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U.S. Department of Commerce
Bureau of Industry and Security
Office of Security
1401 Constitution Ave NW
Washington, DC 20230

RE: Revision of Firearms License Requirements, IRN 0694-AJ46

The Center for American Progress (CAP) is pleased to submit its comment in support of the Department of Commerce's interim final rule (IFR) which strengthens firearm export policy and establishes a new regulatory framework to help protect U.S. national and foreign policy interests. The new regulations to tighten firearm export controls and evaluate foreign policy risks before selling U.S.-made guns overseas will increase accountability and transparency by requiring documentation and analyzing data to identify potential sales that pose a heightened risk of diversion or misuse. By enacting these regulations and committing to their effective implementation, the United States has the opportunity to mitigate the risks posed by irresponsible arms exports while advancing our national security interests.

Trump Administration's Transfer of Authority to Commerce Department

This IFR comes four years after the Trump administration transferred firearm export oversight authority from the State Department to the Commerce Department. Prior to 2020, the State Department maintained oversight authority over transfers of firearms categorized as defense articles in the U.S. Munitions List (USML)¹, regardless of whether those weapons would be transferred to foreign governments or for commercial resale.² In this authority, the State Department determined whether transfers would "strengthen the security of the United States and promote world peace."³ The Commerce Department maintained oversight authority over weapons that may have had uses other than military applications, which appeared in the Commerce Control List (CCL).⁴ Before 2020, provisions in the Arms Export Control Act (AECA)

¹ United States Munitions List, 22 C.F.R. § 121 (1993), available at <https://www.ecfr.gov/current/title-22/part-121>.

² Nathan J. Luker and Michael Vassalotti, "Transfer of Defense Articles: U.S. Sale and Export of U.S.-Made Arms to Foreign Entities," Congressional Research Services, updated March 23, 2023, available at <https://sgp.fas.org/crs/weapons/R46337.pdf>.

³ Arms Export Control, 22 U.S.C. §2751(a) (2010), available at [https://www.govinfo.gov/content/pkg/USCODE-2010-title22/html/USCODE-2010-title22-chap39.htm#:~:text=\(a\)%20Those%20under%20promote%20world%20peace](https://www.govinfo.gov/content/pkg/USCODE-2010-title22/html/USCODE-2010-title22-chap39.htm#:~:text=(a)%20Those%20under%20promote%20world%20peace).

⁴ Commerce Control List, 15 C.F.R. § 774.1 (1996), available at <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-774>.

required the State Department to notify Congress of a proposed sale of firearms (regulated under USML Category I) that exceeded \$1,000,000.⁵

In May 2018, the Trump administration filed a rule in the Federal Register to move the regulatory authority of certain firearm exports, ammunition, and data from the USML to the CCL.⁶ The National Rifle Association (NRA) spoke out in support of the move, claiming it would give American manufacturers “a larger footprint in international markets.”⁷ On March 9, 2020, the Trump administration rule went into effect, moving firearms, close assault weapons, combat shotguns and related ammunition from the USML, under State Department authority, to the CCL, under Commerce Department authority.⁸

This transition, intended to streamline processes and support domestic firearm industries, resulted in a more permissive export framework and led to an increase in U.S. firearms exports, including to countries with poor records of human rights abuses and violence. Based on trade data available at the U.S. Census Bureau, the United States exported over 2.7 million firearms (excluding military firearms) in the four years from 2020 to the end of 2023, valued at around \$1.4 billion, compared to around 2.4 million firearms valued at around \$1 billion in the four years prior.⁹ This marks an increase of 15 percent by volume and over 33 percent in value.¹⁰

These increases are dramatic when it comes to the export of semiautomatic weapons. The United States exported 1.3 million semiautomatic pistols from 2020 to the end of 2023, a 49 percent increase over the previous four-year period.¹¹ Most staggering, the United States

⁵ Arms Export Control Act, 22 U.S.C. § 2776 (c)(1), last accessed June 6, 2024, available at <https://casetext.com/statute/united-states-code/title-22-foreign-relations-and-intercourse/chapter-39-arms-export-control/subchapter-iii-military-export-controls/section-2776-reports-and-certifications-to-congress-on-military-exports> and Military Export Controls, 22 U.S.C. § 2776 subsections (c) and (d) (2009), available at <https://www.govinfo.gov/app/details/USCODE-2009-title22/USCODE-2009-title22-chap39-subchapIII-sec-2776>.

⁶ Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML), 83 FR 24166 (proposed May 24, 2018), available at <https://www.federalregister.gov/documents/2018/05/24/2018-10367/control-of-firearms-guns-ammunition-and-related-articles-the-president-determines-no-longer-warrant>.

⁷ “Trump Administration’s Proposed Rulemakings a Win-Win for America’s Firearms Industry, National Security,” National Rifle Association-Institute for Legislative Action (NRA-ILA), May 25, 2018, available at <https://www.nraila.org/articles/20180525/trump-administration-s-proposed-rulemakings-a-win-win-for-american-firearms-industry-national-security>.

⁸ “Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML),” 85 F.R. 4136 (effective March 9, 2020), available at <https://www.federalregister.gov/documents/2020/01/23/2020-00573/control-of-firearms-guns-ammunition-and-related-articles-the-president-determines-no-longer-warrant>.

⁹ U.S. Census Bureau. Bureau: Economic Indicators Division USA Trade Online, U.S. Import and Export Merchandise trade statistics, retrieved June 5, 2024, from <https://usatrade.census.gov/>

¹⁰ Ibid.

¹¹ Ibid.

exported nearly 200,000 semiautomatic rifles (or autoloading rifles) from 2020 to the end of 2023—a 217 percent increase over the previous four-year period.¹²

The more permissive licensing framework saw an increase in the transfer of firearms later diverted to adversaries, including Russia¹³, as well as transfers to countries mired in violent conflict, human rights abuses, corruption, and other ills. For instance, U.S. Census Bureau data shows the top five importers of U.S. semiautomatic pistols in 2023 were Israel (57,871), Saudi Arabia (24,613), Guatemala (21,557), the Philippines (14,309), and Thailand (11,794)¹⁴—all countries facing significant political violence or human rights abuse. In Thailand, police purchased discounted firearms, while manufacturers like Sig Sauer saturated a vast black market with semiautomatic handguns.¹⁵ In October 2022, a recently fired police officer used a Sig Sauer semiautomatic handgun to kill 36 people, including 23 children and two teachers, in one of Thailand’s worst mass shootings.

Commerce Department’s Export Pause and Policy Review

In response to [increased reporting](#) on these gaps in current policy, as well as advocacy by domestic and international policy experts concerned about how the inadequate scrutiny of firearm export applications undermines U.S. national security and fuels violence around the world, the Commerce Department announced it would reexamine its policies. By the end of October 2023, the Commerce Department had paused some new export licenses while it reviewed and amended its policy.¹⁶ The Department identified a number of instances of lawfully exported firearms that were diverted to individuals and groups who used these weapons to traffic drugs, abuse human rights, and create regional instability. The Department reviewed data from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Government Accountability Office (GAO) and found that a significant portion of these firearms were being trafficked and recovered by foreign law enforcement agencies. In presenting the new rules, the Commerce Department described some of these examples:

“In one case, a firearm that was licensed for export to one country was subsequently diverted to a bordering country and used in a political

¹² Ibid.

¹³ “Revision of Firearms License Requirements,” 89 FR 34680 (May 30, 2024), available at <https://www.federalregister.gov/documents/2024/04/30/2024-08813/revision-of-firearms-license-requirements#:~:text=BIS%20also%20identified%20instances%20of,Russia's%20further%20invasion%20of%20Ukraine>

¹⁴ U.S. Census Bureau. May 17, 2024. Global Market Finder: An Interactive Tool for U.S. Exporters. U.S. Department of Commerce, retrieved May 23, 2024, from <https://www.census.gov/library/visualizations/interactive/export-markets.html>.

¹⁵ Michael Riley, David Kocieniewski, and Eric Fan, “How the US Drives Gun Exports and Fuels Violence Around the World,” Bloomberg, July 24, 2023, available at <https://www.bloomberg.com/graphics/2023-us-made-gun-exports-shootings-violence-sig-sauer/>.

¹⁶ Bureau of Industry and Security United States Department of Commerce, “BIS FAQs Firearms Pause and Review,” October 27, 2023, available at <https://www.bis.doc.gov/index.php/documents/policy-guidance/3374-2023-10-27-bis-faqs-firearms-pause-and-review>.

assassination. In another, a license exception was used to export parts for the unlawful assembly of firearms in Taiwan. BIS also identified instances of firearms and ammunition exports being diverted to Russia via commercial resellers in third countries; such firearms and ammunition may be used to support Russia's further invasion of Ukraine.”¹⁷

While the pause did not apply to exports to close allies, the pause provided the Department of Commerce a period to review its export policies and identify areas of improvement. This review included extensive consultation with other government agencies, civil society, and private industry, leading to the development of the IFR. On April 26, 2024, the Department of Commerce announced policy reforms intended to reduce the risk that U.S. firearms would undermine U.S. foreign policy objectives or contribute to national security concerns overseas.¹⁸ The reforms included in the IFR, which went into effect on May 30, 2024, will enhance Commerce’s licensing policies for firearm exports by increasing scrutiny of firearm exports and restricting exports for commercial use in high-risk countries.

The Interim Final Rule Will Protect U.S. National Security

This rule includes key policy updates and more rigorous standards of review for firearm export applications. The following changes included in the IFR are necessary to evaluate foreign policy risks and prevent violence and instability:

- 1) Reduces the validity of export licenses from four years to one year. Reviewing licenses on a more regular basis will allow the Commerce Department to improve oversight and accountability and better account fluent circumstances and destinations abroad.
- 2) Establishes a formalized interagency working group, chaired by the State Department and tasked with conducting comprehensive risk assessments on a country-by-country basis for transfers to commercial distributors, civilians, and other non-governmental end-users. Based on guidelines presented in a State Department Memorandum, these risk assessments will consider terrorism risks, human rights considerations, state fragility, corruption levels, the inherent nature and capabilities of the firearm in question, as well as historical instances of diversion and misuse.¹⁹

¹⁷ Revision of Firearms License Requirements, 89 F.R. 34680 (April 30, 2024), available at <https://www.federalregister.gov/documents/2024/04/30/2024-08813/revision-of-firearms-license-requirements>.

¹⁸ United States Department of Commerce, “Department of Commerce Restricts Export of All Firearms to Non-Government Entities in High-Risk Countries,” April 26, 2024, available at <https://www.commerce.gov/news/press-releases/2024/04/departments-commerce-restricts-export-all-firearms-non-government>.

¹⁹ U.S. Department of State, “Foreign Policy Guidance on Firearms Export Policy,” April 8, 2024, available at <https://www.bis.gov/sites/default/files/press-release-uploads/2024-04/State%20Guidance%20Memorandum.pdf>.

- 3) The State Department memorandum includes a specific list of 36 countries where officials should assume a presumption of denial for export licenses because they have been deemed a significant risk based on the assessment criteria described above.²⁰ The State Department will review and update the list annually.
- 4) The Commerce Department has created new export classifications to distinguish between semi-automatic and non-semi-automatic weapons, which will allow the Commerce Department to better track and collect data on specific exports.
- 5) The IFR mandates purchase orders and import certifications for export licenses destined for certain high-risk countries to improve transparency around end-users and to better prevent diversion. It also includes requirements for passports or national ID cards for individuals that import firearms (outside of countries that are part of the Wassenaar Agreement for export controls).

Recommendations for Strengthening Firearm Export Policies

The amendments that the Commerce Department has put forward in its interim final rule are an important step in the right direction toward ensuring U.S. firearms do not contribute to instability, violence, and rights abuse abroad. To further strengthen this new rule, the administration should take the following steps:

- 1) President Biden and Vice President Harris have publicly declared their strong support for a domestic ban on assault weapons due to the disproportionate violence and harm that these weapons cause.²¹ To prevent U.S.-made assault weapons and foreign-made assault weapons imported by the U.S. from fueling mass shootings and instability abroad, **the Commerce Department should strengthen the rule by amending Paragraph (b)(3)(ii) to include a presumption of denial to applications of export or reexport of any assault weapons (specifically semiautomatic rifles, pistols, and shotguns now classified as ECCN OA506-8), for nongovernmental end-users.**
- 2) The [State Department's Memorandum on Foreign Policy Guidance for Firearms Export Policy](#) contains guidance for a new interagency working group reviewing license applications, including specific and comprehensive details on risk factors to inform assessments. To ensure the durability of this working group and transparency around its

²⁰ Ibid.

²¹ "Fact Sheet: Vice President Kamala Harris Announces Two Gun Safety Solutions While Continuing Efforts to Keep Schools Safe from Gun Violence," The White House, March 23, 2024, available at: [https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/23/fact-sheet-vice-president-harris-announces-gun-safety-solutions-while-continuing-efforts-to-keep-schools-safe-from-gun-violence/#:~:text=At%20the%20same%20time%20President.and%20manufactures%20special%20immunity%20from](https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/23/fact-sheet-vice-president-harris-announces-gun-safety-solutions-while-continuing-efforts-to-keep-schools-safe-from-gun-violence/#:~:text=At%20the%20same%20time%20President.and%20manufactures%20special%20immunity%20from;); Rebecca Shabad, "Biden talks gun safety at previously scheduled event hours after his son is found guilty on gun charges," NBC News, June 11, 2024, available at: <https://www.nbcnews.com/politics/white-house/biden-deliver-speech-gun-safety-previously-scheduled-event-hours-son-f-rcna156551>.

methodology, **the Commerce Department should elucidate the composition of the working group and include these risk factors in Paragraph (b)(3)(ii) of the final rule.**

- 3) Paragraph (b)(3)(i) of the rule references license review policies for government end users but contains few details about these policies, raising questions about how risk assessments may be made for delivery of firearms that may be used in security sector abuses. To maintain a similar level of rigor for review of licenses for government end users, **the Commerce Department should include similar language to Paragraph (b)(3)(ii), elucidating the composition of a working group and the risk factors that will inform assessments for government end users.**

We appreciate your consideration of these recommendations to improve the interim final rule. If you have any questions about the aforementioned research, analysis, or recommendations, please reach out to Allison McManus, Managing Director of National Security and International Policy, at amcmanus@americanprogress.org, and Nick Wilson, Senior Director for Gun Violence Prevention, at nwilson@americanprogress.org.