

June 27, 2024

**Via Federal eRulemaking Portal**

The Honorable Gina Raimondo  
Secretary  
U.S. Department of Commerce  
1401 Constitution Avenue, NW  
Washington, DC 20230

Re: Comments on Interim Final Rule  
Revision of Firearms License Requirements  
Docket No. 240419-0113  
RIN 0694-AJ46

Dear Secretary Raimondo:

The National Shooting Sports Foundation (“NSSF”) is the trade association for America’s firearm and ammunition industry. On behalf of our 10,500 member companies, I respectfully submit the following comments to the above-referenced Federal Register Notice (89 FR 34680, April 30, 2024) regarding the U.S. Department of Commerce’s Bureau of Industry and Security’s (“BIS”) Interim Final Rule RIN 0694–AJ46 (“IFR”).

We have thoroughly reviewed the IFR with our membership and find that while our industry has always agreed with the goals of national security and reducing the illegal diversion of firearms, the IFR’s stated license policy and regulatory changes are unduly burdensome and will have a significant negative impact on the legal export of all firearms worldwide without providing a similarly significant increase in national security. It is the U.S. Department of Commerce’s mission “to create the conditions for economic growth and opportunity for all communities.”<sup>1</sup> We note that this IFR is in contradiction to BIS’s guiding principles<sup>2</sup> which include protecting U.S. national security as well as economic security, and the stated principle “Protecting U.S. security includes not only supporting U.S. national defense, but also ensuring the health of the U.S. economy and the competitiveness of U.S. industry.”

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<sup>1</sup> U.S. Department of Commerce Website, accessed June, 2024, [About Commerce | U.S. Department of Commerce](#)

<sup>2</sup> BIS Website, BIS Guiding Principles, accessed June, 2024, [BIS Guiding Principles | Bureau of Industry and Security](#)

## 1. HIGH-LEVEL SUMMARY OF COMMENTS

- The new licensing policy is contrary to the Export Control Reform Act of 2018, 50 U.S.C. §§4801-4852, is redundant, adds unnecessary new export license burdens, and is not supported by U.S. Government firearm enforcement reports. **Less than 1% of legally exported firearms are traced as illicitly used international crime guns.**
- The economic impact to the firearm industry and overall cost of the rule will be **nearly \$500 million annually.**
- BIS has severely underestimated the number of new license applications resulting from these new, cumbersome changes. The new requirements implemented in the IFR will result in an **annual firearm license application caseload of approximately 16,600 cases, which is more than double the current average caseload of 7,700 per year and a 115% increase for which BIS is not adequately funded or staffed to handle.**
- The IFR misleads the public about changes to the availability of export license exceptions. It creates an unnecessary licensing burden by restricting the use of license exceptions to most of the world, including trusted allies and partner nations, with no explanation for the regulatory change.
- The new licensing requirement for sporting shotguns and optical devices to trusted Wassenaar Arrangement countries is an abrupt reversal of the December 2023 final rule removing license requirements for these low technology commodities.
- BIS has unnecessarily established new Export Control Classification Numbers (ECCNs) for certain semi-automatic firearms and related parts citing their inability to know specific export data for those commodities based on license information. However, the Harmonized Tariff System (HTS) commodity numbers are part of the required Electronic Export Information (EEI) filed for all exports. This data, uploaded daily into their system, gives BIS complete details on the export of these commodities above and beyond the information available on the export license, which negates the need to have new separate ECCNs.
- The IFR license process changes mimic the DDTC licensing process but add unnecessary complexity to the overall process.
- Reduction in export license validity for ALL firearms, ammunition and related items places an unnecessary, additional onus on exporters and creates an administrative burden for BIS for which the agency is not funded to take on and is insufficiently staffed.
- The new requirement for certain additional support documents also weighs down the process and should not be broadly required for trusted ally countries.

## 2. FIREARM LICENSING POLICY CHANGES

NSSF disapproves of the IFR because it implements overreaching and needlessly harsh policy changes which will directly affect all firearm exports. The IFR adds unnecessary controls on sporting shotguns and optical sighting devices to the U.S.'s most trusted partners and allied countries listed in EAR Country Group A:1, which includes NATO countries. The changes are not the "narrowly targeted" approach as described by Secretary of Commerce Gina Raimondo at the May 8, 2024, Hearing on the "Fiscal Year 2025 Request for the Department of Commerce" before the House Committee on Appropriations, Subcommittee on Commerce, Justice, Science,

and Related Agencies.<sup>3</sup> At that hearing she stated, “The restrictions will affect less than 10% of all gun exports.” But in reality, the new licensing policy—coupled with the new license review process, required support documentation, shortened license validity, extreme restriction on use of license exceptions, and new licensing burden for certain items—impacts 100% of all firearm, ammunition, and related product exports.

All U.S. export control agencies—including BIS—continuously review other countries’ policies. This vigilance is necessary because world events change daily, and an incident in a country today may require a change to U.S. policy on national security, foreign policy and human rights. Our industry understands and accepts country-specific changes are sometimes necessary for achieving the important goal of aligning U.S. policies and interests in response to world events. But that process has never before entailed a complete 180-day halt in processing export licenses for an entire industry’s commodities, or required imposition of a stringent, overreaching and needlessly harmful new licensing policy like that detailed in the IFR. We know of no incident worldwide or in any country that could have given rise to such an overwhelming and unwarranted response. Again, the industry expects and understands reasonable policy changes in response to world events, but the IFR is both unprecedented in its scope and completely unconnected to any developments in the countries it impacts. A wholesale rewrite and presumption of denial policy for licenses specific to our industry is completely unjustified. It is likewise inconsistent with the Commerce Department’s mission to assist U.S. companies in commerce, as well as its stated goal of reducing licensing burdens for trusted allies and partner countries.

#### **A. New Regulations Contrary to the Export Control Reform Act of 2018**

The Export Control Reform Act of 2018,<sup>4</sup> (“ECRA”), 50 U.S.C. §§4801-4852, is the underlying law for the Export Administration Regulations (EAR). As such, the promulgation of regulations in the EAR must be made in accordance with the authorities granted by ECRA. Several of the regulatory changes made by this IFR are contrary to ECRA.

As set forth in 50 U.S. Code § 4811 - Statement of policy –  
The following is the policy of the United States:

...

(5) Export controls should be coordinated with the multilateral export control regimes. Export controls that are multilateral are most effective, and should be tailored to focus on those core technologies and other items that are capable of being used to pose a serious national security threat to the United States and its allies.

(6) Export controls applied unilaterally to items widely available from foreign sources generally are less effective in preventing end-users from acquiring those

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<sup>3</sup> Video Recording House Subcommittee on Commerce, Justice, Science, and Related Agencies May 08, 2024 02:00 PM Hearing: Budget Hearing – Fiscal Year 2025 Request for the Department of Commerce, [Budget Hearing – Fiscal Year 2025 Request for the Department of Commerce \(youtube.com\)](https://www.youtube.com/watch?v=...)

<sup>4</sup> Export Control Reform Act of 2018, 50 U.S.C. 4801-4852, [USCODE-2022-title50-chap58-sec4801.pdf \(govinfo.gov\)](https://www.govinfo.gov/...)

items. Application of unilateral export controls should be limited for purposes of protecting specific United States national security and foreign policy interests.

...

**(11)** The authority under this subchapter may be exercised only in furtherance of all of the objectives set forth in paragraphs (1) through (10).

The IFR makes multiple statements regarding the genesis and implementation of the new licensing policy under Crime Control for human rights. But there is no indication that these changes were coordinated with the multilateral export control regimes in accordance with 50 U.S.C. § 4811(5). In the case of firearms, ammunition and related items, the Wassenaar Arrangement for multilateral regimes is applicable. All member countries of the Wassenaar Arrangement group should have been consulted regarding the new policy because it adds a new (albeit unnecessary) licensing burden to Wassenaar partner countries. Because these countries have well-established, consistent systems for export control BIS has recently implemented rules to relax export controls for these countries in certain areas. But these member countries are not aware of the changes wrought by the new licensing policy in the IFR, which will have a direct impact on both government and commercial exports to Wassenaar countries.

As set forth in 50 U.S.C. §4811(6), unilateral export controls are ineffective in keeping controlled items from end-users, as other countries will fill that void. Therefore, application of unilateral controls should be limited to protecting specific U.S. national security and foreign policy interests. The implementation of a unilateral licensing requirement for sporting shotguns and optical sighting devices—which are widely available throughout the world and are not controlled for national security--is thus inconsistent ECRA stated policy.

Moreover, as set forth in ECRA, Commerce's policy is to use export control only to the extent necessary to restrict the export of items that would make a “significant contribution to the military potential of another country . . . which would prove detrimental to the national security of the United States” or “further significantly the foreign policy of the United States or to fulfill its declared international obligations.” [50 U.S.C. § 4811\(1\)\(A\)-\(B\)](#).

Further, other ECRA provisions were not satisfied in the making of the regulatory changes in this IFR:

As set forth in 50 U.S. Code § 4813 - Additional authorities

**(a) In general** - In carrying out this subchapter on behalf of the President, the [Secretary](#), in consultation with the [Secretary](#) of State, the Secretary of Defense, the [Secretary](#) of Energy, and the heads of other Federal agencies as appropriate, shall—

...

**(6)** establish a process for an assessment to determine whether a foreign [item](#) is comparable in quality to an [item controlled](#) under this subchapter, and is available in sufficient quantities to render the [United States export](#) control of that [item](#) or the denial of a license ineffective, including a mechanism to address that disparity;

...

(12) keep the public appropriately apprised of changes in policy, regulations, and procedures established under this subchapter;

...

(15) establish and maintain processes to inform [persons](#), either individually by specific notice or through amendment to any regulation or order issued under this subchapter, that a license from the Bureau of Industry and Security of the Department of Commerce is required to [export](#);

The new licensing requirement that applies to all exports of optical sighting devices ignores the requirements under 50 U.S.C. § 4813(a)(6), which require an assessment of whether a foreign item with comparable quality to a CCL controlled item is sufficiently available to render U.S. export controls of that item ineffective. BIS, to our knowledge, performed no such assessment prior to applying a global license requirement for these items. The new licensing requirement for optical devices will have an extreme and long-term impact on U.S. exporters who must now wait to receive an export license while competitors throughout the world export those items without a license. Indeed, China is the largest manufacturer of these types of optical devices, and Chinese companies will reap the most benefit from this change.

We also note that under 50 U.S.C. §4813(a)(12)-(13) BIS is required to keep the public aware of regulatory changes and to inform exporters when licenses are required to export. The IFR would implement a severe, general restriction on the use of license exceptions due to the new Crime Control licensing policy, as these parts of the EAR are related. The IFR does not—in either the Supplemental Information or the regulatory text changes—notify the public of this new and far-reaching change to the use of license exceptions. Due to these strict changes, many more export licenses will be needed, and because the rule is silent as to this change, the public is at higher risk of unknowingly violating the EAR.

Taken together, these provisions demonstrate that the IFR is inconsistent with ECRA, and that BIS has exceeded its statutory authority by ignoring several of ECRA’s clear mandates as explained above. In sum, BIS cannot make regulatory changes to export controls without coordinating with the multilateral export control regimes. 50 U.S.C. § 4811(5). And yet BIS plowed ahead with the IFR without any indication that it followed that command. Likewise, ECRA makes clear that unilateral export controls must be tailored to specific national security and foreign policy interests. 50 U.S.C. §4811(6). The IFR’s unilateral licensing requirement for widely available sporting shotguns and optical sighting devices flouts this command, as BIS cites no national security or foreign policy interest that furthers this broad, ineffective control (and none are conceivable). Relatedly, ECRA requires that, prior to implementing a licensing export control, BIS must assess whether a comparable, foreign item is available in sufficient quantities to render the U.S. export controls of the item ineffective. 50 U.S.C. § 4813(a)(6). Again, BIS ignored that statutory command and implemented a licensing requirement on all exports of optical sighting devices without completing the necessary assessment. Finally, BIS failed to properly inform the public of the IFR’s regulatory changes under ECRA. See 50 U.S.C. §§ 4813(a)(12)-(13). As a result, BIS has acted “in excess of its delegated powers and contrary to a specific prohibition in the statute that is clear and mandatory,” and the IFR should be invalidated under *ultra vires* review. See *Changji Esquel Textile Co. Ltd. v. Raimondo*, 40 F.4th 716, 722 (D.C. Cir. 2022) (recognizing availability of *ultra vires* claims for violations of ECRA). Put

simply, BIS's aforementioned actions flagrantly defy Congress's statutory mandates under ECRA, and, as such, they cannot stand.

## **B. New Licensing Policy Under Crime Control**

The IFR adds a new paragraph to the Crime Control licensing policy in EAR Part 742 that implements a license requirement specific to human rights. The policy applies to all countries, except Canada, including A:1 and NATO countries, and is discussed in preamble sections A., B.5 and D.2.

This is a severe and overreaching new policy which is not supported by U.S. government reports, factual diversion and crime data, or by historical exports. It is redundant because human rights concerns have been part of the BIS license review process since the 2020 transition of firearm controls to the EAR. And it forces our most trusted allied countries to undergo licensing that has never been required.

There has been no coup, upheaval, revolution, or similar event in these countries to warrant such a sweeping change. Certainly, there has been no event signaling the need to foist new, burdensome license requirements for sporting shotguns and rifle scopes on our most trusted allied countries. BIS's assessment that civilian owned firearms are more likely to be diverted to criminal misuse completely ignores the factual evidence detailed below that many foreign governments in high-risk countries have firearm stockpiles. And other governments continually experience the problem of firearm theft or sale to criminal elements, which we cite examples below. Firearms are not safer in government hands.

Moreover, this policy change causes a redundancy in the license review process. All firearm licenses have been reviewed for human rights issues for over four years now. The review criteria and presumption of denial is based only on anticipated risk. It is not based on factual cases of diversion or misuse, but instead the mere possibility that it may occur. The rationale for this policy change is belied by years of approved export and end-use monitoring of legal firearm importers who have complied with preexisting regulations. Exports to those commercial end-users have been undergoing National Security, Foreign Policy and Human Rights license review for the past four years. Licenses that have been granted have had no detrimental impact to national security.

The IFR advises that “[f]or each license application, BIS will specifically review concerns in the destination associated with **state fragility, human rights and political violence, terrorism, corruption, organized crime or gang-related activity, drug trafficking, and past diversion or misuse of firearms; the nature of the end user; the capabilities, potential uses, and lethality of the item;** and other factors as needed.” License applications for government end-users will be reviewed on a case-by-case basis. License applications for non-government, i.e., commercial, end users are also reviewed on a case-by-case basis but with a presumption of denial applied to certain countries.

We question how review of these criteria will be applied uniformly and objectively. Items such as “potential uses, and lethality of the item” can be very subjective when used to evaluate

firearms. All firearms can be lethal – will that instantly lean the review towards a negative determination? The potential uses of firearms are varied, but they can be criminally misused – does that factor into the review?

The new policy and above criteria mean that a license application for the UK Ministry of Defence or the French National Police will be reviewed for human rights concerns on a case-by-case basis. Yet these agencies are trusted allies, particularly in the case of the UK, and they have extremely reduced license burden for Commerce Control List (CCL) controlled items significantly more sensitive than firearms. And this review will be made even though these countries are part of the Wassenaar Arrangement and have a presumption of approval for license applications for all other items controlled on the CCL.

BIS has commented to our industry that the review criteria listed above will be used by licensing officers for all applications, and it would be invisible to the exporter. In most cases, the officer can quickly and easily move through the list. However, by forcing each application to go through this process, with most applications to the A:1 country group, this is an unnecessary use of BIS resources and will have a major impact on the licensing teams' ability to timely process applications. It forces the A:1 country group license applications to undergo interagency review, which needlessly drains the resources of other U.S. government agencies.

This new licensing policy is the antithesis of many of BIS's recently stated goals, as well as its newly published rules, which are meant to enhance cooperation with U.S. trusted allies and simplify export controls for these important partners.

### **C. Unnecessary New License Requirement for Sporting Shotguns and Optical Sighting Devices**

The above detailed licensing policy under Crime Control implements a new license requirement for sporting shotguns and optical sighting devices. These items historically have not required an export license to many countries, particularly the Wassenaar Arrangement countries listed in EAR Country Group A:1. In fact, long barreled shotguns and optics—such as rifle scopes and red dot sights—are not controlled in the Wassenaar Arrangement Munitions List (WAML1).<sup>5</sup> The control text for shotguns in the WAML1 is as follows:

ML1. b. Smooth-bore weapons as follows:

1. Smooth-bore weapons specially designed for military use;
2. Other smooth-bore weapons as follows:
  - a. Fully automatic type weapons;
  - b. Semi-automatic or pump-action type weapons;

The WAML1 includes an important qualifying note:

*Note **ML1.b. does not apply to the following:***

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<sup>5</sup> Wassenaar Arrangement Munitions List, December, 2023 [Stand-alone-Munitions-List-2023-1.pdf](https://www.wassenaar.org/stand-alone-munitions-list-2023-1.pdf) ([wassenaar.org](https://www.wassenaar.org))

*c. Smooth-bore weapons **used for hunting or sporting purposes.** These weapons must not be specially designed for military use or of the fully automatic firing type;*

Regarding optical devices used with firearms, WAML1 controls higher level optics with image processing or that are designed for military use. It does not control most common rifle scopes and red dot sights.

ML1.d. Accessories designed for arms specified by ML1.a., ML1.b. or ML1.c., as follows:

5. Optical weapon-sights with electronic image processing;
6. Optical weapon-sights specially designed for military use.

As BIS has cited ATF import criteria to support these policy changes, we refer to ATF’s stated policy regarding rifle scopes and its determination that they “do not present a significant concern for trafficking or diversion into illicit channels.” ATF removed riflescopes from the U.S. Munitions Import List (USMIL) per ATF rule “Importation of Arms, Ammunition and Defense Articles—Removal of Certain Defense Articles Currently on the U.S. Munitions Import List That No Longer Warrant Import Control Under the Arms Export Control Act (2011R–25P)”<sup>6</sup> published March 27, 2014. That ATF rule related to scopes that were controlled on the U.S. Munitions List (USML) at that time, and which were subsequently transferred to control on the CCL in 2020. The ATF rule states:

The Department is removing from the USMIL Category I—Firearms, **paragraph (e), “Riflescopes** manufactured to military specifications and specifically designed or modified components therefor.” The defense articles currently covered by Category I, **paragraph (e) are readily available through diverse domestic commercial sources and they do not present a significant concern for trafficking or diversion into illicit channels. The defense articles currently covered by Category I, paragraph (e) do not warrant import control under the AECA.**

The new licensing requirement for A:1 countries with regards to these items is not explained by BIS and is contrary to recent decisions to remove licensing burdens for the very same products.

BIS Final Rule “Allied Governments Favorable Treatment: Revisions to Certain Australia Group Controls; Revisions to Certain Crime Control and Detection Controls” was published December 8, 2023.<sup>7</sup> This removed Crime Control (CC) licensing obligations on sporting shotguns and optical devices exported to Austria, Finland, Ireland, Liechtenstein, South Korea, Sweden, and Switzerland, as these countries are part of the Global Export Controls Coalition (“GECC”). BIS stated:

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<sup>6</sup> ATF Firearms Guidance - <https://www.atf.gov/rules-and-regulations/docs/report/atf-25i/download>

<sup>7</sup> BIS Final Rule “Allied Governments Favorable Treatment: Revisions to Certain Australia Group Controls; Revisions to Certain Crime Control and Detection Controls”, December 8, 2023, [Federal Register :: Allied Governments Favorable Treatment: Revisions to Certain Australia Group Controls; Revisions to Certain Crime Control and Detection Controls](#)



“The United States has relied on deep connections with its allies and partners to protect its vital national security and foreign policy interests. Following Russia's unjustifiable further invasion of Ukraine and Belarus's complicity in that invasion, the United States led the formation of and continues to lead alignment within the Global Export Controls Coalition (GECC), now comprising the United States and 38 other global economies. BIS's export controls on Russia and Belarus have been successful because they have been imposed and maintained in coordination with U.S. allies and partners.”

The rule “is removing Crime Controls (CC) on seven key allied and partner countries, Austria, Finland, Ireland, Liechtenstein, South Korea, Sweden, and Switzerland. These amendments to the EAR eliminate certain controls on allied and partner countries, as well as on AG member countries, thereby facilitating exports and reexports involving these countries and allowing BIS to apply its resources toward reviewing and monitoring more sensitive exports and higher-risk transactions.”

“[T]his reflects . . . these seven countries' status as close United States allies and partners. Moreover, these seven countries share the United States' commitment to the observance of human rights worldwide. All seven countries have strong records regarding the safeguarding of civil liberties and individual freedoms and upholding other democratic norms.”

Yet four months later, with publication of this IFR, BIS reimposes those license requirements on these seven countries, and adds new license requirement to all NATO and A:1 “allies and trusted partners.” BIS does not explain the reason for the abrupt change nor why a new license requirement is needed. The GECC group of 38 countries are still engaged in enforcing and strengthening export controls. There is no logic behind acknowledging these countries are in line with U.S. goals for human rights and national security and then, a mere four months later, imposing a license requirement for these same countries for commodities that are not controlled on the WAML1.

What is more, the 2023 rule stated that in the two years prior “BIS approved approximately 200 licenses and did not deny any licenses for CC items destined to these seven countries. BIS anticipates that the **removal of CC controls on these seven countries will enable the agency to reallocate its licensing application review and processing resources on higher-risk destinations that present human rights concerns.**” But under the IFR, we conservatively estimate an increase of 2,500 – 3,000 license applications for sporting shotguns and optical sighting devices due to the new license requirement for all NATO/Wassenaar/Country Group A:1 countries. With a stated 100% license approval rate for the seven countries, and a likely 100% license approval rate for all A:1 countries, it is an extreme waste of government resources to impose a new license burden for these two commodities to A:1 countries.

It is important to note that the new license requirement will be particularly damaging to U.S. manufacturers of optical sighting devices who face stiff competition from a variety of foreign manufacturers, particularly those in China. China is the global leader in the manufacturing of scopes and similar optical devices. With the new global license requirement for these low technology items, U.S. scope manufacturers will not be able to meet market demands in a timely manner. Lengthy delays due to added restrictions in export licenses will drive the demand to

foreign suppliers, and U.S. manufacturers will lose that business permanently. In other words, this new license requirement will do significant, irrevocable damage to these U.S. manufacturers.

#### **D. Policy Change Redundant Due to Existing Licensing Policy**

In the IFR Supplementary Information Background Section A.1, BIS reviews the history of EAR Firearms Controls since 2020, and specifically acknowledges the control structure for firearms meant to “protect U.S. national security and foreign policy interests, which **include countering diversion and misuse of firearms and related items and advancing human rights.**”

In the four years following the transition of firearm controls from the U.S. Munitions List (USML) under the International Traffic in Arms Regulations (ITAR) to the Commerce Control List (CCL) under the Export Administration Regulations (EAR), BIS advises that for the period March 9, 2020 -June 30, 2023, a total of 26,422 applications for firearms items totaling \$40.2 billion have been processed to all destinations and end-users worldwide.<sup>8</sup> The licensing policy established in 2020 was eminently clear in both the BIS and DDTC final rules.

In the DDTC final rule published January 23, 2020, titled “International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III,” 85 FR 3819<sup>9</sup> Supplementary Information section, under Comments of General Applicability, page 3822, DDTC stated: “A number of commenters suggested the proposed rule, if made final, **may have a negative impact on human rights in foreign countries.** As stated previously, the **Department of Commerce will continue its longstanding end-use monitoring efforts, including vetting of potential end-users, to help prevent human rights abuses.** Similarly, as part of the aforementioned continuing interagency review of export licenses for firearms, **the Departments of Defense and State will review export license applications on a case-by-case basis** for national security and foreign policy reasons, **including the prevention of human rights abuses.**”

In the BIS final rule published January 23, 2020, titled “Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML),” 85 FR 4136<sup>10</sup> (hereinafter “2020 Firearms Rule”), Supplementary Information section, under Comments of General Applicability, BIS stated Commerce’s “Mission and the Regulation of Firearms” in several pertinent sections, which include Commerce’s policy with regard to national security, foreign policy and human rights:

- Under the section “3D Printing of Firearms,” page 4142:

The agency takes seriously its responsibility to regulate judiciously, seeking to assert jurisdiction only as needed and consistent with its statutory authority. As set forth in the

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<sup>8</sup> BIS Licensing of 600-Series, 9x515, and Firearms Items, <https://www.bis.doc.gov/index.php/documents/technology-evaluation/ote-data-portal/ecr-analysis/3365-2023-june-statistics-of-bis-licensing-under-usml-to-ccl-regulatory-changes/file>

<sup>9</sup> DDTC Final Rule 85 FR 3819 - [International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III - Content Details - 2020-00574 \(govinfo.gov\)](https://www.federalregister.gov/documents/2020/01/23/85-fr-3819-international-traffic-in-arms-regulations-us-munitions-list-categories-i-ii-and-iii-content-details-2020-00574)

<sup>10</sup> BIS Final Rule [Federal Register :: Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List \(USML\)](https://www.federalregister.gov/documents/2020/01/23/85-fr-4136-control-of-firearms-guns-ammunition-and-related-articles-the-president-determines-no-longer-warrant-control-under-the-united-states-munitions-list-usml)

Export Control Reform Act of 2018, 50 U.S.C. 4801-4852, Commerce's policy is to use export control only to the extent necessary to restrict the export of items that would make a "significant contribution to the military potential of another country . . . which would prove detrimental to the national security of the United States" or "further significantly the foreign policy of the United States or to fulfill its declared international obligations." 50 U.S.C. 4811(1)(A)-(B). Further, Commerce must ensure that its controls are "tailored to focus on those core technologies and other items that are capable of being used to pose a serious national security threat to the United States. 50 U.S.C. 4811(2)(G)."

- Under the section "Overseas Trafficking, Proliferation, and Diversion of Firearms," page 4143:

**BIS does not agree that there is anything in the EAR that will make the possibility of diversion any greater than it was under the ITAR.** These concerns of diversion are taken into consideration by the export control system and underlie the basis for some of the agency's controls. BIS also notes that the **U.S. Government continuously monitors the export control system to determine where the most likely points of diversion are and takes actions to prevent potential diversion** points by using existing license review policies, rescinding or revoking prior authorizations, or imposing new license requirements or other prohibitions.

- Under the section "Human Rights Issues," page 4144:

BIS will use its resources and expertise in this area to **vet parties involved in transactions subject to the EAR for human rights concerns.** Similarly, as part of the aforementioned continuing interagency review of export licenses for firearms, **the Departments of State and Defense will remain active in the interagency review process of determining how an item is controlled and will review export license applications on a case-by-case basis for national security and foreign policy reasons, including the prevention of human rights abuses.** As stated previously in this final rule and in the companion rule published by the Department of State, the **Department of State will continue vetting potential end users when reviewing Commerce licenses, to help prevent human rights abuses.**

As definitively stated above, the 2020 Firearms rule was deliberately written to ensure licensing review policy included human rights concerns, and that interagency review to the Department of State was also focused on human rights issues. In fact, the more than 26,000 export licenses issued by BIS from the implementation of the rule on March 9, 2020 through June 20, 2023, were only approved after specific review for human rights concerns. Any transaction involving parties known to be involved in illegal firearms trafficking, diversion risk, or abuse of human rights was not authorized.

#### **E. New Regulations Contrary to BIS Stated Goals in Other Recent Final Rules**

BIS's rationale in support of this overarching change and the resulting new regulations contradict BIS's own stated policies in new, recently published rules.

In December 2023, BIS published two rules that BIS states are critical to its goals of simplifying various export categories, removing specific export controls, and expanding the availability of export license exceptions for U.S. allies and partner countries. Conversely, the IFR creates new regulations that directly contradict these aims by making export categories for firearms more complex, adding burdensome and unnecessary export controls, and severely limiting the availability of export license exceptions to U.S. allies and partner countries.

The first relevant rule is a final rule titled “Export Administration Regulations for Missile Technology Items: 2018, 2019, and 2021 Missile Technology Control Regime Plenary Agreements; and License Exception Eligibility.”<sup>11</sup> It expanded the availability of license exceptions for certain Missile Technology (MT) controlled items by revising the general license exception restriction in Part 740.2(5) to allow the use of more license exceptions. BIS stated that the previous restriction caused unintended effects by including unnecessary requirements for an export license. Conversely, in this IFR, BIS adds unnecessary license requirements for firearms and related items because the IFR severely restricts the use of common license exceptions to almost all countries.

The second relevant rule, also published in December of 2020, is a proposed rule titled: “Proposed Enhancements and Simplification of License Exception Strategic Trade Authorization (STA).”<sup>12</sup> It proposes to clarify license exception STA in order to encourage use of the exception and remove prior license conditions in certain cases. The rule states: “The proposed changes with this rule and two other ally and partner rules published today are **part of a broad effort to liberalize controls for allies and partner countries . . .** Together, these rules will **ease several categories of export licensing requirements and increase the availability of export license exceptions for key allied and partner countries**, as well as members of certain multilateral export control regimes.” On the contrary, the firearm IFR intentionally increases export licensing requirements for key allied and partner countries. Those additional regulatory hurdles contradict, and indeed, undermine BIS’s stated goals.

It is also important to note that at the same time the burdensome controls have been applied to firearm and ammunition license applications, other new rules effectively reduced the need for licenses for exports of commodities controlled under the Chemical Weapons Convention and Missile Technology Control Regime. The unnecessary new process delays for license approvals have been hard for U.S. exporters to explain to the same trusted foreign governments who can now say it is easier for them to get more sensitive and controlled Chemical Weapon and Missile Technology items than it is for them to get U.S. firearms and ammunition. It is a global market. Those trusted allies and partners will simply turn elsewhere to meet their needs resulting in the loss of business for U.S. companies.

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<sup>11</sup> Export Administration Regulations for Missile Technology Items: 2018, 2019, and 2021 Missile Technology Control Regime Plenary Agreements; and License Exception Eligibility, Final Rule, published December 8, 2023, [Federal Register :: Export Administration Regulations for Missile Technology Items: 2018, 2019, and 2021 Missile Technology Control Regime Plenary Agreements; and License Exception Eligibility](#)

<sup>12</sup> Proposed Enhancements and Simplification of License Exception Strategic Trade Authorization (STA), published December 8, 2023, [Federal Register :: Proposed Enhancements and Simplification of License Exception Strategic Trade Authorization \(STA\)](#)

## **F. DOS Firearms Guidance Memorandum and Presumption of Denial for Civilian Users in 36 Countries**

In IFR preamble Sections A.3 and A.4, BIS details the coordination with the Department of State that resulted in a guidance document which BIS refers to as the “Firearms Guidance Memorandum,”<sup>13</sup> which lists 36 destination countries at high risk for diversion of firearms. BIS and State defined several key factors to be used to determine the countries with highest risk diversion: firearms trafficking/diversion risk, terrorism risk, corruption risk, human rights and political violence risk, state fragility risk, organized crime/gang-related risk, and drug trafficking risk. Further, they concluded that there are higher risks associated with firearm exports to commercial distributors, civilians, and other non-governmental end users because, unlike that group of entities, governments have systems in place to prevent firearms from being stolen, sold or otherwise used for illicit purposes. Based on this information, BIS decided to apply a presumption of denial review policy to firearm license applications involving non-government end users in those destinations.

Despite these details regarding the review of potential diversion and risk factors, neither BIS nor State addressed the factual evidence showing the rate of legally exported firearms being traced as crime guns is very small. Neither the information provided in the Firearms Guidance Memorandum nor the IFR preamble offer any information regarding confirmation of a significant increase in diversion to those countries. The preamble mentions a few tragic circumstances of criminal misuse of firearms. But there is no supporting evidentiary reason to make this overreaching license policy change, or to deny civilian sales of firearms in countries which are also U.S. partner countries.

Everything related to the new review process is based on anticipated risk rather than actual cases of diversion. What is more, State has been involved in the interagency review of ALL firearm license applications since 2020 and have authorized thousands of licenses for commercial sales to some of the 36 destinations now under a presumption of denial policy. Despite this, BIS has provided no clear proof showing why this draconian change is necessary.

Further, this rationale gives no acknowledgement to the long-established systems in place by many of these countries to control the legal use of firearms within their borders. The vast majority of approved firearm exports to the 36 countries were NOT diverted for illicit use.

Many small and mid-sized foreign companies long established and legally authorized by their government to conduct firearm business are at risk of being put out of business completely. The majority of these distributors and dealers have been in business for many years. They have dedicated time, money, and effort to establish processes in their operations to be compliant with the U.S. export regulations. They have been transparent about their businesses when reviewed by U.S. export control agencies during audits, pre-license checks, or post shipment verifications (PSVs). It is in their company’s best interest to abide by the U.S. export control laws. These companies are known entities to OEE and have been receiving approved export licenses for the

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<sup>13</sup> Department of State “Firearms Guidance Memorandum” published on BIS website: [www.bis.gov/guidance\\_memorandum](http://www.bis.gov/guidance_memorandum)

past four years from BIS, notably all of which were vetted by the State Department. And, prior to the Administration's Export Control Reform (ECR) (aka USML to CCL Transition) initiative transitioning export licensing authority for dual-use items to BIS, these businesses had been receiving approved licenses from DDTC.

As a result of the stringent presumption of denial policy for these 36 countries, in order to survive, these foreign small businesses will source firearms and ammunition from other countries, some of which do not have strong export control regulations and oversight. This will increase the risk of diversion because the exporting country will see this as an opportunity to expand into a new market and make sales to companies that are not as compliance focused.

And this policy and DOS Firearm Guidance Memorandum completely bypasses the risk of diversion from foreign governments warehouses and stockpiles from which firearms are diverted or illegally sold to criminal elements.

### **G. BIS Cited Statistics and Sources Supporting Policy Change**

The policy change to case-by-case basis for most countries and presumption of denial to others—for all exports worldwide of all firearms intended for commercial or civilian end-use—is extreme, unnecessary, and would cripple U.S. exporters without measurably enhancing national security goals.

Two of the sources BIS cites in support of these changes are U.S. Government reports that BIS has misquoted and taken out of context.

Moreover, BIS also relies upon suspect sources, as many are not official government sources, and are not objective, as they are biased against the legal use of firearms by civilians. Some sources BIS cited are from organizations with discriminatory and prejudiced views of firearms ownership. BIS relies upon these biased sources as objective fact with no independent review and/or verification by OEE agents located in various posts throughout the world. Likewise, BIS offers no support based on BIS's own investigations, or investigation by any other U.S. export enforcement agency such as the Department of Homeland Security.

Instead, the IFR imposes arbitrary burdens on the lawful U.S. gun industry without any legitimate justifications. BIS states that firearms lawfully exported to civilians are more likely to be diverted into black markets than firearms lawfully sold to foreign militaries and police agencies. However, this ignores studies on firearms crime, which show that the main causes of instability in other countries are the illegal diversion from government stockpiles and illegal imports. As a result, these studies demonstrate that most lawful civilian purchases of legally imported guns are not the source of criminal misuse of firearms. The following sources support that conclusion:

- In the Global Initiative Against Transnational Organized Crime (GI-TOC), Arms Trafficking and Organized Crime Policy Brief,<sup>14</sup> it states: “research in a number of

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<sup>14</sup> Global Initiative Against Transnational Organized Crime (GI-TOC), Arms Trafficking and Organized Crime Policy Brief, [GI-TOC-policy-brief Arms-trafficking-web-1.pdf \(globalinitiative.net\)](#)

[global] regions has found that **military stockpiles are one of the most common sources of weapons**” that end up in the hands of criminal actors and terrorists.” Notably, BIS cites this source, but ignores this information.

- In the United Nations Office on Drugs and Crime (UNODC) Issue Paper 1/2022, Firearms and Ammunition Trafficking in Eastern Africa,<sup>15</sup> it states: “5.1.2 Diversion from state stockpiles - **The diversion of firearms and ammunition from state stockpiles is a significant source of illicit firearms, contributing to the proliferation and circulation of illicit weapons to civilians, armed groups, gangs, and other groups including pastoralists.** Stockpile diversion can result from several factors, including poor weapons management practices and security procedures, theft, and intentional leakage, often facilitated by corrupt officials with access to weapons stores, including police and military stores, or others under the control of wildlife or custodial services.”
- Further, the United Nations Office on Drugs and Crime (UNODC), Firearms within Central America Report,<sup>16</sup> states: “Rather, the problem is leakage. Guns leak from licit civilian use to illicit use. They **leak from licit military and police use to illicit use.** And they leak across borders, in every conceivable direction. Key to leakage is surplus. If every police officer and soldier had only the weapons needed for immediate use, explanations would be called for when a weapon went missing. Unfortunately, several countries in the region run rather large surpluses, the legacy of military downsizing during the peace process. **The core role of the police and military in supplying guns to criminals is not unusual – in many developing regions, unpaid or underpaid police and military officers sell or rent their firearms as a way of supplementing their income. The risk is particularly acute where there are large military stocks relative to the number of active duty military.** In Honduras, all firearms sales are controlled by the military. This has not, however, prevented criminals from accessing guns.”
- In the Latin American Research Review, The Armed Arena: Arms Trafficking in Central America,<sup>17</sup> it states: “Based on fieldwork in Honduras, Guatemala, and El Salvador . . . **Although state arms arsenals should be closely monitored, there is endemic uncertainty over their numbers, types, and background. One reason is military control. Within El Salvador, weapons held by the military are regularly sold to criminal groups.**”

These sources confirm that a significant number of firearms in illicit trade are diverted from government stockpiles. This research thus undermines BIS’s statement that the greater risk of diversion comes from non-government sources, such as private dealers and civilians. The new

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<sup>15</sup> United Nations Office on Drugs and Crime (UNODC) Issue Paper 1/2022, Firearms and Ammunition Trafficking in Eastern Africa, page 5, [UNODC-ROEA-Issue-Paper-1\\_2022- Firearms-and-Ammunition-Trafficking-in-Eastern-Africa.pdf \(eapcco-ctcoe.org\)](#)

<sup>16</sup> United Nations Office on Drugs and Crime (UNODC), Firearms within Central America Report, [TOCTA CACaribb firearmssmuggling within CAmerica.pdf \(unodc.org\)](#)

<sup>17</sup> Latin American Research Review, The Armed Arena: Arms Trafficking in Central America, [The Armed Arena: Arms Trafficking in Central America | Latin American Research Review | Cambridge Core](#)

Crime Control licensing policy and resultant policy of presumption of denial for commercial sales in 36 countries fails to take into account that such reports demonstrate a greater risk of diversion with certain foreign governments. And, as a result, the new licensing policy—which allows export sales only to these government entities—may result in a significant increase in diversion and criminal activity, both of which are contrary to BIS’s stated goals.

#### **H. Government Accountability Office (GAO) Report on Firearms Trafficking**

The IFR Preamble Section A.2 cites data from a U.S. Government Accountability Office (GAO) report titled “Firearms Trafficking: More Information is Needed to Inform U.S. Efforts in Central America.”<sup>18</sup> BIS states this report “identified concerns that the U.S. government is licensing firearm exports that fuel criminal activity and gun violence, enable human rights abuses, and destabilize government institutions in foreign countries, particularly in Central America.” But the report makes no mention of any concerns regarding firearm export licensing. Nor does the report recommend that BIS take action to halt licensing to the four countries subject of the report, namely Belize, El Salvador, Guatemala, and Honduras.

Further, BIS cites this report for the proposition that “nearly 20% of approximately 27,000 firearms recovered and traced by law enforcement agencies in those four countries were U.S.-origin firearms diverted from legitimate commerce (i.e., they were not illicitly smuggled from the United States, but rather lawfully exported).”

BIS mischaracterizes data. In fact, the GAO report admits that “U.S. agencies have no reliable data on criminals’ acquisition of firearms” in these four countries. The report also states that “[a]bout 6,000 firearms were either traced to U.S. retail purchasers or were determined to be U.S.-sourced but could not be traced to an initial purchaser” and that “[f]irearms traced to non-U.S. entities include firearms manufactured in foreign countries as well as **U.S.-sourced firearms acquired by non-U.S. entities through licit or illicit means.**”

Thus, the report is inconclusive. Indeed, the results of the investigation are clear from the report’s title: “Firearms Trafficking: More Information is Needed to Inform U.S. Efforts in Central America.” The upshot of the report is its inclusion that existing data is not sufficient to warrant permanent changes. And the report made just one recommendation, which was directed at the State Department, not BIS. Therefore, nothing in this report supports any licensing policy changes implemented by BIS.

#### **I. ATF Report on Firearms Trafficking and International Trace Data**

The IFR Preamble Section A.2 also cites selected data from ATF international tracing statistics as the rationale for the policy changes. The IFR makes the following statement to support the new policy:

[A]ll international crime gun trace requests received between 2017 and 2021 indicates that at least 11% (18,749) of traced firearms were lawfully exported from the United

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<sup>18</sup> United States Government Accountability Office, *Firearms Trafficking: More Information is Needed to Inform U.S. Efforts in Central America* (Jan. 2022) [gao-22-104680.pdf](https://www.gao.gov/assets/22/104680/gao-22-104680.pdf)



States and later recovered in a foreign country. For countries outside of North America, at least 37% of firearms submitted to ATF were lawful exports; for countries in Central America, at least 19% of firearms submitted to ATF were lawful exports. Together, these reports indicate that a sizeable portion of international crime guns are diverted from lawful exports.

**These statistics are taken out of context and result in an erroneous conclusion.** The ATF publishes aggregate information on international tracing requests they process. Their most recent report is the National Firearms Commerce and Trafficking Assessment (NFCTA): Crime Guns – Volume Two, PART IV: Crime Guns Recovered Outside the United States and Traced by Law Enforcement, published January 2023.<sup>19</sup> The ATF report data shows the following facts:

- For the five-year period 2017-2021, there was a total of 165,874 firearms traced of which 18,749 (11%) were lawfully exported and 89% were illegally exported or trafficked.
- The BIS asserts that “at least 11% (18,749) of traced firearms were lawfully exported from the United States.” As the table below shows, the figure of 11% (or 18,749) refers to a portion of the total number of traces (165,874).
  - The 18,749 lawfully exported traced firearms account for 0.67% of the 2,793,002 firearms legally exported in total. The other 99.33% of U.S. firearms legally exported are NOT being used in crimes.
  - This is confirmed by the ATF report, which states that “[a]n analysis of **international crime gun trace requests** indicates that 11% (18,749) were attributable to firearms lawfully exported from the U.S. and later recovered in a foreign country. These **recovered and traced crime guns represent less than 1% of the total (2,793,002) firearms lawfully exported out of the U.S. between 2016 and 2020.**”
- BIS also states that “[f]or countries outside of North America, at least 37% of firearms submitted to ATF were lawful exports.” That is grossly inaccurate.
  - Per the below table, the 18,749 legally exported and traced firearms are split into five categories. The **“Outside North America” category accounts for 37% of the 18,749 figure, or 3,058 firearms, which equates to 0.11% of the 2,793,002 firearms legally exported in total.**

Therefore, BIS’s conclusion that “these reports indicate that a sizeable portion of international crime guns are diverted from lawful exports” is false, and the rationale for the policy change is unsupported by the facts. While BIS cites instances of criminal misuse of firearms, those few cases do not represent the disposition of the preponderance of legally exported firearms.

Below is the related table from the ATF report:

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<sup>19</sup> U.S. Department of Justice. Bureau of Alcohol, Tobacco, Firearms and Explosives. 2023. National Firearms Commerce and Trafficking Assessment (NFCTA): Crime Guns – Volume Two, PART IV: Crime Guns Recovered Outside the United States and Traced by Law Enforcement. <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iv-crime-guns-recovered-outside-us-and-traced-le/download>

Table IRT-06a: Total Lawful U.S. Firearm Exports Recovered and Traced by Law Enforcement by Recovery Country or Grouping, 2017 – 2021			
Recovery Country/Grouping	Traces Associated with Lawful U.S. Exports	Total Traces	% Total Traces Related to Lawful U.S. Exports
Outside North America	3,058	8,192	37.3%
Canada	8,238	24,586	33.5%
Central America	5,083	26,432	19.2%
Caribbean	724	8,873	8.2%
Mexico	1,646	97,791	1.7%
<b>TOTAL</b>	<b>18,749</b>	<b>165,874</b>	<b>11.3%</b>

The international crime guns recovered and traced by ATF account for **less than 1%** of the total number legally exported from the U.S. under approved export licenses. Thus, BIS’s implementation of this new stringent licensing policy is not supported by factual findings from law enforcement. It also makes the license process much more burdensome, which is borne most acutely by small and mid-sized U.S. firearm exporting companies.

All told, the ATF statistics should be viewed as an affirmation of the success of the pre-existing U.S. export control laws and regulations pertaining to firearms. The low levels of criminal misuse of legally exported firearms serve as proof that the licensing policies, processes and procedures in place prior to the IFR have been extremely effective at ensuring that legally exported firearms are being used by the properly vetted and approved end user for the approved end use.

Moreover, the referenced NFCTA report confirms that not all traced firearms are used in crimes as stated in the ATF Firearms Trace Data Disclaimer (introduction, page 6):

Firearm traces are designed to assist law enforcement authorities in conducting investigations by tracking the sale and possession of specific firearms. Law enforcement agencies may request firearms traces for any investigative reason, and those reasons are not necessarily reported to the federal government. Not all firearms used in crime are traced and not all firearms traced are used in crime.

A firearm trace initiated by a law enforcement agency does not necessarily mean that a company or entity in the chain of commerce committed a crime. And as stated above, traces can be requested for a variety of investigative reasons. If a trace involves a foreign entity, OEE is a participant in the investigation to determine the various factors for OEE to consider, such as “time-to-crime.” Per the NFCTA report: Firearm trace data allows ATF to calculate time-to-crime (TTC), the length of time between the date of a firearm’s last known purchase to the date of its recovery in a crime. A short TTC suggests that traced crime guns were rapidly diverted from lawful firearms commerce into criminal hands. The median TTC rates of international

crime guns traced to a purchaser by country or region grouping indicates Canada had the shortest median TTC rate at four years, while Central America had the longest median TTC at 21 years.

The longer the TTC, the less that a subsequent criminal misuse of a legally exported firearm—in some instances decades later—has anything to do with the importer or dealer. Likewise, a longer TTC rate in no way implies export controls in that foreign country are lacking.

We also note that OEE receives (or can obtain) detailed trace information from ATF to assist their investigative efforts. Such trace data includes much more information than provided in the aggregate data that is publicly available. We strongly urge OEE to pool enforcement resources and work closely with U.S. agencies, including the ATF and State Department, as well as foreign government agencies, to encourage their law enforcement agencies to trace all U.S. origin firearms used illegally.

## **J. BIS Office of Export Enforcement and Firearms Exports**

BIS cites multiple sources which contain information from news, media outlets, and private organizations that have biased views towards the use of firearms. BIS takes these sources as their word and does not include any reference to their own investigations to confirm the assertion that that a majority of legally exported firearms are being used in crimes. In fact, the recently update BIS publication “Don’t Let This Happen To You!”<sup>20</sup> includes approximately 20 real life enforcement cases related to the illegal export, smuggling, trafficking, diversion, or criminal misuse of firearms. Yet not a single case pertains to a legitimate U.S. firearm exporter. This publication shows that the BIS Office of Export Enforcement (OEE) cases are successfully stopping illegal smuggling of firearms. The OEE’s efforts are completely supported by industry, and serve as yet another source of confirmation that lawful firearm and ammunition exporters are not diverting firearms to criminals, illegally exporting or trafficking firearms, or contributing to contributing to bad actors receiving these controlled items.

Since the transition of firearms and ammunition to BIS in March 2020, OEE has accumulated significant information regarding the foreign entities<sup>21</sup> who are purchasing U.S. firearms, both from government agencies and commercial sales via distributors and dealers. During the past four years, OEE has done hundreds of end-user checks, including site visits from U.S. Embassy personnel, to ensure that the foreign commercial buyers are valid businesses operating under the laws and requirements of the EAR and are likewise licensed for business in their home country. In addition, OEE conducts multiple audits, pre-license checks, and post shipment verifications of both the exporters and the foreign buyers. From this database of information, OEE can review the merits of a license application and quickly determine whether a particular foreign party on a license application has favorable standing.

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<sup>20</sup> BIS Publication “Don’t Let This Happen To You!”, revised March, 2024

<https://www.bis.doc.gov/index.php/documents/enforcement/1005-don-t-let-this-happen-to-you-1/file>

<sup>21</sup> These are chiefly the same foreign distributors and dealers U.S. firearm and ammunition exporters have been doing business with for many years, if not decades, while DDTC issued export licenses to the firearms industry.

As agency leadership has pointed out on several occasions, the resources of BIS and OEE are stretched particularly thin due to other rules enacted in the past three years, especially related to China and Russia, which have necessarily required additional resources from the agency. During various conferences over the past three years, OEE has advised our industry that they have a backlog of several hundred firearm-related cases under investigation at any given time. These investigations are for violations of the regulations, and criminal activities to illegally export, re-export, or transfer firearms and ammunition. Our industry wholeheartedly supports these efforts. No legitimate firearm and ammunition exporter wants their products in the hands of criminals, terrorists, bad actors, and other unauthorized persons. The industry continues to cooperate with law enforcement and export enforcement agencies whenever possible.

### **K. Foreign Availability**

With implementation of this IFR, it is very clear that the demand for firearms will not disappear. In fact, the demand for firearms will be met by other countries that manufacture these products, some of which are much less scrupulous, and do not have the high-level export controls of the U.S. and other Wassenaar Arrangement countries. Denial of U.S. firearms to be exported to the 36 countries harms U.S. exporters, damages our relationships with our foreign counterparts, undermines U.S. foreign policy and puts our national security at risk, all without making a change in the number of guns going into these countries.

Another consideration is the potential for increased development of local firearms manufacturers. As BIS has seen from other global market changes in recent years, denial of U.S. commodities to certain countries has only encouraged countries to develop or expand their own home industries. In fact, denying export of American manufactured firearms and ammunition to some countries may result in increased local production in those countries, which may increase the number of firearms and ammunition allowed to be exported to high-risk countries which raises the risk of diversion.

Firearm technology is not new, emerging, or particularly sensitive. The technical information to build a firearm is over 100 years old and is widely available throughout the world.<sup>22</sup> The ability to manufacture firearms exists in most countries. While U.S. manufactured firearms and ammunition are widely recognized and desired as high-quality products, giving our industry members a competitive advantage, when there is a need for firearms, countries will look elsewhere as a result of the IFR.

Industry expends considerable time and money to ensure compliance with the U.S. export control laws and regulations. These companies spend hundreds of thousands of dollars every year to ensure that their processes are compliant with the regulations. They are also working with partners who are legitimate firearms and ammunition businesses, as well as working with law-enforcement agencies to ensure that criminal misuse and other illegal activities related to firearms are investigated and stopped whenever possible.

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<sup>22</sup> The Sunday Times recently reported on a Hamas produced [video](#) on how to make a firearm.

### 3. ECONOMIC IMPACT OF INTERIM FINAL RULE

This Interim Final Rule will add significant costs to the export of firearms and related products, which will be passed on to manufacturers and consumers. The rule is based solely on BIS's subjective beliefs about the impact of the IFR, as the agency did not conduct any cost/benefit or regulatory impact analysis.

According to the IFR, the new rules would add “minimal” enforcement costs for the Federal Government. The rule suggests that regulators would face an additional 1,003 administrative burden hours, of which 132 hours is anticipated as a one-time increase related to the revocation and modification of licenses for firearms and related items. But no analysis of the burden on manufacturers, distributors, exporters, or U.S. consumers was conducted. BIS claims that it is exempt from these normal impact requirements even though the rule is considered to be a *significant regulatory action* under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.<sup>23</sup> A significant regulatory action is one that has an annual effect on the economy of \$200,000,000 or more.

While \$200,000,000 is the minimum cost to trigger these requirements, data from a survey of members of NSSF indicate that the cost is likely to be more than double that amount.

Using a median value of \$8,772<sup>24</sup> per firearms manufacturing employee extrapolated across 30,750 firearms manufacturing jobs in the United States, the rule would lead to a 1.92 percent reduction in sales.<sup>25</sup> According to the most recent analysis of the U.S. civilian arms and ammunition industry, a total of \$14,036,707,643 worth of firearms were produced by manufacturers in 2023.<sup>26</sup> Multiplying this by 1.92 percent means that the loss of firearms sales as a result of the rule would be \$269,741,229 in one year.

But the \$269,741,229 figure only accounts for firearms sales. The rule also applies to ammunition, optical sighting devices and related products. Based on the most recent analysis of the economic impact of the arms and ammunition industry, a total of \$37,423,959,500 worth of arms, ammunition and associated products were sold in the United States in 2023.<sup>27</sup> This includes exports to foreign countries of civilian arms and ammunition. Of this, 57 percent were firearms, and about 21.5 percent were ammunition and related products. Because the licensing policy changes will impact the ammunition and related products sectors in the same way as firearms, **the overall cost of the rule will be \$473,422,292 annually.** (See Table 1)

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<sup>23</sup> *Executive Order on Modernizing Regulatory Review*, Executive Order 14094, Executive Office of the President, April 6, 2023, at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/06/executive-order-on-modernizing-regulatory-review/>

<sup>24</sup> See Attachment 1 – John Dunham & Associates Memorandum dated May 22, 2024, RE: Revision of Firearms License Requirements Economic Impact Study

<sup>25</sup> Total jobs and sales based on *2023 Economic Impact of the Firearm Industry*, prepared for the National Sports Shooting Foundation by John Dunham & Associates, January 2024, at: <https://www.nssf.org/wp-content/uploads/2024/04/2024-Economic-Impact-Report.pdf>

<sup>26</sup> *Ibid.*

<sup>27</sup> Not including excise and sales taxes, and including imported firearms, ammunition and associated products.

**Table 1**  
**Impact of Products by Type (2023)**

Industry	Jobs	Wages	Output	Output Pct.	Minimum Rule	
					Cost	Estimated Rule Cost
Arms	30,755	\$2,708,500,400	\$14,036,707,700	57.0%	\$ 113,953,751	\$ 269,741,229
Ammunition	11,041	\$907,111,600	\$5,307,595,800	21.5%	\$ 43,088,484	\$ 101,995,243
Hunting Supplies	15,371	\$1,442,552,900	\$5,291,494,100	21.5%	\$ 42,957,766	\$ 101,685,819
Total	57,167	\$5,058,164,900	\$24,635,797,600	100.0%	\$ 200,000,000	\$ 473,422,292

Based on the 1.92 percent price increase developed from the NSSF survey, annual sales of firearms would fall by \$272,457,090, ammunition by \$57,618,270, and other associated products by \$77,320,856.

In 2023, the industry was responsible for nearly 384,440 full-time equivalent jobs in the United States, paying workers \$25,975,133,300 in wages and benefits, and as much as \$90.06 billion in total economic activity.<sup>28</sup> It is axiomatic that lower sales volumes will result in reduced jobs, as manufacturers will produce fewer products, distributors and retailers will need fewer truck drivers, clerks, and warehouse staff and retailers need less service personnel.

The rule would impact more than just the firearms and related products exporters. NSSF estimates that around 400 full-time firearms and associated product manufacturing jobs could be lost due to the higher prices caused by the IFR. The higher prices would also lead to the reduction of just over 680 retail and distribution jobs across the country. If we include businesses that supply the industry, as well as those that depend on re-spending by direct and supplier firm employees, the rule will lead to a total of over 2,690 full-time jobs in America, and almost \$181,971,900 in lost wages and benefits. On top of this, we also estimate that the American economy would suffer a \$631,299,730 reduction.

Prior to and since the 2020 transition of our industry’s products came under the control of the EAR, NSSF sponsored multiple training sessions to help industry members understand and comply with the EAR regulations. Based on the attendance at these training sessions, we conservatively estimate at least 50 U.S. small businesses (several minority-owned) were able to begin exporting or to increase their existing export business. The IFR policy changes will have the biggest impact on these small and minority-owned businesses, as they face irreparable loss of business. Small and mid-sized U.S. companies that have strategic partners who compromise a significant portion of their exports will lose business, which is critical to their continued operations.

There is also the related loss of business for small companies who supply the larger U.S. manufacturers. One such small business negatively impacted by recent BIS actions is Outdoorsman Precision Manufacturing which was located in Celina, Tennessee. This company was forced to close in March of 2024 as a result of lost business due to the BIS “90-day pause” which was ultimately 180 days. The company president stated they were forced to close with over \$1,000,000 in open orders that were either put on hold or cancelled by their OEM customers whose sales declined during that time period. This resulted in a loss of 8 jobs in a distressed community, \$600,000 in cash investments, \$1,000,000 in unsecured loans unable to be repaid, and \$1,500,000 in capital equipment surrendered to the banks.

<sup>28</sup> Op. cit., 2023 *Economic Impact of the Firearm Industry*.

Another consideration is that small and mid-sized U.S. exporters manage their businesses with very tight cash flow while coordinating the timing to obtain an export license, purchase the ordered products, receive payment, and export to the foreign buyer. During the 180-day pause, many of these companies experienced unanticipated restrictions on their cash flow, additional warehouse costs, and canceled orders while waiting months for approved licenses. The newly implemented policy changes will leave many of these companies with product on hand that they can no longer sell and additional burdensome costs. Likewise, in many instances, they will need to refund the foreign buyer for prepaid goods that have already been purchased from the supplier. These consequences will be disastrous for many small and mid-sized businesses in our industry.

#### **4. BIS ESTIMATION OF LICENSE APPLICATION CASELOAD SIGNIFICANTLY UNDERSTATED**

The IFR notes changes in the number of license applications throughout the Supplemental Information section, giving the estimated increase or decrease of license applications expected by the changes implemented in the new rule. Many of these figures are severely underestimated, and BIS neglects to offer estimates of increased license caseload for other changes in the rule.

BIS licensing caseload is approximately 40,000 licenses per year for all items under its jurisdiction. Since the transfer of firearms-related items from the USML to CCL on March 9, 2020, BIS advises that for the period March 9, 2020, through June 30, 2023, a total of 26,422 applications for firearms items totaling \$40.2 billion were processed to all destinations and end users worldwide.<sup>29</sup> This represents an average of approximately 7,700 license applications per year, which is almost 20 percent of all licenses reviewed by BIS each year. During the first year after the 2020 transition, BIS advised our industry members that they processed just over 10,000 license applications.<sup>30</sup> Since the majority of firearms had transitioned from the USML to CCL, it was necessary for all exporters to apply for new licenses approved by BIS.

The BIS licensing data for the initial year (2020) shows approximately 10,000 license applications, which correlates exactly to the decrease in the annual number of firearm license applications processed by DDTC. DDTC handled approximately 11,000 firearm and ammunition licenses per year prior to the transition. As stated in DDTC's Final Rule "International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III" published in the Federal Register on January 23, 2020, 85 FR 3819,<sup>31</sup> "The Department believes the effect of this rule will decrease the number of license applications submitted to the Department under OMB Control No. 1405-0003 by approximately 10,000 annually."

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<sup>29</sup> BIS Licensing of 600-Series, 9x515, and Firearms Items, <https://www.bis.doc.gov/index.php/documents/technology-evaluation/ote-data-portal/ecr-analysis/3365-2023-june-statistics-of-bis-licensing-under-usml-to-ccl-regulatory-changes/file>

<sup>30</sup> Presentation given by BIS Licensing personnel at 2021 NSSF Annual Import/Export Conference

<sup>31</sup> Federal Register Notice 85 FR 3819 [85 FR 3819 - International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III - Content Details - 2020-00574 \(govinfo.gov\)](https://www.federalregister.gov/documents/2020/01/23/85-fr-3819-international-traffic-in-arms-regulations-us-munitions-list-categories-i-ii-and-iii-content-details-2020-00574)

For subsequent calendar years 2021 through 2023, BIS's annual firearm license application volume was less than 10,000, as the licenses were valid for 4-years, which allowed multiple exports against approved licenses without the need for obtaining another license.

Based on BIS's first year of approving firearm licenses and DDTC's long history of annual license caseload for firearms, **the IFR change to a 1-year validity for all firearm licenses equates to a minimum of 10,000 license applications per year. That is an immediate increase of 30% in comparison to the BIS average annual figure of 7,700 license applications noted above.**

BIS cites estimated increases or decreases to the annual number of license applications in several paragraphs within the IFR. However, BIS does not offer any estimations of increased license applications related to several key changes:

- Preamble Section B.5 – Other changes for existing 0z5zz ECCNs - BIS states that the addition of CC Column 2 controls to ECCNs 0A501, 0A502, 0A504, 0A505, 0D501, 0D505, 0E501, 0E504, and 0E505 will result in an increase of 1,115 annual license applications.
  - In relation to the new license requirement under 742.7(a)(5) Crime Control Licensing Policy applying to long barreled shotguns and optical sighting devices for export to all countries worldwide, we conservatively estimate an increase of 2,500 – 3,000 license applications for these two commodities, which have never required a license to Wassenaar/Country Group A:1 countries.
- As described in more detail below, with regards to the license exception restriction 740.2(a)(4) applicable to the 742.7(a)(5) Crime Control licensing policy for all the 0x5zz items, this change results in a severe restriction on the use of all license exceptions to most of the world. We estimate a minimum of 2,000-3,000 new license applications each year will be necessary to authorize exports previously made under license exceptions LVS, TMP and RPL.
  - Note that in Preamble Section C.2 LVS Additional Restrictions, the paragraph includes BIS's estimation of an increase of 500 applications per year due to restriction on use of LVS for CARICOM countries. This is a misleading figure, as it doesn't consider the aforementioned change per the Crime Control policy 742.7(a)(5), which means LVS can't be used for any countries except NATO, Australia, India, Japan and New Zealand. Since a license will be required for all small parts exports to certain European countries, all of South America, Africa, and most of Pacific Rim and Asia, we estimate that the annual license application increase will be significantly more than the 500 applications BIS has estimated for the CARICOM countries alone.
- Preamble Section C.3 License Exception BAG restricts the use of the license exception for the CARICOM countries, which BIS estimates will result in an additional 500 license applications. This estimate is reasonable. Section C.3 also limits individuals who take on one overseas trip to three total shotguns and firearms. BIS estimates this will increase annual license applications by 50. That number is greatly underestimated. Thousands of



U.S. hunters and sportsmen travel overseas with their firearms. The number and type of firearms they carry depends on the type of trip (hunt, sporting event, competition or combination) and the type of firearm needed for those purposes. We estimate a minimum of 250 additional applications per year.

- Preamble Section D Revisions to License Review Policies lists an expected decrease of 650 license applications per year for export to countries that are now under a presumption of denial policy for non-government exports, and we agree with this estimation. In paragraph D.3 Revisions to Policies for OAS Countries, BIS states an expected decrease in license applications of 100 cases due to applicants being deterred by the new case-by-case license review policy. We disagree. OAS countries that are not subject to a presumption of denial policy will continue to source U.S. made firearms. And U.S. subsidiaries with foreign manufacturer parents in OAS countries, such as Brazil, will need to apply for more licenses due to the lack of availability of license exceptions. We estimate this will result in an annual increase in applications as stated above.
- Preamble Section E Changes to Support Document Requirements, paragraph 2.ii—which would require a purchase order support document for license application to non-A:1 countries—states that BIS estimates a decrease of 500 license applications due to exporters being unwilling or unable to provide purchase orders. But this requirement will not result in any license application decrease. Exporters routinely receive a purchase order from the foreign customer. The benefit of the previously flexible BIS system was that an exporter could apply for a license in excess of the ordered products and quantities. This allowed the exporter to make additional shipments to the same customer without the need for a new export license. However, since the licenses for non-A:1 countries will be limited to only the quantities and commodities on the purchase order, this will require exporters to submit multiple annual applications for each customer in each non-A:1 country. We estimate that this will increase license applications by 2,000 annually.
- Section E.3 Requiring Passport or National Identity Card – BIS estimates a decrease of 100 license applications for individuals not wanting to provide this document. But a person seeking an individual export license will be required to obtain an import authorization or other document from their government to allow them to import the firearm. They understand the need to provide proof of identity and therefore will be willing to provide a copy of their identity card or passport. Thus, we do not agree that this will cause any reduction in license applications.
- Preamble Section G Reduction in General License Validity Period – With the reduction of license validity to 1-year, BIS estimates that this will result in an increase of 500 license applications. As noted above, **this change alone will cause an immediate 30% increase in license applications due to an additional 2,300 cases annually.**

<b>ESTIMATED LICENSE APPLICATIONS PER YEAR</b>		
<b><u>IFR Preamble Section</u></b>	<b><u>BIS Estimate</u></b>	<b><u>Industry Estimate</u></b>
B.5 - Crime Control Policy – New License Sporting Shotguns and Optical Sighting Devices	1,115	2,500-3,000
B.5 - Crime Control Policy - License Exception Restrictions	0	2,000-3,000
C.3 - BAG Exception Not Allowed for CARICOM	500	500
C.3 - BAG Exception Three Gun Total Limit	50	250
D - License Review Policies - Denial Policy 36 Countries	-650	-650
D.3 Case-by-Case Basis License Policy	-100	0
E.2.ii - Purchase Order Requirement	-500	2000
E.3 - Passport or ID Card Requirement	-100	0
G - 1 Year License Validity	500	2300
<b>Average Annual License Applications 2020 - 2023</b>	<b>7,700</b>	<b>7,700</b>
- Net Difference Per Above Estimates	815	8,900
<b>Total annual License Applications post IFR changes</b>	<b>8,515</b>	<b>16,600</b>

According to BIS’s incorrectly low estimations, the IFR will cause an 11% increase in the annual caseload of firearm license applications. Based on the above comparison, however, of the IFR estimates versus prior BIS annual license information, DDTC annual license history, and NSSF estimates from our industry members, **the changes implemented in the IFR will result in an annual firearm license application caseload of approximately 16,600 cases, more than double the current average caseload of 7,700 per year, i.e., a 115% increase.**

There is no provision in BIS’s budget for the additional manpower that will be required for both administrative and enforcement activities necessary to adjudicate these additional license applications. Without added licensing staff and resources—paired with the increased license review and interagency process—this increased volume of license applications will easily add 3-4 months in real time calendar days to the license approval process.

## **5. FIREARM LICENSING POLICY CHANGE – LICENSE EXCEPTIONS**

The IFR provides misleading information regarding changes to the availability of export license exceptions, and it likewise creates an unnecessary licensing burden by restricting the use of license exceptions to most of the world, including trusted allies and partner nations, without explaining the impetus for the change.

The IFR summary includes explanatory sections for changes to certain license exceptions, which are implemented in the corresponding changes to the regulatory text. Thus, anyone reading the rule can easily understand the reason for the change.

The new Crime Control licensing policy in Part 742.7(a)(5) directly correlates to the general restrictions on use of license exceptions in Part 740.2(a)(4). The severe restriction in the use of all license exceptions is not explained in the summary. Likewise, the IFR includes corresponding changes to the regulatory text for various other license exception changes but is silent on how the new licensing policy affects use of license exceptions. It is not clear to the public that such a significant change is taking place.

Moreover, the IFR preamble provides reasons for the change in license exceptions, such as LVS and BAG, but is silent on this much larger restriction on all exceptions. That tactic misleads readers. Indeed, only a deep analysis of the connections between the various EAR parts will give exporters the information they need to determine if they can use a license exception for 0x5zz items in a particular transaction. Such massive changes should not be difficult for exporters to discover or understand.

The first paragraph of the Summary section of the IFR states that it “adds additional license requirements for Crime Control and Detection (CC) items, thereby resulting in additional restrictions on the availability of license exceptions for most destinations.” The preamble then goes on to explain in detail the various changes to the regulations and the rationale behind the changes. These include specific changes to Part 740 License Exceptions, particularly revisions to Part 740.2 General License Exception Restrictions, Part 740.3 Shipment of Limited Value (LVS), 740.9 Temporary Imports, Exports, Reexports, and Transfers (in-country) (TMP), and 740.10 Servicing and Replacement of Parts and Equipment (RPL). But yet the IFR is silent as to the most significant change to license exception—i.e., the new Crime Control licensing policy.

The IFR adds new paragraph 742.7(a)(5) to the Crime Control licensing policy that implements a license requirement for ECCNs: 0A501 (except 0A501.y), 0A502, 0A504, 0A505. a, .b, and .x, 0A506, 0A507, 0A508, 0A509, 0D501, 0D505, 0E501, 0E502, 0E504, and 0E505. The policy applies to all countries, except Canada, including A:1 and NATO countries. This policy change is discussed in preamble sections B.5 and D.2 with explanations of the rationale for the change.

The licensing requirements in Part 742.7(a)(5) are directly related to the Part 740.2 general license exception restrictions, particularly in relation to Part 740.2(a)(4). The restriction in Part 740.2(a)(4) states:

(a) You **may not use any License Exception if any one or more of the following apply:**

(4) The item being exported or reexported is **subject to the license requirements described in § 742.7** of the [EAR](#) **and the export or reexport is not:**

- (i) Being made to **Australia, India, Japan, New Zealand, or a NATO** (North Atlantic Treaty Organization) member state (see [NATO](#) membership listing in § 772.1 of the [EAR](#) );
- (ii) Authorized by § 740.11(b)(2)(ii) (official use by personnel and agencies of the U.S. government);
- (iii) Authorized by § 740.14(e) of the [EAR](#); or
- (iv) Authorized by § 740.20 of the [EAR](#) (License Exception STA).

The effect of this change is that use of **ALL** license exceptions for the 0x5ZZ ECCNs listed in 742.7(a)(5) will only be allowed for the small group of NATO+4 countries (35 countries) listed in 740.2(a)(4)(i), or if the transaction is authorized by the 740.2(a)(4)(ii) GOV exception (for U.S. Government only), or 740.2(a)(4)(iii) BAG exception, or 740.2(a)(4)(iv) STA exception.

This change is quite significant, as it will impact commonly and frequently used license exceptions such as 740.3 Shipments of Limited Value (LVS), 740.9 Temporary Imports, Exports, Reexports, and Transfers (in-country) (TMP), and 740.10 Servicing and Replacement of Parts and Equipment (RPL). The allowed countries in 740.2(a)(4)(i) do not include certain Wassenaar countries in EAR Country Group A:1, such as Argentina, Austria, Ireland, South Korea, Mexico, South Africa, and Switzerland. And the allowed group of countries do not include other major non-NATO allies such as Bahrain, Brazil, Egypt, Israel, Jordan, Kuwait, Morocco, the Philippines, Qatar, South Korea, Thailand and Tunisia. A considerable number of export transactions occur with these countries, and the use of these license exceptions are vital. For example, the BIS Analysis of U.S. Trade with Brazil<sup>32</sup> states that for exports of all EAR controlled items under license exceptions, two of the three most frequently used licenses exceptions are TMP and RPL.

Conversely, this change provides eligibility for all license exceptions to NATO countries, which are not part of the Wassenaar Arrangement, such as Albania, Montenegro, and North Macedonia. While these three countries are NATO partners, they are also countries without more highly developed export control systems per the Wassenaar Arrangement. These factors equate to a higher risk of diversion. Yet the IFR makes all license exceptions available for use in those countries.

This change also effectively makes the EAR more restrictive than ITAR. During the Export Control Reform initiative and the USML-to-CCL Transition in 2020, the EAR was modified with the intention of keeping the same level of controls on items that were transitioning to the EAR—i.e., the controls as the ITAR. The license exception restrictions implemented by the 742.7(a)(5) policy change in the IFR go far beyond ITAR restrictions that control the most sensitive military defense articles.

- LVS License Exception – allows exports of specific 0x5zz commodities, such as spare parts, without a license up to a maximum \$500 per order. The Part 740.2(a)(4) license exception restriction narrows use of LVS to just the 35 countries listed in Part 740.2(a)(4)(i). Licenses will be required for all other countries for all exports of these spare parts. As a result, a \$2.00 firearm spare part being exported to Switzerland, for example, will require a license.
  - ITAR license exemption 22 CFR 123.16(b)(2) allows for the export of spare parts up to \$500 in value to support previously exported defense articles. Exports can be made to any country except the ITAR 126.1 proscribed destinations, which are mirrored in the EAR US Arms Embargo Country Group D:5 list. Under ITAR, a

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<sup>32</sup> BIS Office of Technology Evaluation, Analysis of U.S. Trade with Brazil, 2022  
<https://www.bis.doc.gov/index.php/country-papers/3415-2022-statistical-analysis-of-us-trade-with-brazil/file>

U.S. firearm manufacturer of fully automatic firearms can export spare parts such as a barrel, bolt or slide without needing a license. Under the IFR, the same manufacturer will need a license to export the same items for a semi-automatic or non-automatic firearm, regardless of value, to any country except those in the 7402(a)(4)(i) group.

- TMP License Exception – allows temporary exports and temporary imports of items on the Commerce Control List with added restrictions for certain 0x5zz items. This exception is widely used for temporary exports, such as: samples for display at foreign trade shows; temporary transfers of commodities between U.S. entities and foreign parents or subsidiaries; commodities sent overseas for test, inspection, repair; and tools and equipment sent to a foreign subsidiary. Common uses of TMP for temporary imports include: commodities temporarily imported to the U.S. for exhibition or demonstration, or commodities returned to a foreign manufacturer.

The IFR reduces the availability of this exception to the 35 countries listed in 740.2(a)(4)(i), which means that an exporter will need a license to temporarily export 0x5zz items to a show in Austria, to temporarily send tools and equipment to a subsidiary in South Korea, or to return a foreign produced firearm to the Brazilian manufacturer, for example.

- ITAR license exemption 22 CFR 123.16 allows for temporary export to trade shows with certain conditions, or tools and equipment to a foreign subsidiary of a U.S. company, to all countries except the 22 CFR 126.1 embargoed countries.
  - ITAR license exemption 22 CFR 123.4(a) allows for temporary import and subsequent export of USML defense articles for exhibition, demonstration or marketing in the U.S. This exemption is available to all countries except the 22 CFR 126.1 proscribed countries.
- RPL License Exception – allows one-for-one replacement of defective parts, and temporary import/subsequent export of commodities for servicing or replacement. This is an important exception for manufacturers who need to support their products in the field and companies who provide repair services. Under the IFR, a license will be required for all countries except the 35 countries listed in 740.2(a)(4)(i). Export of a replacement barrel valued at \$25, for example, or a trigger valued at \$5 will require a license to most countries. Export of a U.S. origin firearm that was temporarily returned to the U.S. for repair will require a license to be returned to the foreign customer.
    - ITAR 22 CFR 123.4(a) allows for the temporary import of defense articles for inspection, testing, servicing including one-for-one replacement. It is available to all countries except ITAR 22 CFR 126.1 proscribed countries.

What is more, because the IFR became effective in a short time and the restriction on use of license exceptions was not well informed, many exporters have had commodities either temporarily exported or temporarily imported under TMP or RPL which are no longer authorized for the return shipment. For items temporarily exported, will CBP or ATF now require a permanent import permit to be issued to allow these commodities to enter the U.S.? Will goods temporarily imported for a U.S. trade show or other event now require an export license? And if

so, how will a foreign party who brought such items to the U.S. obtain an export license? These parties all face substantial risk of export violations because of the lack of transparency regarding the effects of this policy change.

The IFR also adds confusion in this area. While BIS revised Part 740.3 LVS license exception to exclude the CARICOM group of countries—and even included a definition of CARICOM in Part 772.1—the change per 740.2(a)(4) makes that revision irrelevant. A public reader might see the LVS explanation and revised regulatory text and conclude that the only change to the LVS exception is related to CARICOM countries and the requirement for an import certificate. But that impression is a false one, as the actual revisions and new regulatory requirements drastically increase the exporter’s risk of a violation.

**Recommendation:** For the above reasons, we request that BIS reconsider the change to license exceptions as a result of the Crime Control policy, and consider revising the language in 740.2(a)(4) to allow for use of common and frequently used license exceptions such as LVS, TMP, RPL, and TSU for 0x5zz items to all countries except Country Groups D and E.

## 6. NEW ECCNS FOR SEMI-AUTOMATIC FIREARMS AND RELATED PARTS, COMPONENTS, DEVICES, ACCESSORIES, ATTACHMENTS

In Preamble Section B - New ECCNs for Semi-Automatic Firearms and Certain Related Parts, Components, Attachments, and Accessories - BIS states it “was unable to readily identify what share of firearms exports to a country were semi-automatic rifles versus non-automatic pistols because they were controlled under the same item paragraph of ECCN 0A501.” That assertion is incorrect. The Electronic Export Data (EEI) gathered in the Automated Export System (AES), uploaded daily to BIS, includes exports by Harmonized Tariff System (HTS)<sup>33</sup> or Schedule B<sup>34</sup> number. There are specific HTS and Schedule B numbers for semi-automatic firearms as follows. Note that “autoloading” refers to a firearm that has semi-automatic function.

Commodity Description	HTS Number	Schedule B Number
Semiautomatic pistols	9302.00.0040	9302.00.0040
Shotguns: Autoloading	9303.20.0020	9303.20.0035*
Rifles: Centerfire: Autoloading	9303.30.8010	9303.30.7010
Rifles: Rimfire	9303.30.8030	9303.30.7030

\* Schedule B description – “Other” non-pump action

BIS has always been able to ascertain exactly how many semi-automatic firearms have been exported sorted by: number, value, export license number, name of foreign consignee/end-user, country, and date. The EEI data provides complete transparency regarding exports of these types of firearms, which undermines BIS’s argument that separate ECCNs are necessary for identifying what share of firearms exports fit under the semi-automatic category. The EEI data from the AES system has more specificity regarding the details of the export transaction than the

<sup>33</sup> U.S. International Trade Commission, [Harmonized Tariff Schedule \(usitc.gov\)](https://www.usitc.gov)

<sup>34</sup> U.S. Census Bureau, [Schedule B \(census.gov\)](https://www.census.gov)

BIS export license does. This data includes information on routed transactions, agents, forwarders, transportation companies, and carriers – all of which have a part in the export and movement of controlled items and are more relevant in reviewing for risk of diversion than whether the firearm is semi-automatic.

#### **A. New ECCN 0A506 For Semi-automatic Rifles**

As stated in preamble Section B.1, new ECCN 0A506 controls semi-automatic rifles, centerfire and rimfire. The control criteria include a listing of various features or configurations that are largely cosmetic, such as: folding or telescoping stock; pistol grip; ability to accept a bayonet, flash suppressor, and bipods. There is no precedent for using such a specific list of product features to control semi-automatic rifles.

The IFR preamble mentions that the Wassenaar Munitions List (WAML1)<sup>35</sup> was used to identify the above features. This is not accurate. The controls on semi-automatic rifles under WAML1 do not use any specific features as part of the control text, which includes:

“ML1. a. Rifles and combination guns, handguns, machine, sub-machine and volley guns.”

Further, historic controls of semi-automatic rifles on the U.S. Munitions List (USML) never included any specific features or configurations. The 2019 USML, as listed in the International Traffic in Arms Regulations (ITAR), used the following control text:

“Category I(a) Nonautomatic and semi-automatic firearms to caliber .50 inclusive (12.7mm).”

If neither the WAML1 nor the earlier USML listed specific features, we see no rationale to include them now. Rather, it appears that the list of control criteria in this ECCN is intended to mirror similar features listed in the federal “assault weapon” ban which was in place from 1994 to 2004 in the United States, and which studies demonstrate did nothing to reduce crime in the country.<sup>36</sup>

For purposes of license review and approval, there is no benefit to listing such specific commodity features. These features are commonly available and have widespread foreign availability. A foreign dealer can easily obtain pistol grips and folding stocks, as these items are

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<sup>35</sup> The Wassenaar Arrangement On Export Controls For Conventional Arms And Dual-Use Goods And Technologies Munitions List, [Stand-alone-Munitions-List-2023-1.pdf \(wassenaar.org\)](https://www.wassenaar.org/Stand-alone-Munitions-List-2023-1.pdf)

<sup>36</sup> A 1997 congressionally-mandated study looked at the effects of the first 30 months of the 1994-2004 federal “assault weapons” ban and found it had no impact on crime. Roth, Koper, et al., Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994, Urban Institute, March 13, 1997. A follow-up study found “the ban’s effects on gun violence are likely to be small at best and perhaps too small for reliable measurement.” Koper, Christopher S., An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003, Report to the National Institute of Justice, June 2004. A Rand Corporation study also found no evidence that the “assault weapon” bans affect mass shootings. Rand Corporation, The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States, p. 66, 2018.

manufactured in many countries. The features and configurations listed in ECCN 0A506 are available on these types of firearms throughout the world. And these features have common uses. For example, semi-automatic rifles are widely used for hunting. We also question the inclusion of bipods as one of the listed criteria. Bipods are not attached to the firearm permanently in the way of stocks or pistol grips. Rather, bipods are simply used to support the rifle to assist in stabilizing the barrel when firing, and they are classified as EAR99 items.

ECCN 0A506 includes Technical Note 2 to 0A506, which states “Firearms described in 0A506 include pistols built with, e.g., AR- or AK-style receivers (frames).” This ECCN Heading and List of Items Controlled specifically state they apply to semi-automatic rifles only. The ATF uses clear definitions of different firearm types under the Gun Control Act—i.e., what constitutes a rifle, pistol, revolver or shotgun. The following are the legal definitions of a pistol<sup>37</sup> and a rifle<sup>38</sup>:

#### **Gun Control Act Definitions - Pistol**

[18 U.S.C., § 921\(A\)\(29\)](#) and [27 CFR § 478.11](#)

The term “**Pistol**” means a weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when **held in one hand**, and having:

- *a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s);*
- *and a short stock designed to be gripped by one hand at an angle to and extending below the line of the bore(s).*

#### **Gun Control Act Definitions - Rifle**

[18 U.S.C., § 921\(A\)\(7\)](#) and [27 CFR § 478.11](#)

The term “**Rifle**” means a weapon designed or redesigned, made or remade, and intended to be **fired from the shoulder** and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

The U.S. firearm industry complies with these ATF definitions of firearm types, and companies are required to maintain records which include the type of firearm as defined in the Gun Control Act. Pistols are designed to be fired “when held in one hand” and rifles are designed “to be fired from the shoulder.” A pistol manufactured from an AR- or AK-style frame is still a pistol according to ATF regulations. And such a firearm is required to be recorded in the original manufacturer and subsequent dealer records as a “pistol” type.

But Technical Note 2 to 0A506 adds control of these types of pistols to an ECCN that specifically controls rifles. A technical note that is contrary to the clearly defined ECCN Heading and List of Items Controlled will create confusion and be misinterpreted by exporters who may not read the note at the end of the listing. It is not intuitive to a firearm exporter that a pistol would be controlled under a rifle-specific ECCN even if the pistol is made with an AR- or AK-style receiver. It will also cause a discrepancy in the exporter’s records, as the required ATF records must show the firearm as a pistol, but the EAR records will require the firearm to be

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<sup>37</sup> ATF- [Firearms - Guides - Importation & Verification of Firearms - Gun Control Act Definition - Pistol | Bureau of Alcohol, Tobacco, Firearms and Explosives \(atf.gov\)](#)

<sup>38</sup> ATF- [Firearms - Guides - Importation & Verification of Firearms - Gun Control Act Definition - Rifle | Bureau of Alcohol, Tobacco, Firearms and Explosives \(atf.gov\)](#)



indicated as a rifle. Since ECCN 0A507 is specific to semi-automatic pistols, it is clear that control of pistols with AR- or AK-style frames should be included with other semi-automatic pistols.

**Recommendation:** We strongly urge BIS to remove Technical Note 2 to 0A506 and add control for all semi-automatic pistols, including those with AR- or AK-style frames, to ECCN 0A507. We also request BIS remove subparagraph 0A506.a.6 for bipods, as there is no legitimate reason for adding controls to these items.

## **B. New ECCN 0A507 For Semi-automatic Pistols**

As stated in preamble Section B.2, new ECCN 0A507 controls semi-automatic pistols, centerfire and rimfire. The control text in subparagraphs .a and .b is simple and easy to understand. ECCN 0A507 does not include specific product features that do not need to be listed to effectively control semi-automatic pistols. However, the ECCN includes a Technical Note to 0A507 which states: “Firearms described in 0A507 includes those chambered for the .50 BMG cartridge, **including revolvers**, or that may be developed to fire .50 BMG cartridges.” Revolvers are a type of pistol but are required to be recorded as a different firearm type according to the ATF regulations.

### **Gun Control Act Definitions - Revolver<sup>39</sup>**

[18 U.S.C., § 921\(A\)\(29\)](#) and [27 CFR § 478.11](#)

The term “**Revolver**” means a projectile weapon of the pistol type, having a breechloading chambered cylinder so arranged that the cocking of the hammer or movement of the trigger rotates it and brings the next cartridge in line with the barrel for firing.

Revolvers are commonly understood and recorded as a separate type of firearm. Thus, inclusion of this Technical Note will sow confusion amongst exporters who will not automatically consider a revolver to be included in an ECCN that specifically controls semi-automatic pistols (as shown in the Heading and List of Items Controlled).

**Recommendation:** For transparency and clarity, we urge BIS to delete Technical Note to 0A507 and add a new subparagraph: c. Revolvers, .50 BMG cartridge. We also suggest amending the ECCN Heading to say “Semi-Automatic Pistols and Certain Revolvers as follows (See List of Items Controlled).” Lastly, further to our recommendation above in section ECCN 0A506, we request BIS add the language in Technical Note 2 to 0A506 to ECCN 0A507 to indicate that pistols with AR- and AK-style frames are controlled in 0A507.

## **C. New ECCN 0A508 For Semi-automatic Shotguns**

As stated in preamble Section B.3, new ECCN 0A508 controls semi-automatic shotguns, centerfire and rimfire. The control criteria in this ECCN also includes lists various features or configurations that are largely cosmetic, such as: folding or telescoping stock; flash suppressor,

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<sup>39</sup> ATF - [Firearms - Guides - Importation & Verification of Firearms - Gun Control Act Definition - Revolver | Bureau of Alcohol, Tobacco, Firearms and Explosives \(atf.gov\)](#)

5-round magazine and drum magazine. It also includes control text regarding excessive weight and bulk of semi-automatic shotguns. As indicated in the above section for ECCN 0A506, there is no precedent for using such a specific list of product features to control semi-automatic shotguns.

The IFR preamble mentions that the Wassenaar Munitions List (WAML1)<sup>40</sup> was used to identify the above features. This is not accurate, as the control text for semi-automatic shotguns under WAML1 does not include any specific features. WAML1 controls:

“ML1. b. Smooth-bore weapons as follows: 2.b. Semi-automatic or pump-action type weapons”.

However, there is an important qualifying note:

*Note ML1.b. does not apply to the following:*

*c. Smooth-bore weapons **used for hunting or sporting purposes**. These weapons must not be specially designed for military use or of the fully automatic firing type.*

Semi-automatic shotguns are commonly used for sport shooting and competition events. Wassenaar Arrangement does not control shotguns used for hunting and sporting purposes. Prior to the effective date of this IFR—and for decades prior—all shotguns were controlled in the EAR based on the barrel length, as that is the key distinction for determining whether the shotgun is used for hunting or sporting purposes. By removing the barrel length distinction, ECCN 0A508 adds unnecessary complexity and heightens licensing burdens because no reference is made to sporting shotguns.

**Recommendation:** We strongly urge BIS to revise this ECCN such that it uses separate controls for semi-automatic shotguns in relation to barrel length and sporting purposes. Further, as explained in the above section, we request BIS to revise the CC2 licensing policy for sporting shotguns back to the previous policy that allowed exports without a license to A:1 countries, regardless of type of shotgun action.

#### **D. New ECCN 0A509 For Certain “Parts,” “Components,” Devices, “Accessories,” and “Attachments” for Items Controlled under ECCNs 0A506, 0A507, and 0A508**

This new ECCN 0A509 is described in preamble Section B.4 as necessary to track certain types of firearm commodities due to their sensitivity and potential use in illicitly assembled firearms. The ECCN includes a total of 4 subparagraphs. Three of these subparagraphs are designated .b, .c, and .d respectively, and they control receivers and frames for semi-automatic rifles, pistols, and shotguns respectively. Subparagraph .a controls any “part,” “component,” device, “attachment,” or “accessory” that is designed or functions to: A) convert a non-semi-automatic firearm...to semi-automatic or B) accelerate the rate of fire of a semi-automatic firearm controlled under ECCNs 0A506, 0A507, or 0A508.

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<sup>40</sup> The Wassenaar Arrangement On Export Controls For Conventional Arms And Dual-Use Goods And Technologies Munitions List, [Stand-alone-Munitions-List-2023-1.pdf \(wassenaar.org\)](https://www.wassenaar.org/stand-alone-munitions-list-2023-1.pdf)

The ECCN does not include any notes or other information to provide guidance to exporters regarding the specific commodities being controlled. Amorphous catch-all controls such as subparagraph .a cause confusion and inadvertent non-compliance due to inaccurate designation and description of the commodity the intended regulation is meant to control.

For examples, rate of fire is a measurement of how fast a weapon can be fired, and it is usually applied to full-automatic firearms—i.e., the number of rounds per minute which can be cycled through the mechanism. Semi-automatic firearms can only fire one round per trigger pull. The rate of fire of a semi-automatic firearm is not defined by the capability of the weapon. Rather, it is defined by the shooter, and how quickly the shooter can pull the trigger in rapid succession. This is a subjective definition that is entirely dependent on the shooter’s skill level. Indeed, competitive shooters can easily and quickly expend all the rounds in a fully loaded firearm in the time it would take an average shooter to pull the trigger once or twice.

Accessories that assist the shooter in resetting the trigger for a second shot would still require a separate function of the trigger to expel an additional round and do not change a semi-automatic rifle’s function. Certain parts—such as a forced reset or binary trigger—provide the shooter with greater accuracy in firing a second shot, but do not change the capability of the rifle. There are many accessories of this variety available, and most have been assessed by ATF to not change the rifle from semi-automatic functioning. Bump stocks are an example of an accessory meant to assist a handicapped shooter but they do not make a firearm fully automatic.<sup>41</sup> If BIS considers bump stocks a commodity that fits the description of 0A509 subparagraph .a, then BIS should include the part name in the control text or incorporate it into the ECCN as part of a technical note.

**Recommendation:** We ask BIS to either revise the text of 0A509.a to be more specific to the type of commodity being controlled, or to add a Technical Note that provides exporters with more information on the types of commodities referenced in subparagraph .a.

#### **E. Other Changes For Existing 0x5zz ECCNs**

IFR preamble Section B.5 lists a number of amendments made to existing ECCNs for other firearms, shotguns, optical sighting devices, and ammunition controls. Most of the changes are made to conform to the changes implemented by the new licensing policy or the addition of the new ECCNs for semi-automatic firearms. There are several points we wish to raise:

- ECCN 0A501 – We appreciate BIS has continued to control the various firearm parts and components in this ECCN without changes. This is beneficial to exporters and manufacturers in particular, who have tens of thousands of parts that would have required individual review and reclassification. Such a change would have been a major undertaking and required significant time and resources to accomplish.
- ECCN 0A505 – We note the IFR removes Note 2 to 0A505.x: “*Note 2 to 0A505.x: The controls on “parts” and “components” in this entry include*

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<sup>41</sup> See *Garland v. Cargill*, 22-976, U.S. Supreme Court, 2024 [22-976 Garland v. Cargill \(06/14/2024\)](https://www.supremecourt.gov/opinions/22-976) ([supremecourt.gov](https://www.supremecourt.gov))

*those “parts” and “components” that are common to ammunition and ordnance described in this entry and to those enumerated in USML Category III.”* We feel this important clarifying note should be included, as it confirms that ammunition components common to items on the USML and CCL are controlled under the EAR. USML Category III includes any ammunition that is belted or linked. Non-military types of ammunition that are controlled on the CCL become ITAR controlled if they are belted or linked. Without this clarifying Note 2 to 0A505.x, there will be confusion regarding ammunition components such as a 7.62 caliber projectile or an empty brass cartridge case and whether or not they would be controlled under the USML for belted/linked cartridges, and under the CCL for individual cartridges not belted or linked.

**Recommendation:** We strongly urge BIS to reinstate Note 2 to 0A505.x in ECCN 0A505 to provide clarity on the controls for common ammunition components and confirm that such components are controlled under the EAR.

## **7. IFR LICENSE PROCESS CHANGES MIMIC DDTC LICENSING PROCESS BUT ADD UNNECESSARY COMPLEXITY TO THE OVERALL PROCESS**

DDTC has publicly stated that commercial sales no longer exist under ITAR since the transfer of licensing for commercial and dual-use items was moved to BIS. The licensing system under ITAR is strict and has become even more stringent since the USML has been revised to include only the most sensitive military commodities and technologies. The licensing system under the EAR controls dual-use items, which by nature have both commercial and government uses. Commercial exports of firearms controlled under the ITAR were severely over-licensed, which was recognized by DDTC, but unavoidable due to the restrictions in the ITAR system. As part of the Export Control Reform initiative, firearms and ammunition were transferred for control under the EAR, which is a regulatory system that controls commodities for both commercial and government uses. The flexibility underlying the EAR licensing system is specifically meant to place the right level of controls on dual-use items and allow for commercial sales in the respective countries. The review and allowance for commercial sales must apply equally to firearms and ammunition as it does to all the other dual-use items on the CCL. However, the IFR places new and severe restrictions on firearms and related items, which are not applied to any other items controlled by the EAR including sensitive items, such as missile technology, chemical and biological weapons, and 600-series military items.

It seems that the changes to the BIS licensing process for firearms and ammunition implemented in the IFR are meant to align the EAR licensing process to the previous ITAR licensing process. However, this does not achieve the goals or mission of BIS and serves only to create limitations and burdens in the licensing process for dual use items like firearms and ammunition. Likewise, the change will significantly expand the licensing caseload, which will require that BIS expend additional resources. As the above ATF trace information confirms, with less than 1% of international trace crime guns originating from legitimate licensed U.S. exports to verified and known entities, there is no justification for a major overhaul of firearm and ammunition licensing.

It is also important to note that DDTC did not staff every license application for firearms and ammunition. In some instances, the cases were processed within DDTC and were not sent out for interagency review. Also, DDTC routinely approved normal commercial licenses to certain partner countries within 2 to 3 weeks real time. This meant that even though the DDTC system was stricter and more support-document intensive, exporters could rely on a known average processing time. This allowed exporters to better plan, have more reliable scheduled deliveries, and communicate more accurately with their foreign partners and customers.

After the initial transition of firearms and ammunition to BIS in March 2020, the license processing time became more standardized, and exporters were generally seeing licenses approved by BIS within one month, sometimes even sooner depending on the country and the transaction. Since BIS implemented the license application process changes during the October 27, 2023, “pause”—which now have become permanent per the IFR—license approval times have grown to 1 to 2 months (counted in continuous calendar days). We note that BIS counts calendar days in licensing processing times, but not as continuous calendar days. When an application is put on Hold Without Action status, the time clock is paused, and those days are not counted toward the total processing time. So, while BIS may say a license was approved in 27 days, it is more likely 50-75 days in continuous calendar days.

Since early 2023, BIS license approval times have grown to an average of 2 to 3 months, and in some cases 4 to 5 months. The internal redundancies in the license process, the changes regarding review and counter signatures, and the new stricter review policy and requirement for interagency review has created a tremendous drag on the process and has increased license approval timelines dramatically. This alone has caused tremendous harm to industry members, large and small.

## **8. REDUCTION IN EXPORT LICENSE VALIDITY**

The new reduction in export license validity for firearms and related items will have negative impacts on all entities involved in export transactions. The rippling effects will touch all aspects of the export process. For starters, BIS will need to expend more resources to adjudicate the additional licenses. Likewise, foreign import authorities will also use more resources to issue the additional import permits as supporting documents. Foreign importers will expend additional time and money to obtain import permits. Finally, U.S. exporters will experience long lead times to complete export orders, which has a direct impact on their business cash flow and shipments. Those additional burdens for exporters are likely to result in lost business when the foreign importer inevitably decides to buy the products from another country. With the exception of items controlled for Short Supply, all other items controlled on the CCL—including 600-series military items—have the standard 4-year license validity.

IFR Preamble Section G reduces the general validity period from four years to one year for all licenses involving firearms and related items controlled under ECCNs 0A501, 0A502, 0A504, 0A505, 0A506, 0A507, 0A508, and 0A509. The IFR provides an allowance for extended validity of licenses in certain limited circumstances, such as transactions involving intra-company transfers of items (e.g., from a subsidiary to a parent company) or government contracts that

require a period of performance longer than 12 months. BIS justifies the change by contending that “limiting the length of the license validity period will lead to more frequent reviews of exports and thus enable BIS to account for developments and often fluid circumstances in destinations.” Likewise, BIS asserts that “the risks associated with certain transactions can be difficult to predict several years in advance.” Both statements are overly broad and do not acknowledge long established and frequently utilized mechanisms within the EAR to that give BIS the tools it needs to respond promptly to changing global circumstances by revoking existing licenses.

In fact, BIS routinely revokes or modifies existing export licenses in response to national security or foreign policy concerns to “account for developments and often fluid circumstances in destinations.” Indeed, all U.S. government agencies with export control accountability have the same authority and responsibility. The effectiveness of the U.S. export control system is dependent on alacrity and flexibility in responding to policy changes and, in some instances, implementing restrictions based on conditions specific to each foreign country. World events change constantly, and U.S. foreign policy and export controls must be able to react appropriately.

Because BIS already has the authority and regularly restricts or revokes export licenses, reducing validity only for firearms export licenses does not provide any additional benefit with regards to BIS’s ability to respond to world events. As cited in the section above, restricting all firearm licenses to 1-year validity will immediately increase the annual license caseload to 10,000, which is a figure established by BIS prior licensing data and DDTC licensing history. When one factors in the additional licensing requirements placed on long barreled shotguns and optics, as well as the new license exception restrictions (which will increase applications), the annual license caseload will increase by more than 8,900 to 16,600. This will make BIS’s overall licensing caseload for all EAR controlled products approximately 50,000 annually, with firearms and related items accounting for 32% of all license applications.

The IFR preamble also states: “A shortened validity period also reduces the risk of shipments on an expired import certificate.” This statement has no basis in fact. Every license BIS has issued since 2020 for firearms and related products has included a condition requiring that the exporter have a current and valid import certificate on hand prior to export against the license. OEE has performed hundreds of audits of shipments against these licenses, including to confirm compliance with this condition. But problems with adherence to that condition was not stated as a reason for the reduced license validity, which implies that few exporters have been out of compliance. Further, all air carriers require a copy of a current import certificate prior to accepting a shipment of firearms, which precludes the possibility of exporting without a valid import certificate.

#### **A. Licenses to Allies and Trusted Partner Countries**

In addition, U.S. trusted allies and partner countries, such as the Wassenaar Arrangement group of countries per EAR Country Group A:1, have a presumption of approval for exports. Recent EAR rule changes have further relaxed the licensing requirements for the A:1 countries for more sensitive items, such as 600-series military items, MTCR controlled items, and chemical and

biological controlled items. Requiring firearm licenses to the A:1 countries to be reduced to a one-year term achieves no benefit, and will only result in significant licensing burden for exporters and unnecessary delays for foreign importers and governments in Wassenaar countries.

Put another way, if BIS approves of a particular ultimate consignee and end user in a specific country to receive a certain number of firearms and ammunition, there is no benefit gained by reducing the license validity to one year. That is especially true for countries that are trusted allies, such as an A:1 countries. Because BIS trusts A:1 countries to have systems in place to control the legal sale and use of firearms, requiring one year licenses simply adds to the time it takes to deliver U.S. products to both government and commercial users, increases the likelihood that they will purchase from other countries, and expends additional BIS licensing resources. These additional complications are unnecessary, as BIS has not shown that they further U.S. export policy goals.

### **B. Transactions Needing Longer Validity**

BIS says it will allow extended validity of licenses in certain limited circumstances, such as intra-company transfers (e.g., from a subsidiary to a parent company) or government contracts. But those narrow exceptions don't cover other, common situations in which a longer license validity is needed, such as supply chain transactions and deemed exports to foreign person employees. Small and mid-sized U.S. companies that manufacture a variety of small parts and components have long-term business relationships with foreign manufacturers. They routinely export a variety of parts to meet varying production needs and, to do so effectively, they need the flexibility of a license with a longer validity. Also, U.S. companies that employ foreign persons rely on these individuals to perform specific jobs, oftentimes in an engineering or manufacturing role. Reduction of validity for foreign person employee licenses raises the risk that a license will expire while waiting for issuance of a new license, which could require that the U.S. employer stop the activities of the foreign person employee. The result is a loss for the company, as the job could not be performed in those circumstances, as well as a loss in wages for the foreign employee.

### **C. Forecast Licenses and 4-Year Validity**

Except for 600 series military items, the commodities controlled under the CCL are dual-use items that have both commercial and military applications. These items include electronics, machine tools, telecommunications equipment, GPS systems, certain cameras, optics, and lasers. These CCL items are eligible for 4-year licenses that anticipate future sales over the validity of the license. This length of time for license validity—one of the benefits of Export Control Reform—is recognized as the right level of control for these dual-use items because of their commercial applications.

Forecast licenses are necessary for companies to compete effectively in export commercial markets, including the legitimate and well-governed firearm markets in Country Group A:1. Exporters must be responsive to market needs; otherwise, the demand will be met by foreign competitors.

Forecast licenses can also be used to aid U.S. exporters bidding on a potential foreign government contract. Many government contracts require delivery within 90 – 150 days, and they provide that late delivery due to export license approval delays does not qualify as force majeure (i.e., a defense to liability). The U.S. company can apply for the BIS export license during the bidding phase. If they are the successful bidder and receive the contract, the approved license is already in place. This gives the U.S. company a significant advantage and it confirms its ability to meet the contract requirements. But the reduction in license validity places U.S. exporters at a competitive disadvantage because they cannot be assured of timely receiving an export license. They will not be able to bid on contracts that will instead be awarded to foreign competitors.

The IFR states that the utilization rate of 4-year licenses was less than 20%. This averaged figure doesn't take into account the hundreds of licenses that were fully utilized as reported by our members. And the averaged figure includes licenses that were not utilized at all for one reason or another.

Utilization rates of forecast licenses vary depending on the exporter, the end user, the foreign market, and the commodities and quantities. For commercial sales, a forecast license is a business decision based on what the exporter predicts over a 4-year period. Markets can change significantly during that time period and can make the license obsolete. Forecast licenses for government contracts may not be fully used for several reasons. For example, in some instances the contracts are not completely fulfilled for a given reason or option years were not exercised. Likewise, some licenses may have been obtained in support of a bid that was never awarded to the U.S. exporter. Or a license may have been approved for a specific model or manufacturer, and the actual export transaction required a different model/manufacturer, necessitating application for a new license.

The IFR stated rationale for this change is that “licensing that did not result in exports offered limited visibility into actual demand for U.S. firearms abroad, which in turn made effective monitoring of diversion risks more difficult.” This statement is not accurate, as BIS has complete visibility into actual exports against every export license via the Electronic Export Information (EEI) from the Census Bureau's Automated Export System (AES), which is uploaded to BIS daily. At any time, OEE and OEA can provide full details of exactly how many commodities were exported to a particular Ultimate Consignee or Foreign End User on any approved license.

Further, and as discussed above, the data from AES includes specific export information by the Harmonized Tariff System (HTS) number. This gives BIS complete visibility into the types of firearms being exported (rifles, pistols, shotguns), the quantities and values, and the foreign end-users. Therefore, reducing export license validity is not an effective way for BIS to gauge demand for U.S. firearms abroad, as exports filed in AES already provide an accurate metric for this assessment. It is not more effective at monitoring of diversion risk than the current system of OEA reviewing AES data, and it does nothing to enhance U.S. national security or foreign policy.

**Recommendation:** We request BIS reconsider the blanket change of validity reduction for all licenses to all countries and allow A:1 countries to continue to be eligible for forecast licenses



with four-year validity. This would reduce the number of annual license applications and allow exporters to provide more effective and timely deliveries to trusted Wassenaar countries. Further, we request BIS consider allowance of longer validity licenses for supply chain transactions and foreign person employee deemed export licenses.

## 9. IMPORT PERMIT REQUIREMENT

In IFR preamble section E.1.i, BIS states that “the requirement that all license applications for firearms and related item include an import certificate or equivalent official document as part of the submission will minimize the risk of an exporter failing to obtain an import certificate or equivalent official document if required by the importing country. This requirement will also help ensure that the importing country’s government is aware of the shipment and has confirmed that the import is lawful.” Respectfully, we disagree.

Import permits have been a standard required document since BIS became the control agency for the majority of firearms and ammunition in 2020. Since that time, every license application for firearms to Organization of American States (OAS) countries was required to have the import permit included. For all other countries, the import permit may be included if the importing country issued one. In addition, all approved licenses for firearms include a rider which requires the exporter to maintain a current valid import permit for every export against that license. OEE routinely audits exporters’ records, including maintenance of current import permits against valid open licenses. This process ensures that every export against the license has been approved by the foreign country. As noted above, air carriers will not accept firearms freight without having a copy of the consignee’s current import permit. Thus, OEE’s audits already provide assurance that every export against the license is supported by a current and valid import permit. For these reasons, submitting an import certificate with each license application is unnecessary.

We refer to preamble Section E.1.ii - Combining the OAS and non-OAS requirements to simplify the requirements and improve understanding. While we agree that having the same set of data elements for import certificates from both OAS and non-OAS countries provides consistency, it is important to note that the required information under an OAS country import certificate was agreed to among the parties to the Inter-American Convention Against The Illicit Manufacturing Of And Trafficking In Firearms, Ammunition, Explosives, And Other Related Materials,<sup>42</sup> which entered into force July 1, 1998. Non-OAS countries did not develop their import certificates in accordance with this treaty, and therefore documents issued by non-OAS countries may not include all the information listed in the Part 748.12(c).

The revised 748.12(d)(1) is also relevant to this issue. It states that a “license application must include the same commodities as those listed on the document.” It is important to keep in mind that many times the import certificate descriptions are expressed using HTS numbers and related descriptions. Such certificates may not exactly match the commodity description on the license application, but they act as authorization for import of those commodities by the foreign government.

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<sup>42</sup> [OAS :: SLA :: Department of International Law \(DIL\) :: Inter-American Treaties](#)

Further, revised Part 748.12(b) requires that the importer must provide the original or a certified copy to the license applicant. But the issuance of hard copy original documents or certified copies have significantly decreased with the advent of electronic systems. Most countries now use online systems similar to BIS's SNAP-R electronic licensing system. No "original" document is issued, and those governments typically don't provide "certified copies." Thus, this requirement provides yet another hurdle.

**Recommendation:** We request BIS revise the regulatory text of Part 748.12 to allow for import certificates from non-OAS countries that do not include all the listed information per 748.12(c). Additionally, we request BIS revise the regulatory text under 748.12(b) regarding "original or certified copy" to include "or electronic equivalent document officially issued by the foreign government import authority" or amendments to that effect.

## **10. PURCHASE ORDER REQUIREMENT**

Section E.2 of the IFR preamble requires the inclusions of purchase orders for certain firearms license applications. Purchase orders are not required for any other CCL controlled items including 600-series military items. Requiring individual purchase orders for firearms license applications is punitive, as it singles out our industry for additional regulatory burdens and will impede the ability of U.S. exporters to export and deliver these firearms in a timely manner.

The EAR includes provisions that allow for flexibility in controls that can be tailored specifically to items used commercially and/or for government. Allowing licenses for quantities of commodities without the need for a purchase order—or in some cases higher quantities than are included on the purchase order—allows for the legal and legitimate commercial sales of these controlled commodities based on market demand. We are happy to see the purchase order requirement does not apply to A:1 countries, which demonstrates BIS's understanding of the need for flexible controls, particularly with the trusted Wassenaar group of countries.

However, for the non-A:1 countries, this new requirement will make it extremely challenging for U.S. exporters to compete for foreign government contracts or commercial business, and the resulting significant delays will in turn damage their relationships with partners abroad.

We also thank BIS for the allowance in Supplement 2 to Part 748 – Unique Application and Submission Requirements, paragraph (aa)(2), which states that various model types may be exported against the license as long as the items are consistent with the ECCN item paragraph. This is very important because it allows exporters to meet changing product demand in commercial markets without the need to apply for a new license simply because a particular model is not available.

## **11. NATIONAL IDENTIFICATION OR PASSPORT REQUIREMENT**

IFR preamble section E.3 - Requiring passport or national identity card for firearms license applications

for natural persons located in destinations other than in Country Group A:1 - states that a passport or national identity card is required to support license applications for exports made directly to natural persons in non-A:1 countries. There has been some confusion within the firearm industry as to whether this requirement would be applied to all license applications. We are pleased to see that BIS focuses this document requirement on just license applications for exports directly to individuals and only those individuals in the non-A:1 countries. We feel this is a reasonable request since it is important for BIS to have clear information on the identity of the individual end-user. In some countries, people may have nearly identical, common names, analogous to the U.S. name “John Smith.” Therefore, it is important to have specific identifying information from the individual end user.

## 12. AES CHANGES

IFR Preamble Section H makes changes to the information required for filing in the AES system. Specifically, exporters are required to include items-level classifications in the Commodity description block in the Electronic Export Information (EEI) filed in AES. In simple terms, this means the commodity description must begin with the subparagraph of the controlled item as listed in the ECCN, e.g. “.a - semi-automatic rifle” description for ECCN 0A506 commodity. This alternative submission method of reporting information required under Part 743.4 Conventional Arms Reporting was originally suggested by NSSF in our July 6, 2018, comment letter to BIS’s proposed rule for the transfer of USML Categories I, II and III to the CCL. We are gratified to see BIS comment that nearly all exporters have been using this alternative method. It is a more efficient way to provide the required information both for the exporter and for BIS in preparing the conventional arms reports.

However, we note that the revised regulatory text of Part 758.1(g)(4)(ii) has two inconsistencies. The first sentence states “For any export of items controlled under ECCNs . . . 0A508.a.1, or .a.2, . . .” yet the descriptors listed in paragraph (g)(4)(ii)(E) states “under 0A508, enter .a or .b . . .” We believe the first sentence’s inclusion of subparagraphs .a.1 and .a.2 is an error and that the reference to subparagraphs .a.1 and .a.2 should be deleted. In addition, we note that 758.1(g)(4)(ii)(F) states “ECCN 0A509, enter .a, .b, .c, .d, or .e, . . . ECCN 0A509 does not contain a subparagraph .e and this should also be deleted.

**Recommendation:** We request BIS revise the regulatory text in Part 758.1(g)(4)(ii) as explained above.

## 13. LICENSE EXCEPTION BAGGAGE (BAG)

IFR Preamble Section K seeks public comments related to license exception Baggage (BAG) and two possible regulatory changes being contemplated by BIS. Paragraph 1 seeks comments on the impact on individuals of adding a time limit to the use of BAG. Paragraph 2 seeks comments on requiring exports under license exception BAG to be submitted in AES.

BIS is considering these changes to increase transparency and reduce the chance of diversion. However, the initial export of personally carried firearms does not present a diversion risk. Rather, the failing to return the firearms to the U.S. is the diversion risk, which would result in an unlicensed and unauthorized export. This is where the regulatory focus should be.

According to American Hunter magazine, there are an estimated 100,000 American hunters and sport shooters who travel abroad every year with their firearms. Typical hunting trips cost \$10,000 to \$25,000, or more. Hunters and competition shooters have invested considerable sums of money in purchasing and configuring their firearms for top capability. For example, the majority of shooters will have their shotgun “fitted” to them with modifications to the length and comb of the stock necessary for the shotgun to properly fit their stature, which improves accuracy. As a result, hunters and shooters are particularly keen to ensure that their personal firearms remain within their control and are returned to the U.S. For this reason, it would be an unnecessary, added control to set a time limit to the use of BAG.

Likewise, there are several reasons why AES is the wrong system for individuals to use:

- Census’s Automated Export System (AES) resides within CBP’s Automated Commercial Environment (ACE), which is the system the trade community uses to report all imports and exports. The system is designed for commercial imports and exports. Both the ACE<sup>43</sup> and AES systems require an Employer ID Number (EIN) before a user can create an account and submit any data. It does not allow individuals to access the system using a Social Security Number, which was removed by Census in 2010 due to privacy concerns.
- The Census AES guidelines<sup>44</sup> instruct individuals to select “Sole Proprietorship” as the “type of legal structure applying for an EIN,” which is defined by the IRS<sup>45</sup> as: “someone who owns an unincorporated business by themselves.” 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 false and is entered only to obtain the EIN. In fact, when the individual requests an EIN, the form requires that they assert that their purpose is to establish a business concern. They are required to sign the form under penalty of perjury, declaring that all the information is true and correct, when in fact the individual is not establishing a business.
- There is conflicting information on the Census website and the IRS website regarding an individual obtaining an EIN. While both agencies have guidance indicating that individuals may obtain an EIN, Census guidelines state the EIN can be obtained for purposes of filing in AES. But the IRS website states other reasons for an individual to obtain an EIN, such as for filing bankruptcy or paying excise taxes. **There is no written policy, guidance or regulation to support an individual obtaining an EIN solely for**

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<sup>43</sup> CBP Website – downloaded June 5, 2024, [Applying for an ACE Secure Data Portal Account | U.S. Customs and Border Protection \(cbp.gov\)](#)

<sup>44</sup> How to Receive an Internal Transaction Number (ITN) through the Automated Commercial Environment (ACE) [register access aesdirect.pdf \(census.gov\)](#)

<sup>45</sup> [Sole proprietorships | Internal Revenue Service \(irs.gov\)](#)

**the purpose of filing data in AES and confirming that the individual is not obligated to file other reports or business tax returns under IRS regulations.**

- There are multiple fields in AES related to commercial exports, including port of export, type of export, license codes, and Harmonized Tariff System (HTS)/Schedule B commodity codes. Individuals generally have no knowledge of this information and at best can only take guesses at the correct data to input. For example, the port of Los Angeles has five different codes. For HTS/Schedule B commodity codes, it is difficult for an individual to understand the complexity of the numbers and pick the correct one. All this information is a common and ordinary part of commercial exports but is not intuitive for individuals.
- The AES is implemented under the Foreign Trade Regulations (FTR) which carries authority for penalties for inaccurate information entered into AES, up to \$10,000 per day. The data inserted into AES is used for statistical purposes to track balance of trade for the U.S. Inaccurate data negatively affects the statistics. Individuals trying to use the AES are at extremely high risk for penalties because they lack the knowledge to ensure the data is accurately entered in the electronic system. Therefore, the risk of inadvertent violations is very high even with the best compliance intentions.
- The requirement that individual hunters obtain an EIN, recognized by the IRS for business purposes, could potentially jeopardize the ability of hunters to import sport-hunted trophies harvested abroad. The U.S. Fish and Wildlife Service prohibits the importation of many sport-hunted species for commercial purposes. If the hunter registers as a business for the purpose of leaving the country and exporting the firearms he or she plans to use to hunt outside the United States, that registration could be used by the FWS to prohibit the hunter from importing the trophies and could subject the hunter to fines and other penalties.
- There is no corresponding official record of the return importation of hand carried firearms. Except for CBP Declaration Form 6059B submitted by individuals arriving in the U.S., CBP does not require a formal import entry to be filed for goods brought back to the U.S. by individuals.

Also, we must consider how BIS will enforce these potential changes. With tens of thousands of such temporary exports under BAG, OEE will be required to audit the individuals to ascertain if they returned to the U.S. with their personal firearms and if the return was within a defined time period. There will be little to no supporting documents from the individuals. And except for CBP's record of a person's return to the U.S, there will be no official documentation confirming the return of the temporarily exported personal firearms.

**Recommendation:** As we proposed to BIS in 2018, we recommend an alternative to submitting information in AES when using the license exception BAG. This suggested system would also negate the need to establish a time limit as it would provide transparency of both the temporary export and subsequent import of personal firearms.

- Rather than trying to force AES to fit the purposes of this data collection, we recommend that CBP develop a simple online interface that uses the individual's passport number as the reference number. Every person leaving or entering the U.S. must present a passport to CBP, and CBP has an electronic system to review the individual's passport data.
- Under the current process, individuals travelling overseas with firearms are completing the CBP Form 4457 "Certificate of Registration for Personal Effects Taken Abroad" to register their firearm for export and reentry. This form includes details regarding the property being carried as baggage, including details of the firearm (model, caliber, serial number). There are indications that CBP is considering implementing an electronic version of this paper form. In recent years, CBP has increased the use of online systems to file declarations when individuals enter the U.S. An electronic Form 4457 could be linked to the passport review system. This would allow CBP officers to see not only the individual's passport information, but also any personal property including firearms taken out of the U.S. More importantly, it would be a simple and effective method to confirm that the firearms temporarily exported under BAG have in fact been returned to the U.S. And such an online system would have great benefits for the many other persons who use CBP Form 4457 for other types of personal items such as high-end watches or electronics.

#### **14. LICENSE PROCESS CONFUSION BY EXPORTERS AND BIS LICENSING PERSONNEL**

Since the beginning of the October 27, 2023, "pause" and the effective date of this IFR, BIS licensing teams handling firearm and related item applications have been giving exporters conflicting information on application details, support documents, and policy review. We understand that during the 180-day pause the license process changes were not fully decided, which brought about conflicting and changing requests for documents, or greatly increased cases which resulted in Return Without Action (RWA) disposition.

Now that the IFR is in effect, we hoped to see consistent information from BIS licensing staff in accordance with the new policies and procedures. Unfortunately, many of our members are reporting instances of licensing officers asking for support documents, such as purchase orders, when they are not required, or RWA'ing cases when the IFR says the policy allows for the related export, or requiring license applications to list specific models when the new paragraphs in Supplement No. 2 to Part 748 specifically say various models of firearms may be exported.

Our members are reporting that the number of RWA'd cases is increasing rapidly since the IFR became effective on May 30, 2024. Instead of the usual request for additional information or documents, the licensing officers are RWA'ing the applications, which closes the case and requires exporters to submit a new application, which starts the process over again. It appears BIS is doing this as a case management tool due to the increase in volume of applications. But it is detrimental to both BIS and exporters as the resubmitted applications have to go through the licensing process again from the start. This is a waste of time and effort for both parties.

During this period of adjustment for both exporters and regulatory staff, it is critical to have standardized and consistent set of guidelines that both parties can work from to minimize the delays in the process and streamline application review. A simple document posted on BIS's website can outline the initial document set to be submitted with each license application. We understand that interagency partners may request additional documents depending on the transaction, and BIS can't anticipate those requests in advance. But a clear guidance document regarding the initial documents would be of great assistance to both exporters and BIS licensing staff. Such guidelines could include the following:

- Confirmation of requirement for import certificate to be attached to all license applications for all countries.
- Confirmation that a purchase order or contract copy is required to be attached to license applications for non-A:1 countries, or for other specific countries such as Israel and Ukraine, or for other types of transactions.
- Confirmation of when a BIS-711 form should be included with an application. Since the October 27, 2023, "pause", licensing officers have been requesting the BIS-711 for most applications. Though it is not currently a regulatory requirement, asking exporters to provide this document at the initial license submission allows them to obtain the completed form at the same time the foreign importer is getting the necessary import certificate. Requesting all the documents at once simplifies the process.
- Confirmation that firearm model numbers are not required to be included in license description per Supplement No. 2 to Part 748.

On another topic, our members have noted an omission in the information in Supplement No. 2 to Part 748 that resides on the BIS website in the "Search the EAR" page. The IFR includes a revision to this supplement to add new paragraphs (aa)(1), (2), and (3) specific to firearm application requirements, as well as (bb) regarding 600 Series Major Defense Equipment. The BIS "Search the EAR" webpage for Supplement No. 2 to Part 748 does not include these new and important paragraphs. The listing on the BIS webpage ends with paragraph (z).

Though BIS includes a disclaimer that the "Search the EAR" tool is not meant to replace the official rule in the Federal Register, BIS is aware most exporters use this page exclusively. BIS also encourages exporters to use this source to find the regulations pertaining to their export transactions. In the past, BIS published the official EAR Parts in a two-column page format, and exporters have ingrained habits of referring to the BIS website as the official source of the EAR regulations. For these reasons, it is incumbent upon BIS to ensure that the information in the "Search the EAR" webpage is accurate and up to date.

**Recommendation:** We ask that BIS provide clear license process guidelines that will provide transparency, assist both exporters and BIS licensing staff, and will ultimately reduce the amount of time a licensing officer needs to spend on a license application. We also request that BIS revise their "Search the EAR" webpage for Supplement No. 2 to Part 748 to include the new firearm application paragraphs included in the IFR.

## 15. CLOSING CONSIDERATIONS AND RECOMMENDATIONS

We appreciate the importance of protecting our national security by safeguarding critical U.S. technologies and goods that provide our military with a tactical advantage and ensuring that sensitive material does not fall into the hands of our adversaries. In fact, one of the primary goals of the Export Control Reform (ECR) initiative that began under the Obama-Biden Administration was to strengthen national security while at the same time improving the competitiveness of U.S. companies in a global economy. Exporting U.S. goods not only increases our nation's presence in the global marketplace, but it also creates jobs and strengthens the American economy.

BIS's resources are stretched thin in light of the huge regulatory changes of the past two years, which necessarily demanded more time and attention from BIS personnel. The new changes implemented in this IFR add considerable demands on BIS resources. Regarding export controls of firearms and ammunition, it is important to have the right level controls focused on the changes that are actually needed and to remove unnecessary controls that only add to the burden with no corresponding benefit to national security. To this end, we offer the following:

- We understand the need for policy changes as world events transpire, but the overall and draconian policy changes that specifically increase the licensing burden for exports of U.S. firearms and ammunition only hurts U.S. companies. The need for global demand for these products will not go away. The void created will simply be filled by other, possibly less scrupulous, countries.
- We question the need for these industry-wide process changes when international crime guns recovered and traced by ATF are **less than 1%** of the total number of firearms legally exported from the U.S. under approved export licenses. The recent attempts to conflate the illegal diversion/smuggling of firearms and ammunition that are misused to commit human rights violations with the lawful commercial sales to well-established, longstanding customers are disheartening because they are inaccurate and unsupported. The ATF report supports the NSSF's position. Lawfully exported products are NOT ending up in conflict zones being used to commit human rights violations. In fact, BIS and all the U.S. export control agencies should view this as an affirmation and proof that our system of export controls is effective.
- We question the need for such drastic changes since there has been no significant world event prompting the new licensing policy to this extent, as well as the added restrictions and process delays. BIS has not provided any information or rationale based on their own enforcement efforts related to firearm trafficking, illicit misuse of firearms, or increased diversion significant enough to warrant the changes contained within the IFR. These changes completely ignore the legal and valid commercial application of these dual use items, threaten to severely and negatively impact U.S. firearm and ammunition exports, and put many small and mid-sized companies at risk of total loss of business.



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

Sincerely,

A handwritten signature in cursive script that reads "Lawrence G. Keane".

**Lawrence G. Keane**  
Senior Vice President for Government & Public Affairs,  
Assistant Secretary & General Counsel

**MEMORANDUM**

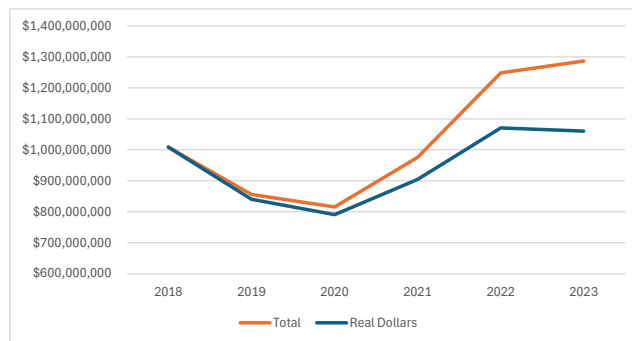
TO: Salam Fatohi  
 FROM: John Dunham  
 DATE: May 22, 2024  
 RE: Revision of Firearms License Requirements

The Bureau of Industry and Security in the US Department of Commerce (BIS) has issued an interim final rule that would amend the Export Administration Regulations to further restrict the export of firearms and related items.<sup>46</sup>

This proposed rule would add significant costs to the export of firearms and related products, which would be passed on to manufacturers and consumers.<sup>47</sup> The rule is effective May 30, 2024, and is based solely on Agency beliefs, with no cost/benefit or regulatory impact analysis conducted.

According to the BIS rule, the new rules would add minimal enforcement costs for the Federal Government. The rule suggests that regulators would face an additional 1,003 administrative burden hours, of which 132 hours would be a one-time increase related to the revocation and modification of licenses for firearms and related items. As was stated above, no analysis of the burden on manufacturers, distributors, exporters, or US consumers was conducted. The Agency claims that it is exempt from these normal requirements even though the rule is considered to be a *significant regulatory action* under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

**Figure 1  
Export Value of Civilian Firearms and Ammunition**



<sup>46</sup> *Revision of Firearms License Requirements*, US Department of Commerce, Bureau of Industry and Security, Docket No. 240419-0113, RIN 0694-AJ46, as published in the *Federal Register*, April 30, 2024, at: [www.federalregister.gov/documents/2024/04/30/2024-08813/revision-of-firearms-license-requirements](http://www.federalregister.gov/documents/2024/04/30/2024-08813/revision-of-firearms-license-requirements)

<sup>47</sup> Items to be regulated include optics, scopes, antique firearms, non-automatic and semi-automatic firearms, and ammunition.

Even under these regulatory standards, which were softened considerably by the current Administration, a significant regulatory action is one that has an annual effect on the economy of \$200,000,000 or more.<sup>48</sup> This suggests that the rule would have a minimum annualized cost of \$200,000,000.

While \$200,000,000 would be the minimum cost, data from a survey of members of the National Shooting Sports Foundation (NSSF) suggest that the cost would be more than double that amount. Companies surveyed reported a median cost ranging from \$0.00 to as much as \$10,000,000 annually. Dividing the reported costs by employment suggests that the rule would cost an average of about \$20,450 per firearms manufacturing employee. The data were, however, very skewed, with a standard deviation larger than the average value. Owing to the skew, the median value of just under \$8,772 per firearms manufacturing employee would be more appropriate to use.<sup>49</sup> Extrapolating this value across all 30,750 firearms manufacturing jobs in the United States, suggests that the rule would lead to a 1.92 percent reduction in sales.<sup>50</sup> According to the most recent analysis of the US civilian arms and ammunition industry, a total of \$14,036,707,643 worth of firearms were produced by manufacturers.<sup>51</sup> Multiplying this by 1.92 percent means that the loss of firearms sales as a result of the rule would be \$269,741,229.

The \$269,741,229 figure only accounts for firearms sales. The rule also applies to ammunition and related products. Based on the most recent analysis of the economic impact of the arms and ammunition industry, a total of \$37,423,959,500 worth of arms, ammunition and associated products were sold in the United States in 2023.<sup>52</sup> This includes exports to foreign countries of civilian arms and ammunition. Of this, 57.0 percent were firearms, and about 21.5 percent was from ammunition and related products respectively. If the ammunition and related products sectors are assumed to be impacted in the same way as firearms, the overall cost of the rule would be \$473,422,292. (Table 1)

Using the minimum cost of \$200,000,000 as a baseline, the rule would be equivalent to an overall price increase on these products of 0.53 percent.<sup>53</sup> Based on the 2023 economic impact analysis, the costs would be spread out across products, with 57.0 percent of the sales in dollar terms being for firearms, and the remainder split between ammunition and associated products.<sup>54</sup> Based on the \$473,422,292 figure, the cost increase would be equal to 1.27 percent.

**Table 1**  
**Impact of Products by Type (2023)**

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<sup>48</sup> *Executive Order on Modernizing Regulatory Review*, Executive Order 14094, Executive Office of the President, April 6, 2023, at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/06/executive-order-on-modernizing-regulatory-review/>

<sup>49</sup> These data are based on a survey by the NSSF of eight firearms exporters ranging from very small to very large companies. While the survey results are in no way statistically significant, they are the only data available to use in calculating the overall cost of the rule.

<sup>50</sup> Total jobs and sales based on *2023 Economic Impact of the Firearm Industry*, prepared for the National Sports Shooting Foundation by John Dunham & Associates, January 2024, at: <https://www.nssf.org/wp-content/uploads/2024/04/2024-Economic-Impact-Report.pdf>

<sup>51</sup> *Ibid.*

<sup>52</sup> Not including excise and sales taxes.

<sup>53</sup> This includes taxes.

<sup>54</sup> For manufacturing sectors, Output is a measure of sales.

Industry	Jobs	Wages	Output	Output Pct.	Minimum Rule	
					Cost	Estimated Rule Cost
Arms	30,755	\$2,708,500,400	\$14,036,707,700	57.0%	\$ 113,953,751	\$ 269,741,229
Ammunition	11,041	\$907,111,600	\$5,307,595,800	21.5%	\$ 43,088,484	\$ 101,995,243
Hunting Supplies	15,371	\$1,442,552,900	\$5,291,494,100	21.5%	\$ 42,957,766	\$ 101,685,819
Total	57,167	\$5,058,164,900	\$24,635,797,600	100.0%	\$ 200,000,000	\$ 473,422,292

Based on a model developed for the NSSF by John Dunham & Associates (JDA), the minimum increase in the price of firearms and their associated products from the proposed rule would be 0.81 percent. Using the elasticities shown in the methodology below, this would reduce sales of firearms produced in the United States by \$115,752,911, ammunition by \$24,417,918, and other associated products by \$32,803,547.<sup>55</sup> Based on the 1.92 percent price increase developed from the NSSF survey, the price increase, sales of firearms would fall by \$272,457,090, ammunition by \$57,618,270, and other associated products by \$77,320,856.<sup>56</sup>

In 2023, the industry was responsible for the support of nearly 384,440 full-time equivalent jobs, paying workers \$25,975,133,300 in wages and benefits.<sup>57</sup> Lower sales volumes will result in reduced jobs as manufacturers produce fewer products, distributors need fewer truck drivers, clerks, and warehouse staff and retailers need less service people.

**Table 2**  
**Economic Impact of the Minimum Rule Cost on the Firearms and Ammunition Industry**

Sector	Jobs	Wages	Output
Arms	(254) \$	(22,335,494) \$	(115,752,911)
Ammunition	(51) \$	(4,173,222) \$	(24,417,918)
Hunting Supplies	(95) \$	(8,942,815) \$	(32,803,547)
Wholesale	(21) \$	(2,056,407) \$	(7,770,048)
Retail	(660) \$	(24,456,127) \$	(54,167,097)
Total Direct	(1,081) \$	(61,964,065) \$	(234,911,520)
Supplier	(730) \$	(62,359,269) \$	(209,901,904)
Induced	(881) \$	(57,648,565) \$	(186,486,310)
Total Industry	(2,691) \$	(181,971,899) \$	(631,299,735)

As Table 2 shows, the rule would impact more than just the firearms and related products exporters. Around 400 FTE firearms and associated product manufacturing jobs could be lost due to the higher prices under the proposed rule. The higher prices would also lead to the reduction of just over 680 retail and distribution jobs across the country. Including businesses that supply the industry, and those that depend on re-spending by direct and supplier firm employees, the rule would lead to a total of over 2,690 FTE jobs in America, and almost \$181,971,900 million in lost wages and benefits. On top of this, the American economy would be reduced by \$631,299,730 million.

Based on the higher figure from the survey results, the impact would be even larger. As Table 3 shows, the rule would impact more than just the firearms and related products exporters. Around 940 FTE firearms and associated product manufacturing jobs could be lost due to the higher prices under the proposed rule. The higher prices would also lead to the reduction of just over

<sup>55</sup> This is based on all sales of each product, with the costs spread out across the domestic and international market.

<sup>56</sup> Ibid.

<sup>57</sup> Op. cit., *2023 Economic Impact of the Firearm Industry*.

1,600 retail and distribution jobs across the country. Including businesses that supply the industry, and those that depend on re-spending by direct and supplier firm employees, the rule would lead to a total of just over 7,570 FTE jobs in America, and \$561,132,741 million in lost wages and benefits. On top of this, the American economy would be reduced by \$2,022,816,976 million.

**Table 3**  
**Economic Impact of the Survey Cost of the Rule on the Firearms and Ammunition Industry**

Sector	Jobs	Wages	Output
Arms	(597) \$	(52,572,879) \$	(272,457,090)
Ammunition	(120) \$	(29,402,975) \$	(152,379,879)
Hunting Supplies	(225) \$	(39,577,398) \$	(205,108,469)
Wholesale	(50) \$	(4,843,493) \$	(18,300,937)
Retail	(1,555) \$	(57,601,969) \$	(127,580,769)
Total Direct	(2,546) \$	(183,998,715) \$	(775,827,144)
Supplier	(2,410) \$	(205,949,941) \$	(693,229,497)
Induced	(2,615) \$	(171,184,085) \$	(553,760,334)
Total Industry	(7,571) \$	(561,132,741) \$	(2,022,816,976)

It must be remembered that this is just the impact on the firearms and ammunition industry. Higher prices for firearms and associated products will flow through nearly every other sector of the economy, leading to more job losses.

### A Regulatory Impact Analysis Should Have Been Performed

According to the US Department of Commerce, the United States exported a total of \$1,286,345,300 worth of civilian firearms and related products in 2023.<sup>58</sup> This was down by about 1.0 percent in real terms from the prior year. (Figure 1 on the prior page) This means if the rule were to only cost the industry the minimum amount to be considered a *significant regulatory action*, the cost would be equivalent to 15.5 percent of the total value of all exports to all countries. If it were to cost the amount suggested by the survey, it would be equivalent to 36.8 percent of the total value of exports.

More importantly from a procedural standpoint, the vast majority of civilian firearms and related product exports are destined for countries that are either US treaty partners, or countries that would generally be considered either allies (such as Israel or Ireland) or under the protection of the US military (e.g., Bermuda, Dominica, Bahrain). Looking at just the exports destined for allied countries, the minimum \$200,000,000 cost of the rule would be equal to 23.4 percent of the value of exports. If non-treaty allied countries were to be included in the figure, then

<sup>58</sup> U.S. Import and Export Merchandise Trade Statistics, U.S. Census Bureau, Economic Indicators Division, USA Trade Online at: <https://usatrade.census.gov/index.php?do=login>. Data accessed May 12, 2024.

\$200,000,000 would be equivalent to 194.2 percent of the value of the remaining exports (which would total just \$102,999,570).<sup>59</sup>

**Table 3**  
**Areas to Which US Firearms are Exported (2023)**

<b>Grouping</b>	<b>2023 Exports</b>	<b>Minimum Rule Cost as Percent</b>
Treaty Allies and Their Territories	\$ 854,400,656	23.4%
Defacto Allies and Their Territories	\$ 328,945,102	60.8%
Potential Adversary Nations	\$ 34,184,142	585.1%
Other	\$ 68,815,425	290.6%
<b>Total</b>	<b>\$ 1,286,345,325</b>	<b>15.5%</b>

Of course, the Commerce Department does not list diversion to military adversaries as a reason behind the promulgation of the rule, rather, it suggests that the rule is necessary to reduce diversion of civilian firearms to criminal elements.<sup>60</sup> Based on export data, this is true, as very few firearms or related products are shipped from the United States to non-allied or non-friendly nations.

It is not inconsequential that the reason stated by the Agency for promulgating the rule was to reduce criminal diversion, not for national security reasons.<sup>61</sup> This would confirm that the rule should be subject to the provisions of Executive Order 14094 since it would not be related to national security. Not even a cursory Regulatory Impact Analysis was performed by the Agency, prior to issuing a final rule.

### **Demand Model Methodology**

JDA’s Regulatory Assessment Model (RAM) is an updated version of a multi-market demand model first developed by the American Economics Group (AEG) under contract with Philip Morris. It was completely rebuilt by Dr. Hyeyeon Park in 2001, and its structure was updated by JDA in 2019. The model was presented to the National Conference of State Legislatures, Senior Fiscal Analysts Seminar in Portland Maine, on September 4, 1999, where it was well received. In fact, at that time many state fiscal analysts asked if the model could be made available to them as a forecasting tool. The results from the model were also presented to the Tax Foundation Excise Tax Seminar, held in Jacksonville, Florida, on January 12, 2001, as part of a larger discussion on the economic impact of tobacco taxes.

<sup>59</sup> Note that the cost of the rule does not just apply to exported products but would spread across all products produced and sold by the industry, including products for domestic use. This rule, like all rules, works no differently than a federal tax in economic terms, as it is part of the fixed cost that all manufacturers and distributors involved in the export market in any way would be required to pay.

<sup>60</sup> In the rule the agency stated: *Because those instances of diversion largely involved commercial exports to nongovernmental end users, Commerce tailored the pause to apply only to exports involving non-governmental end users. Leading up to the pause, Commerce reviewed aggregate data showing that a substantial number of firearms recovered by foreign law enforcement agencies were lawfully exported from the United States. For example, a GAO report published in January 2022 identified concerns that the U.S. government is licensing firearm exports that fuel criminal activity and gun violence, enable human rights abuses, and destabilize government institutions in foreign countries, particularly in Central America*

<sup>61</sup> US Code Title 5, Part 1, Chapter 5, Subchapter 2, Section 553, at: <https://www.law.cornell.edu/uscode/text/5/553>

Since then, the RAM model has been modified to work with nearly any product or market. It is designed to measure product sales in a multi-state market structure with differential pricing. The general methodology is a two-stage estimation of the demand equation linked to a non-linear programming model of import and export patterns. Data for the model comes from the 2023 Economic Impact Model of the Firearms and Ammunition Industry, as well as from the US Census Bureau, the Bureau of Economic Analysis, the Bureau of Transportation Statistics Commodity Flow Survey and JDA research. Caliper Corporation was used to estimate distances between states.

Estimates on what sales should be in each state are developed first. In this case, both demand and prices come directly from the Impact model. If cross-border sales were observable, the calculations would be complete; however, since they are not, the model must estimate them through non-linear programming techniques that solve the 51 demand functions simultaneously. The model adjusts the cross-price elasticities between states to balance the actual sales with expected demand.

Demand elasticities are calculated using a logarithmic demand curve with a base of -0.568 for ammunition, -1.020 for firearms, and -0.766 for other products (the elasticity for sporting goods).<sup>62</sup>

Once the linear program model balances, the model can be *shocked* with either new prices or demand values. By rebalancing the model following the shock, it is possible to calculate demand response estimates across all states (as well as cross-border sales changes).

Revenue and job impacts can then be estimated through linear extrapolation.

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<sup>62</sup> See: Gallaway, Michael, et. al., *Short-run and long-run industry-level estimates of US Armington elasticities*, North American Journal of Economics and Finance, March 2003.