BE APPROVED TO NON-GOVERNMENT END-USERS UNLESS THE FIREARM WOULD TEND TO OUTMATCH WEAPONS NORMALLY CARRIED BY LAW ENFORCEMENT OFFICERS ON ROUTINE PATROL IN THE AREA WHERE THE WEAPON WOULD BE AUTHORIZED FOR USE OR OTHERWISE IMPAIR THE EFFORTS OF LAW ENFORCEMENT OFFICERS IN THE AREA TO CONTROL CRIME AND CIVIL DISTURBANCE.

(4)

22 CFR 121.1, category III

Add a new paragraph 4 to notes to category III of 22 CFR 121.1, as follows:

(a) SUBJECT TO (b) AND (c), APPLICATIONS FOR ITEMS CONTROLLED UNDER THIS CATEGORY WILL

GENERALLY BE CONSIDERED FAVORABLY ON A CASE-BY-CASE BASIS UNLESS THERE IS CIVIL DISORDER IN THE COUNTRY OR REGION OR UNLESS THERE IS EVIDENCE THAT THE GOVERNMENT OF THE IMPORTING COUNTRY MAY HAVE VIOLATED INTERNATIONALLY RECOGNIZED HUMAN RIGHTS. THE JUDICIOUS USE OF EXPORT CONTROLS IS INTENDED TO DETER THE DEVELOPMENT OF A CONSISTENT PATTERN OF HUMAN RIGHTS ABUSES, DISTANCE THE UNITED STATES FROM SUCH ABUSES AND AVOID CONTRIBUTING TO CIVIL DISORDER IN A COUNTRY OR REGION.

(b) A LICENSE APPLICATION FOR AMMUNITION WITH MUZZLE ENERGY OF 5,000 JOULES (3,688 FOOT-POUNDS) OR MORE, OR ASSOCIATED EQUIPMENT, SHALL BE DENIED TO NON-GOVERNMENT END-USERS.

(c) AMMUNITION, WITH MUZZLE ENERGY LESS THAN 5,000 JOULES (3,688 FOOT-POUNDS) MAY BE APPROVED TO NON-GOVERNMENT END-USERS UNLESS THE FIREARM WOULD TEND TO OUTMATCH WEAPONS NORMALLY CARRIED BY LAW ENFORCEMENT OFFICERS ON ROUTINE PATROL IN THE AREA WHERE THE WEAPON WOULD BE AUTHORIZED FOR USE OR OTHERWISE IMPAIR THE EFFORTS OF LAW ENFORCEMENT OFFICERS IN THE AREA TO CONTROL CRIME AND CIVIL DISTURBANCE.

(5)

15 CFR 124.14 (c) (9)

Amend 15 CFR 124.14 (c) (9) as follows:

(a) Unless the articles covered by the agreement are in fact intended to be distributed to private persons or entities (e.g., cryptographic devices and software for financial and business applications), the following clause must be included in all warehousing and distribution agreements: “Sales or other transfers of the licensed article shall be limited to governments of the countries in the distribution territory and to private entities seeking to procure the licensed article pursuant to a contract with a government within the distribution territory, unless the prior written approval of the U.S. Department of State is obtained.

(b) SUBJECT TO (c) AND (d), APPLICATIONS FOR ITEMS CONTROLLED UNDER THIS CATEGORY WILL GENERALLY BE CONSIDERED FAVORABLY ON A CASE-BY-CASE BASIS UNLESS THERE IS CIVIL DISORDER IN THE COUNTRY OR REGION OR UNLESS THERE IS EVIDENCE THAT THE GOVERNMENT OF THE IMPORTING COUNTRY MAY HAVE VIOLATED INTERNATIONALLY RECOGNIZED HUMAN RIGHTS. THE JUDICIOUS USE OF EXPORT CONTROLS IS INTENDED TO DETER THE DEVELOPMENT OF A CONSISTENT PATTERN OF HUMAN RIGHTS ABUSES, DISTANCE THE UNITED STATES FROM SUCH ABUSES AND AVOID CONTRIBUTING TO CIVIL DISORDER IN A COUNTRY OR REGION.

(c) A LICENSE APPLICATION FOR A FIREARM OR AMMUNITION WITH MUZZLE ENERGY OF 5,000 JOULES (3,688 FOOT-POUNDS) OR MORE, OR ASSOCIATED

EQUIPMENT, SHALL BE DENIED TO NON-GOVERNMENT END-USERS.

(d) A FIREARM, AND AMMUNITION, WITH MUZZLE ENERGY LESS THAN 5,000 JOULES (3,688 FOOT-POUNDS), AND ASSOCIATED EQUIPMENT, MAY BE APPROVED TO NON-GOVERNMENT END-USERS UNLESS THE FIREARM WOULD TEND TO OUTMATCH WEAPONS NORMALLY CARRIED BY LAW ENFORCEMENT OFFICERS ON ROUTINE PATROL IN THE AREA WHERE THE WEAPON WOULD BE AUTHORIZED FOR USE OR OTHERWISE IMPAIR THE EFFORTS OF LAW ENFORCEMENT OFFICERS IN THE AREA TO CONTROL CRIME AND CIVIL DISTURBANCE.

(6)

22 CFR Part 126, Supplement No. 1

In 22 CFR Part 126, Supplement No. 1, category I (a-e) (firearms and related articles), mark all three country boxes with an X.

In 22 CFR Part 126, Supplement No. 1, category II (a) (guns and armament), mark all three country boxes with an X.

In 22 CFR Part 126, Supplement No. 1, category III (ammunition and ordinance), mark all three country boxes with an X.

(7)

22 CFR 129.7 (b)

Amend 22 CFR 129.7 (b) to add the following:

(b) No person may engage in or make a proposal to engage in brokering activities that involve any country, area, or person referred to in § 126.1 of this subchapter without first obtaining the approval of the Directorate of Defense Trade Controls. NO PERSON MAY ENGAGE IN OR MAKE A PROPOSAL TO ENGAGE IN BROKERING ACTIVITIES THAT INVOLVE EXPORTING OR TRANSFERRING, TO A NON-GOVERNMENT PERSON, A FIREARM OR AMMUNITION WITH MUZZLE ENERGY GREATER THAN 5,000 JOULES (3,688 FOOT-POUNDS), OR ASSOCIATED EQUIPMENT. NO PERSON MAY ENGAGE IN OR MAKE A PROPOSAL TO ENGAGE IN BROKERING ACTIVITIES THAT INVOLVE EXPORT OR TRANSFER, TO A NON-GOVERNMENT PERSON, OF A FIREARM OR AMMUNITION WITH MUZZLE ENERGY LESS THAN 5,000 JOULES (3,688 FOOT-POUNDS) OR ASSOCIATED EQUIPMENT IF THE ITEM IS LIKELY TO OUTMATCH LAW ENFORCEMENT OFFICERS ON ROUTINE PATROL IN THE AREA WHERE THE ARTICLE WOULD BE AUTHORIZED FOR USE.

Thank you for the opportunity to submit comments on the ITAR amendment.

Sincerely,

William A. Root  
Erick Williams