



Transfer of Firearms, Ammunition, and Artillery on U.S. Control Lists Raises Proliferation, Terrorism Concerns

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On September 19, 2017, Reuters reported that the Trump administration is in the final stages of deciding about the transfer of three categories of items (Categories 1-3) controlled by the United States Munitions List to the Commerce Control List.¹ Those categories include firearms, ammunition, and artillery. These items are currently controlled by the International Traffic in Arms Regulations, administered by the State Department's Directorate of Defense Trade Controls, but would be moved to the Commerce Control List under the Export Administration Regulations, which is administered by the Commerce Department's Bureau of Industry and Security.² The planned transfers would finish a proposed Obama administration reform under the Export Control Reform Initiative that was halted due to opposition from U.S. federal law enforcement agencies.³ The transfers are being hailed as an export promotion program, but the potential risks to U.S. national security are dire. There are a few key problems with the proposed transfers that the administration should be aware of, which could contribute to the proliferation of U.S. firearms worldwide to nefarious countries and to terrorists:

1. If moved to the Commerce Control List, the firearms categories 1-3 could become eligible, unless action is taken to prevent it, for a licensing exemption available on that list called the Strategic Trade Authorization. The Strategic Trade Authorization, or STA, was created by the Obama administration to loosen export restrictions for NATO and a handful of other U.S. allies. It allows a group of 44 countries to obtain vast amounts of goods without applying for a U.S. export license.
2. The Strategic Trade Authorization could be exploited by front companies or other illicit procurement efforts for a long duration before U.S. export control or enforcement agencies would catch on, allowing proliferators or terrorists to traffic U.S. guns.

¹ Mike Stone and Matt Spetalnick, "Exclusive: Trump Administration Prepares to Ease Gun Export Rules," Reuters. http://www.reuters.com/article/us-usa-trump-weapons-exclusive/exclusive-trump-administration-prepares-to-ease-export-rules-for-u-s-guns-idUSKCN1BU2N8?utm_source=twitter&utm_medium=Social

² The EAR is maintained by the president's annual renewal of the state of emergency under the International Emergency Economic Powers Act (IEEPA) following the expiration in 2001 of the Export Administration Act (EAA).

³ Adam Entous and Evan Perez, "White House Efforts to Relax Gun Exports Face Resistance," *The Wall Street Journal*, May 1, 2012, <https://www.wsj.com/articles/SB10001424052702304868004577378421787264242>

3. Some of these firearms are inherently deadly weapons, such as sniper rifles, that could be used against U.S. troops abroad, trafficked by terrorists, used by nefarious regimes, and proliferated globally, counter to U.S. national security interests.
4. The State Department, which traditionally weighs in on transfers of deadly weapons depending on political and other national security considerations, would relinquish this capability to the Commerce Department, which is often more concerned with export promotion as its mandate.
5. The Commerce Control List is already known to entail less strict enforcement than the United States Munitions List. The Categories 1-3 transfers would propagate that impression in a negative way for those seeking to illegally obtain U.S. firearms. New illicit procurement schemes would almost certainly increase targeting of those goods.
6. The deadliest weapons must be kept out of the hands of U.S. adversaries as a foremost priority over the goal of increasing exports of such items. The potential downsides are not worth the apparent benefits.
7. In addition, the transfers would create more government inefficiency by creating duplication in enforcement responsibilities. The Department of Homeland Security's Homeland Security Investigations handles the majority of firearms related cases already. With the movement of the categories to the Commerce Control List, the Commerce Department's Office of Export Enforcement would also have authority to conduct investigations of illegal firearm export investigations.
8. This transfer would likely cause a shift of Office of Export Enforcement investigative resources away from enforcing against exports of sensitive weapons of mass destruction-related dual-use technology toward simpler firearms cases, thus negatively impacting the U.S. counter-proliferation efforts.

Recommendations⁴

- The administration should review the planned transfers currently under study by an NSC interagency process and either:
 - Prevent them from becoming eligible for the Strategic Trade Authorization license exemption if transferred to the Commerce Control List, or

⁴ For additional recommendations and explanation regarding issues with the Obama export control reforms, please see: Andrea Stricker with David Albright, *U.S. Export Control Reform: Impacts and Implications for Controlling the Export of Proliferation-Sensitive Goods and Technologies: A Policy Document for the New President and Congress*, Institute for Science and International Security, May 2017, <http://isis-online.org/isis-reports/detail/u.s.-export-control-reform-impacts-and-implications/20>

- Leave them on the United States Munitions List and under the purview of the State Department, as well as under the Department of Homeland Security's chief enforcement jurisdiction.