

Congress of the United States

Washington, DC 20515

July 1, 2024

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

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

Dear Secretary Raimondo:

We are writing regarding the U.S. Department of Commerce's (Commerce) ongoing reforms to the process of approving and overseeing assault weapons and small arms exports. We applaud and appreciate the recent steps taken to amend the Department's licensing policy for exports of firearms, which recognized the serious and devastating consequences of U.S. firearms exports to other countries.¹ While these changes represent a promising step, we are concerned that the changes fail to include key reporting requirements and do not go far enough to prevent assault weapons from ending up in the hands of dangerous actors around the world. While we continue to support returning all firearms export controls to the State Department,² we urge the Commerce Department to incorporate the recommendations in this letter as part of its policy review in the interim, in order to strengthen export controls and end-use checks and to crack down on unnecessary export promotion of weapons used in brutal killings abroad.

This past January, we wrote to Commerce urging the Department to incorporate eleven recommendations into its review of its assault weapons export policy.³ In April, the Department of Commerce's Bureau of Industry and Security (BIS) released the product of this review, an interim final rule (IFR) "amending the Department's licensing policy for exports of firearms, ammunition, and related components under its jurisdiction."⁴ The IFR makes some improvements to Commerce's arms exports processes and policies, particularly cracking down on firearm exports to non-government

¹ U.S. Department of Commerce, "Department of Commerce Restricts Export of All Firearms to Non-Government Entities in High-Risk Countries," press release, April 26, 2024, <https://www.commerce.gov/news/press-releases/2024/04/departments-commerce-restricts-export-all-firearms-non-government>; Federal Register, "Revision of Firearms License Requirements," April 30, 2024, <https://www.federalregister.gov/documents/2024/04/30/2024-08813/revision-of-firearms-license-requirements>.

² Letter from Senator Warren and Representatives Castro, Torres, and Goldman to Secretary Raimondo, September 6, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.09.06%20Letter%20from%20Sen.%20Warren,%20Rep.%20Castro.pdf>.

³ Letter from Senators Warren and Durbin and Representative Castro and Torres, January 23, 2024, p. 2, <https://www.warren.senate.gov/imo/media/doc/2024.01.23%20Letter%20to%20Commerce%20re.%20arms%20export%20pause.pdf>.

entities in some high-risk countries.⁵ However, we were extraordinarily disappointed to see that Commerce left eight out of eleven of our recommendations partially or completely unfulfilled.⁶ Moreover, the rule falls short in three key ways: the rule lacks adequate oversight of the transfer of weapons to governmental end-users, it fails to regulate or ban the commercial resale of assault weapons outside the United States, and it does not commit to releasing firearms licensing approval data—which Commerce has delayed releasing in the past and which is one of the key ways Commerce can be held accountable.

The Surge in Weapons Exports Approved by Commerce

The IFR comes after firearm exports and license approvals surged following the Trump administration’s decision in March 2020 to transfer oversight of firearm exports from the State Department to Commerce.⁷ After this decision, the dollar value of firearm export license approvals shot up by 30 percent,⁸ profiting gun manufacturers while putting civilians at risk around the world. This alarming spike was followed by a nearly two-year period in which Commerce did not release data on assault weapon export license approvals.⁹ Following pressure to release this data,¹⁰ in the fall of 2023, the Department published new data that again revealed a marked increase in license approvals: from March 9, 2020 (the date of the Trump Administration’s transfer) to June 30, 2023, Commerce approved nearly 25,000 firearms export licenses (for a 93.6% approval rate) with a total value of \$34.7 billion¹¹ — representing a more than \$1 billion increase in the annual value of license approvals compared to the time period when the State Department controlled these approvals.¹²

Assault weapons are deadly, military-style weapons intended for “quick, efficient killing”¹³ that should not be available to the public at home or overseas. Yet, as more and more firearms have left American shores, reports abound of U.S.-manufactured weapons being used in horrific killings across the globe. In Thailand in October 2022, a recently fired police officer entered a nursery school and killed 36

⁴ U.S. Department of Commerce, “Department of Commerce Restricts Export of All Firearms to Non-Government Entities in High-Risk Countries,” press release, April 26, 2024, <https://www.commerce.gov/news/press-releases/2024/04/departments-commerce-restricts-export-all-firearms-non-government>.

⁵ *Id.*

⁶ See Appendix A.

⁷ Letter from Senators Warren and Durbin and Representative Castro and Torres, January 23, 2024, p. 2, <https://www.warren.senate.gov/imo/media/doc/2024.01.23%20Letter%20to%20Commerce%20re.%20arms%20export%20pause.pdf>.

⁸ Bloomberg, “The US Is Pushing Guns on a Country It Labels Violent and Corrupt,” Monte Reel, August 10, 2023, <https://www.bloomberg.com/graphics/2023-us-gun-violence-border-crisis-guatemala/#xj4y7vzkg>.

⁹ Bureau of Industry and Security, “Quarterly Statistics on Licensing and Exports for USML to CCL Regulatory Changes,” <https://web.archive.org/web/20210804182619/https://www.bis.doc.gov/index.php/statistical-reports/ecr-analysis>.

¹⁰ Letter from Senator Warren and Representatives Castro, Torres, and Goldman to Secretary Raimondo, September 6, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.09.06%20Letter%20from%20Sen.%20Warren,%20Rep.%20Castro.pdf>.

¹¹ Forum on the Arms Trade, “Transfer of Arms and Ammunition (USML Cat I-III) to Commerce,” <https://www.forumarmstrade.org/catitooiii.html>.

¹² See Forum on the Arms Trade, “Transfer of Arms and Ammunition (USML Cat I-III) to Commerce,” <https://www.forumarmstrade.org/catitooiii.html>; Cato Institute, “2022 Arms Sales Risk Index,” Jordan Cohen and A. Trevor Thrall, July 18, 2023, <https://www.cato.org/policy-analysis/2022-arms-sales-risk-index>.

¹³ Brady, “STOP THE ASSAULT,” <https://www.bradyunited.org/resources/campaigns-toolkits/stop-the-assault#:~:text=Assault%20weapons%20refers%20to%20semi,fire%20and%20high%20muzzle%20velocity.>

people. In addition to a sugar-cane machete, this officer used an American-made Sig Sauer pistol to carry out this attack.¹⁴ In March 2022—the month with the most semiautomatic firearms exports from the U.S. to El Salvador in the previous four years—gang violence in that country killed a record 62 people.¹⁵ In Tamaulipas, Mexico, despite involvement by state police in two massacres in 2019 and 2021, thousands of U.S.-produced Sig Sauer pistols and rifles were shipped to state forces in Tamaulipas.¹⁶ There is also evidence to suggest that soldiers and civilian militias in Israel are using American-made semiautomatic weapons to perpetrate shocking violence against Palestinian civilians.¹⁷ Since October 2023, armed Israeli settlers, often under the watch of soldiers, have carried out over 700 attacks on Palestinians, killing at least 17 people.¹⁸

Commerce’s Pause and Our Recommendations for Improved Export Controls

We wrote to you in September 2023, urging Commerce to revise its approach,¹⁹ and in October 2023, the Department of Commerce paused new licenses for assault weapons exports in order to review its export policies and procedures.²⁰ During this pause, we again wrote to you urging Commerce to strengthen export controls and end-use checks and to crack down on unnecessary export promotion of weapons used in brutal killings abroad.²¹ We provided eleven recommendations to make significant changes to its export license approval and monitoring policies, including capping the number of exports of firearms to civilian buyers and the number of exported firearms that can be covered by any single export license.²²

On April 26, 2024, the Department of Commerce’s Bureau of Industry and Security (BIS) released an interim final rule (IFR) “amending the Department’s licensing policy for exports of firearms, ammunition, and related components under its jurisdiction.”²³ The IFR makes some improvements to Commerce’s arms exports processes and policies, particularly cracking down on firearm exports to

¹⁴ Bloomberg, “How the US Drives Gun Exports and Fuels Violence Around the World,” Michael Riley, David Kocieniewski and Eric Fan, July 24, 2023, <https://www.bloomberg.com/graphics/2023-us-made-gun-exports-shootings-violence-sig-sauer/>.

¹⁵ Just Security, “U.S. Guns Are Fueling Violence in Central America, Here’s How to Help Stop the Arms Flow,” Nate Smith, February 1, 2023, <https://www.justsecurity.org/84954/u-s-guns-are-fueling-violence-in-central-america-heres-how-to-help-stop-the-arms-flow/>.

¹⁶ Stop US Arms to Mexico, “The Iron River of Weapons to Mexico: Its Sources and Contents,” report, June 11, 2024, p. 10, <https://stopusarmstomexico.org/iron-river/>.

¹⁷ Human Rights Watch, “West Bank: Israel Responsible for Rising Settler Violence,” April 17, 2024, <https://www.hrw.org/news/2024/04/17/west-bank-israel-responsible-rising-settler-violence>.

¹⁸ *Id.*

¹⁹ Letter from Senator Warren and Representatives Castro, Torres, and Goldman to Secretary Raimondo, September 6, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.09.06%20Letter%20from%20Sen.%20Warren,%20Rep.%20Castro.pdf>.

²⁰ Bureau of Industry and Security, “Firearms Pause & Review: Frequently Asked Questions,” October 27, 2023, <https://www.bis.doc.gov/index.php/documents/policy-guidance/3374-2023-10-27-bis-faqs-firearms-pause-and-review/file>.

²¹ Letter from Senators Warren and Durbin and Representatives Castro and Torres to Secretary Gina Raimondo, January 23, 2024, <https://www.warren.senate.gov/imo/media/doc/2024.01.23%20Letter%20to%20Commerce%20re.%20arms%20export%20pause.pdf>.

²² *Id.*

²³ U.S. Department of Commerce, “Department of Commerce Restricts Export of All Firearms to Non-Government Entities in High-Risk Countries,” press release, April 26, 2024, <https://www.commerce.gov/news/press-releases/2024/04/departments-commerce-restricts-export-all-firearms-non-government>.

non-government entities (organizations and individuals that may use firearms to expand transnational drug operations, spark regional conflicts, commit acts of terrorism, abuse human rights, destabilize governments, or harm communities)²⁴ in some high-risk countries.²⁵ Among the improvements are “the creation of additional category numbers to better track semiautomatic weapons exports, a reduction of the general license period to one year (down from four years), consideration of additional risk factors in licensing decisions, presumption of denial of licenses to non-government end-users for select countries, and some additional document requirements in certain cases.”²⁶ Furthermore, the rule includes the designation of all firearms as crime control items,²⁷ an important step since “Crime Control” is linked to screening for human rights violations committed by governments.²⁸

Critical Weaknesses in the Commerce Department’s New Rule

Yet, this rule falls far short of what is needed to address our concerns about the huge increase in weapons exports. Indeed, it only fulfills three out of eleven of our January recommendations (see Appendix A).²⁹ Overall, the rule falls short in three key areas.

- First, the rule lacks adequate oversight of the transfer of weapons to governmental end users. The IFR “lists non-binding criteria for all U.S. gun export licenses, but focuses primarily on weapons exports to non-governmental end users.”³⁰ Likewise, 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,³¹ but establishes no similar oversight body for transfers to governmental end users, nor references any obligation to make “full use of existing, comprehensive sources such as the State Department’s International Vetting and Security Tracking-cloud system to review license applications and identify problematic end users,”³² per our recommendation. Without safeguarding against and thoroughly vetting the threats of human rights abuses by governmental end users, the rule functionally allows for a “free flow of weapons to military and police forces in many countries.”³³

²⁴ Federal Register, “Revision of Firearms License Requirements,” p. 98, <https://www.federalregister.gov/d/2024-08813/p-98>.

²⁵ U.S. Department of Commerce, “Department of Commerce Restricts Export of All Firearms to Non-Government Entities in High-Risk Countries,” press release, April 26, 2024, <https://www.commerce.gov/news/press-releases/2024/04/departement-commerce-restricts-export-all-firearms-non-government>.

²⁶ Forum on the Arms Trade, “Transfer of Arms and Ammunition (USML Cat I-III) to Commerce,” <https://www.forumarmstrade.org/catitooiii.html>.

²⁷ Federal Register, “Revision of Firearms License Requirements,” § 742.7(a)(5), <https://www.federalregister.gov/documents/2024/04/30/2024-08813/revision-of-firearms-license-requirements>.

²⁸ Bureau of Industry and Security, “Human Rights Frequently Asked Questions (FAQs),” March 2023, p. 1, <https://www.bis.doc.gov/index.php/documents/pdfs/3239-2023-bis-human-rights-faqs/file>.

²⁹ See Appendix A.

³⁰ Stop US Arms to Mexico, “Stop US Arms to Mexico Welcomes New Rule for Gun Exports to Non-state Buyers,” John Lindsay-Poland, April 29, 2024, <https://stopusarmstomexico.org/new-gun-exports-rule-more-to-be-done/>.

³¹ Department of State, “Foreign Policy Guidance on Firearms Export Policy,” April 8, 2024, <https://www.bis.gov/sites/default/files/press-release-uploads/2024-04/State%20Guidance%20Memorandum.pdf>.

³² See Appendix A, Recommendation # 4.

³³ Stop US Arms to Mexico, “Stop US Arms to Mexico Welcomes New Rule for Gun Exports to Non-state Buyers,” John Lindsay-Poland, April 29, 2024, <https://stopusarmstomexico.org/new-gun-exports-rule-more-to-be-done/>.

- Second, the rule does not explore all comprehensive options to restrict the export of assault weapons to non-governmental end users. Contrary to our recommendations, the rule does not cap exports to civilian buyers,³⁴ nor the number of exported firearms that can be covered by any single export license.³⁵ The rule does not even consider less comprehensive options, such as banning the commercial resale of assault weapons outside the United States, which can lead to firearms ending up in the hands of users that Commerce was unable to identify before approving the license.³⁶
- Finally, the rule does not commit to releasing firearms export data in any shape or form—which is extremely concerning given Commerce’s nearly two-year delay in publishing updated annual data between July 2021 to June 2023.³⁷ Furthermore, we recommended that Commerce encourage countries of particular concern to fully participate in the Bureau of Alcohol, Tobacco, Firearms and Explosives’ (ATF) eTrace system to better track the use of U.S.-sourced firearms in criminal activity, yet the IFR includes no such provision.³⁸ The public deserves to know whether their government is rubber stamping approvals of assault weapons licenses and transfers that end up in the hands of malicious actors that threaten U.S. national security and foreign policy interests. Transparency regarding export approvals data and how American firearms are used once abroad is one of the key ways Commerce can be held accountable.

Recommendations to Improve Commerce’s Weapons Export Controls

Along with revisiting the eight unfulfilled or only partially fulfilled recommendations,³⁹ Commerce should put in place a presumption of denial for all semiautomatic firearms to all civilian users, including semiautomatic pistols. Commerce should ban the commercial resale of assault weapons outside the United States. And Commerce should consider further restrictions to the License Exception Baggage (BAG) license exception,⁴⁰ including requiring individuals who temporarily export up to three firearms in their luggage to return with them to the United States—a measure that would help prevent the proliferation of weapons into unwanted hands.

Commerce should also commit to at least annually and publicly releasing data to gauge whether its newest policy is fulfilling its intended goal of restricting exports to high-risk countries.⁴¹ In particular,

³⁴ See Appendix A, Recommendation #8.

³⁵ See Appendix A, Recommendation #9.

³⁶ The Reload, “Leaked Document: Biden Admin Looks to Impose Civilian Gun Restrictions on Israel, Ukraine Through American Exports,” Stephen Gutowski, December 21, 2023, <https://thereload.com/leaked-document-biden-admin-looks-to-impose-civilian-gun-restrictions-on-israel-ukraine-through-american-exports/>.

³⁷ Letter from Senator Warren and Representatives Castro, Torres, and Goldman to Secretary Raimondo, September 6, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.09.06%20Letter%20from%20Sen.%20Warren,%20Rep.%20Castro.pdf>.

³⁸ See Appendix A, recommendation #5.

³⁹ See Appendix A.


⁴⁰ § 740.14; Federal Register, “Revision of Firearms License Requirements,” <https://www.federalregister.gov/d/2024-08813/p-86>.


⁴¹ U.S. Department of Commerce, “Department of Commerce Restricts Export of All Firearms to Non-Government Entities in High-Risk Countries,” press release, April 26, 2024, <https://www.commerce.gov/news/press-releases/2024/04/department-commerce-restricts-export-all-firearms-non->

Commerce should release updated export licensing figures, including numbers of licenses and firearms, type of firearm (semiautomatic versus fully automatic), dollar value and license duration (for each country, type of end user, and ECCN), and also work to make it easier to compare ECCN data with the 10-digit Harmonized Tariff Schedule (HTS) number used by U.S. customs.⁴² Before the transfer of oversight from State to Commerce, the relevant statute required a detailed report to Congress on the export of semiautomatic firearms⁴³ — accordingly, Commerce should also publish this data.

National security must come before commerce. During his 2020 presidential campaign, President Biden promised to “ensure that the authority for firearms exports stays with the State Department” and “reverse [the] proposed rule by President Trump.”⁴⁴ The most recent BIS rule, despite making some progress, indicates that firearms exports still will not face sufficient scrutiny in the Department of Commerce’s hands. We continue to support returning all firearms export controls to the State Department,⁴⁵ and in the interim, urge the Commerce Department to incorporate these recommendations into its IFR so that unnecessary export promotion of weapons is not used in brutal killings abroad.

Sincerely,


Elizabeth Warren
United States Senator


Joaquin Castro
Member of Congress

government.

⁴² International Trade Commission, “HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTS),” <https://www.usitc.gov/glossary/term/harmonized-tariff-schedule-united-states-hts>.

⁴³ 22 U.S.C. 2415.

⁴⁴ Politico, “Dems want Biden to reverse Trump’s foreign firearms sales rule,” Alexander Ward and Quint Forgey, February 12, 2021, <https://www.politico.com/newsletters/national-security-daily/2021/12/02/dems-want-biden-to-reverse-trumps-foreign-firearms-sales-rule-495297>.

⁴⁵ Letter from Senator Warren and Representatives Castro, Torres, and Goldman to Secretary Raimondo, September 6, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.09.06%20Letter%20from%20Sen.%20Warren.%20Rep.%20Castro.pdf>.

APPENDIX

Appendix A.

<p>1. Recognizing in a formal policy statement that firearms are the only lethal weapons on the Commerce Control List and asserting that it is a foreign policy interest of the U.S. to restrain the global proliferation of these weapons.</p>	<p>Only partially addressed in the regulatory change. The IFR acknowledges the “lethality” of firearms,⁴⁶ but it does not state that firearms are the only lethal weapon on the CCL. In general, the IFR and State Department Guidance Memorandum focus almost entirely on diversion of exports to non-governmental end users, thus excluding from its focus the lethality of exported firearms when used by government forces that violate human rights or collude with criminal organizations.</p>
<p>2. Publicly posting requirements for end-use certification of exported semi-automatic firearms and committing to pre- and post-shipment transparency and end-use monitoring.</p>	<p>Only partially addressed in the regulatory change. The publicly posted rule includes a disclosure of end use certification requirements for non-governmental end users, which includes a certificate and - in some cases of individual end users - copy of a passport.⁴⁷</p>
<p>3. Adding “crime control” to the list of criteria systematically considered by Commerce prior to approving a firearms export license.</p>	<p>Done.</p>

⁴⁶ Federal Register, “Revision of Firearms License Requirements,” April 30, 2024, p. 21, <https://www.federalregister.gov/d/2024-08813/p-21>.

⁴⁷ Federal Register, “Revision of Firearms License Requirements,” April 30, 2024, p. 113, <https://www.federalregister.gov/d/2024-08813/p-113>.

<p>4. Taking advantage of existing, comprehensive sources (such as the State Department’s International Vetting and Security Tracking-cloud system) when reviewing license applications to identify problematic proposed end users.</p>	<p>Only partially addressed in the regulatory change. Both the new country list (and presumption of denial for some categories of potential buyers) and the new interagency process should raise the prominence of political analysis in approval of export licenses. But it is not clear how rigorously this will be applied across the board, and there is no interagency group for government-government transfers. The State Department’s INVESTc system vets governmental end users of security assistance,⁴⁸ and while State will chair the inter-agency committee considering export licenses, there is no reference at all to the INVESTc system or any obligation to draw on its information for governmental end users in license applications.⁴⁹ This is consistent with the new rule’s focus on non-governmental end users.</p>
<p>5. Encouraging countries of particular concern to fully participate in the Bureau of Alcohol, Tobacco, Firearms and Explosives’ (ATF’s) eTrace system to better track the use of U.S.-sourced firearms in criminal activity and facilitating programs to develop such capacities in countries of concern.</p>	<p>Not covered in the new rules.</p>
<p>6. Reducing export license validity from four years to one year, particularly for destinations of concern.</p>	<p>Done.</p>

⁴⁸ Department of State, “Introduction to Leahy Vetting Policy,” https://www.state.gov/wp-content/uploads/2020/06/PP410_INVEST_v2.1.pdf.

⁴⁹ Department of State, “Foreign Policy Guidance on Firearms Export Policy,” April 8, 2024, p. 10, <https://www.bis.gov/sites/default/files/press-release-uploads/2024-04/State%20Guidance%20Memorandum.pdf>.

<p>7. Systematically reviewing licenses approved for export to countries importing very high numbers of firearms and confirming the identities of end users of these weapons. If the Department cannot verify the end user, it should consider revoking or amending the licenses.</p>	<p>Only partially addressed in the regulatory change. Commerce will systematically review licenses to non-governmental end users in some countries (such as Guatemala)⁵⁰ but does not include other countries importing high numbers of firearms such as Mexico, Israel, and Thailand. Furthermore, if Commerce is unable to confirm the identity of an end user, the rule does not contain any parameter that would make this ground to deny the application.</p>
<p>8. Capping exports of firearms to civilian buyers, and aggressively enforcing policies prohibiting transfers to security forces with an elevated risk of human rights abuse.</p>	<p>The IFR puts no caps in place on exports to civilian buyers. The risk of human rights abuses by governments (and their security forces) is dealt with obliquely and discussed in the regulations as "misuse."⁵¹</p>
<p>9. Capping the number of exported firearms that can be covered by any single export license, particularly for destinations of concern, and distinguishing between firearms destined for security forces of trusted allies versus civilians or commercial retailers.</p>	<p>The IFR puts no caps in place on the number of exported firearms covered by any single license.</p>

⁵⁰ Federal Register, "Revision of Firearms License Requirements," April 30, 2024, p. 102, <https://www.federalregister.gov/d/2024-08813/p-102>.

⁵¹ Federal Register, "Revision of Firearms License Requirements," April 30, 2024, p. 21, <https://www.federalregister.gov/d/2024-08813/p-21>.

<p>10. Ending Commerce’s involvement in the SHOT Show and other firearms export promotion activities that can lead to, and even enable, gun violence and death abroad.</p>	<p>Commerce has ended its involvement in the SHOT Show, but it is not codified in the IFR– and thus will be at the discretion of Commerce.</p>
<p>11. Using its authority under the Export Control Reform Act of 2018 to issue all policy changes stemming from the review process as final rules to ensure prompt implementation.</p>	<p>Commerce issued an IFR, rather than a proposed rule. It goes into effect on May 30, 2024.</p>