

MEMORANDUM

TO Interested Parties

FROM Giffords

DATE UPDATED—July 10, 2019

RE Trump Administration Proposal to Change Oversight of Firearms Exports

Background

Export regulations governing firearms ensure that weapons don't fall into the wrong hands worldwide. Several years ago, the Obama Administration began reforming our export control laws, moving some items off of the [United States Munitions List](#) ("USML"), which is governed by the State Department, and onto the [Commerce Control List](#) ("CCL"), which is governed for export purposes by the Commerce Department. The Obama Administration chose not to move firearms and ammunition, leaving them on the USML within the State Department.

In May 2018, the Trump Administration formally proposed [a regulation](#) that would move most firearms and ammunition—Categories I-III of the USML—to the CCL, shifting their export from the jurisdiction of State to the jurisdiction of Commerce. While the State Department is concerned about foreign policy and human rights, the Commerce Department's central mission is to promote the sale of American products. Consequently, this proposal does not adequately address the potential for violence with American guns including human right abuses, international crime, and terrorism.

The comment period for the Trump Administration's proposed regulation ended in July 2018. In spite of numerous concerns from gun safety, human rights, and arms control groups, the Trump Administration notified Congress of its intention to finalize the regulation in early February 2019. However, Senator Bob Menendez (D-NJ) [put a hold on the regulation](#), and it has not yet been finalized.

Why Change the Oversight of Firearms Exports?

The purported rationale for this change is that the firearms included in Categories I-III of the USML are not military items, even though the use of such firearms in semiautomatic mode is standard for many militaries around the world. At a March 26 hearing about the proposed regulation in the House Foreign Affairs Oversight and Investigations Subcommittee, the minority witness insisted that the change is "not a deregulation," even though the NRA has [said](#) that the proposed regulation would be looser and enable the gun industry to increase sales and profits.

Potential Dangers

Small arms are often the weapons of choice for terrorists, human rights abusers, and other bad actors. If gun exports are moved from the jurisdiction of the State Department to the jurisdiction of the Commerce Department, gun exporters would be subject to less oversight, increasing the risk of future violence from guns falling into the wrong hands. The GAO published [an analysis](#) of the proposed regulation in March 2019

that outlined some of its problems. In drafting the regulation, the Administration has left big gaps, which involve:

- **A Lack of Congressional Oversight.** Currently, Members of Congress receive advance notification of firearms exports of \$1 million or more, and Congress has a chance to limit or stop them. This notification would not occur under the Administration's proposed regulation.
- **Less Rigorous Vetting of Exporters.** The State Department has stronger licensing requirements than the Commerce Department for the pre-screening of exporters.
- **A Lack of Transparency.** The Commerce Department has fewer requirements for public reporting regarding the end use of exported items. This oversight is necessary to ensure that weapons are not being trafficked.
- **Loose Registration Requirements.** Exporters and manufacturers of exported items would no longer be required to register with the State Department, depriving regulators of crucial information they need to enforce the laws.

3D-Printed Guns

The proposed regulation would also enable 3D printing of guns in the United States and abroad. Besides physical guns themselves, the technical data regarding firearms—including the code for 3D printing guns—is currently on the USML. Posting this code online constitutes an export of that technical data.

3D printers are available worldwide. Once the technical data to print firearms is online, it can be accessed anywhere by anyone, making 3D-printed firearms an attractive option for people unable to legally acquire firearms. 3D-printed guns do not have serial numbers, making them untraceable, and some 3D-printed guns can evade the metal detectors used in airports and elsewhere to detect weapons. That raises the potential for a serious act of terrorism.

For several years, the State Department had blocked the online posting of the code, and this decision had been upheld in court. Last year, the State Department abruptly changed its position. That sudden change in position led several state attorneys general to sue, and the court ordered the State Department to continue enforcing its original order prohibiting the code from being posted online. However, if the Administration moves forward with this plan and the proposed regulations are finalized, there will be nothing stopping the online posting of this code, opening it up to anyone around the world.

Solution

The gun industry's desire to sell more weapons is not a good reason to implement a regulatory scheme which would eliminate congressional oversight, allow the 3D-printing of guns in America, sacrifice national security, and enable international crime and terrorism. Congress can pass legislation to stop the proposed regulation: [H.R. 1134](#), the Prevent Crime and Terrorism Act of 2019 introduced by Rep. Norma Torres (D-CA), and [S. 459](#), the Stopping the Traffic in Overseas Proliferation of Ghost Guns Act introduced by Sen. Bob Menendez (D-NJ), would prevent the proposed regulation from taking effect.

UPDATE (July 10, 2019): Amendment #10 to the National Defense Authorization Act introduced by Rep. Norma Torres (D-CA) mirrors the language in H.R. 1134 and would prevent the proposed regulation from taking effect. **Giffords encourages Members to vote YES on Amendment #10.**