



March 2019

EXPORT CONTROLS

State and Commerce Should Share Watch List Information If Proposed Rules to Transfer Firearms are Finalized

Accessible Version

GAO Highlights

Highlights of [GAO-19-307](#), a report to congressional requesters

Why GAO Did This Study

The U.S. government implements an export control system to manage risks associated with exporting sensitive items while facilitating legitimate trade. State currently controls the export of most firearms, artillery, and ammunition. Regulatory changes proposed by State and Commerce would transfer this responsibility for many of these items to Commerce, which implements export controls under different legal and regulatory authorities. The proposed changes are part of a larger export control reform effort since 2010 to transfer control of less sensitive items from State to Commerce.

GAO was asked to review the proposed changes to export controls of firearms, artillery, and ammunition. This report assesses (1) the volume and value of commercial export license applications State reviewed for these items in fiscal years 2013-2017, (2) how certain export controls differ between State and Commerce, and (3) what is known about the resource implications for State and Commerce due to the proposed transfer. GAO reviewed the proposed rules and related laws and regulations; analyzed data and documents related to licensing, end-use monitoring, and staff resources; and interviewed agency officials.

What GAO Recommends

GAO recommends that if the proposed regulatory changes become final, State and Commerce develop a process for sharing State's internal watch list with Commerce to enhance oversight of firearms, artillery, and ammunition exports. State and Commerce agreed with GAO's recommendations.

View [GAO-19-307](#). For more information, contact Kimberly Gianopoulos at (202) 512-8612 or GianopoulosK@gao.gov.

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State and Commerce Should Share Watch List Information If Proposed Rules to Transfer Firearms Are Finalized

What GAO Found

The Department of State (State) reviewed approximately 69,000 commercial export license applications for firearms, artillery, and ammunition valued at up to \$45.4 billion during fiscal years 2013 to 2017. About two-thirds of these applications were for firearms, and the majority involved the export of non-automatic and semi-automatic firearms, which are among the items proposed for transfer from State to Department of Commerce (Commerce) control.

Examples of Firearms and Ammunition Proposed to Transfer from Department of State to Department of Commerce Control



Source: Bureau of Alcohol, Tobacco, Firearms and Explosives. | GAO-19-307

GAO identified several differences in Commerce's and State's export controls including those related to registration, licensing, end-use monitoring, and congressional notification that, according to the agencies, would apply to firearms, artillery, and ammunition proposed for transfer. Some of these differences are due to varying requirements in applicable laws and regulations. For example, the law requires manufacturers, exporters, and brokers to register with State for items controlled by State but not for items controlled by Commerce. Additionally, while Commerce and State both screen parties to licenses against relevant watch lists, Commerce officials said they do not have direct access to State's internal watch list, which contains derogatory information from past screening of licenses for firearms, artillery, and ammunition exports. State and Commerce officials stated that, while they have held some discussions, they have not established a process for sharing watch list information. Without access to State's watch list, Commerce may lack critical information to effectively screen parties to exports of firearms and related items. State and Commerce also both have end-use monitoring programs to confirm the legitimacy of end-users but some differences exist. For example, State relies on embassy staff to conduct end-use monitoring whereas Commerce relies primarily on several officers positioned overseas specifically for this purpose. In addition, a statutory requirement to notify Congress of proposed firearms exports over \$1 million would no longer apply to firearms that transfer from State to Commerce, according to Commerce officials.

According to the proposed rules and agency officials, the proposed transfer, if finalized, would result in a decline in licenses and revenues for State and an increase in licenses for Commerce, but the precise extent of these changes is unknown. State estimates that the transfer would result in a decline in revenue from registration fees but officials stated it is difficult to predict the extent of this decline. Commerce officials stated that they expected their licensing and enforcement workload to increase as a result of the transfer, if finalized, but they believe they have sufficient staff resources available to absorb the increase.

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Abbreviations

AECA	Arms Export Control Act of 1976, as amended
BIS	Bureau of Industry and Security
CAD	Computer Aided Design
CCL	Commerce Control List
Commerce	Department of Commerce
DDTC	Directorate of Defense Trade Controls
DHS	Department of Homeland Security
DRL	Bureau of Democracy, Human Rights, and Labor
DOD	Department of Defense
DOJ	Department of Justice
EAA	Export Administration Act of 1979, as amended
EAR	Export Administration Regulations
ECO	Export Control Officer
ECRA	Export Control Reform Act of 2018
FBI	Federal Bureau of Investigation
ICE	Immigration and Customs Enforcement
ISN	Bureau of International Security and Nonproliferation
ITAR	International Traffic in Arms Regulations
STA	Strategic Trade Authorization
State	Department of State
USML	U.S. Munitions List

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March 1, 2019

Congressional Requesters,

The U.S. government implements an export control system to manage risks associated with exporting sensitive items while facilitating legitimate trade. The Department of State (State) currently controls the commercial export of firearms, artillery, and ammunition, which represented approximately \$7.5 billion in U.S. exports over fiscal years 2013 to 2017.¹ As part of its export controls, State, among other things, registers manufacturers, exporters, and brokers of controlled items, licenses and monitors export transactions, and notifies Congress of high value exports. Regulatory changes proposed by State and Commerce, if finalized, would transfer responsibility for controlling certain firearms, artillery, and ammunition to Commerce, which implements export controls under different legal and regulatory authorities. Under the proposed rules, the items to be transferred to Commerce control include non-automatic and semi-automatic firearms, various firearms parts and components, artillery manufactured between 1890 and 1919, and certain types of ammunition. State would maintain export controls on fully-automatic firearms and modern artillery, as well as ammunition and some of the parts and components for such items.

The proposed rules are part of a larger effort since 2010 to modernize the U.S. export control system and transfer less sensitive items from State to Commerce control. According to State's and Commerce's proposed rules, the purpose of the transfer is to limit the items that State controls to those items that provide the United States with a critical military or intelligence advantage or are inherently for military use. The State proposed rule notes that the items planned for transfer to Commerce do not meet this standard, including many items which are widely available in retail outlets in the United States and abroad.

You asked us to review the proposed changes to export controls of firearms, artillery, and ammunition. This report assesses (1) the volume and value of commercial export license applications State reviewed for these items in fiscal years 2013-2017, (2) how certain export controls

¹This figure represents the actual export value as reported by the Census Bureau.

differ between State and Commerce, and (3) what is known about the resource implications for State and Commerce due to the proposed transfer.

To assess the volume of export license applications for firearms, artillery, and ammunition that State reviewed during fiscal years 2013 to 2017, we obtained data from the interagency export licensing database, USXPORTS, and interviewed State officials. We analyzed the data to describe the number and reported value of export license applications, the items to be exported, and the destination country, among other characteristics. We assessed these data and found them to be sufficiently reliable for the purpose of conducting these analyses. To analyze how certain export controls differ between State and Commerce, we reviewed the departments' proposed rules, relevant laws and regulations, agency guidance, and annual reports related to State's and Commerce's export controls. We also interviewed officials from Commerce, State, the Department of Homeland Security (DHS), and the Department of Defense (DOD). In addition, we analyzed State's end-use monitoring data, which we assessed and found to be sufficiently reliable for characterizing State's end-use checks of licenses for firearms, artillery, and ammunition. To assess what is known about the resource implications for State and Commerce due to the proposed transfer, we held discussions with State and Commerce officials, and reviewed State's export license data, annual budget documents, and other agency reports. For more details on our scope and methodology, see appendix I.

We conducted this performance audit from February 2018 to March 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

U.S. Export Control System

The U.S. government implements an export control system to manage risks associated with exporting sensitive items and ensure that legitimate trade can still occur. The export control system is governed by a complex set of laws, regulations, and processes that multiple federal agencies

administer to ensure compliance. State and Commerce each play a role in the U.S. export control system. Historically, State has controlled the export of military items, known as defense articles and services, while Commerce has controlled the export of less sensitive items with both military and commercial applications, known as dual-use items.² In addition to firearms, artillery, and ammunition, State controls the export of items such as tanks, fighter aircraft, missiles, and military training, which it lists on the U.S. Munitions List (USML). Commerce controls the export of dual-use items such as computers, radars, and telecommunications equipment, which it lists on the Commerce Control List (CCL).³

State and Commerce both control the export of items within their jurisdictions by requiring a license or other authorization to export a controlled item; vetting the parties associated with export transactions; monitoring the end-use of exports and other compliance activities; and supporting law enforcement agencies' investigations of possible violations of export control laws and regulations. Generally, unless a license exemption⁴ applies, exporters submit a license application to State if their items are controlled on the USML or to Commerce if they are controlled on the CCL to receive export approval.⁵ As part of the application review process, State and Commerce consult with other agencies, including DOD. Additionally, offices within Commerce, DHS, and the Department of Justice (DOJ) investigate potential violations of export control laws and regulations, and conduct enforcement activities.

State and Commerce Export Control Lists

Items identified on the State and Commerce export control lists are subject to different laws and regulations. The Arms Export Control Act of

²State uses the term "defense articles and services" to refer to the items it controls, while Commerce uses the term "items." For purposes of this report we sometimes refer to both as "items."

³Commerce's export control jurisdiction also includes basic commercial items that generally do not require a U.S. Government authorization unless destined to a prohibited end use, end-user, or to an embargoed or sanctioned destination. Commerce controls also include a small number of military items.

⁴State uses license "exemption" and Commerce uses license "exception" in instances in which a controlled item may be exported without the need for an approved license.

⁵Exporters may also require a license from Commerce for exports involving prohibited end uses, end-users, and embargoed or sanctioned destinations.

1976, as amended, (AECA) provides the statutory authority to control the export of defense articles and services, which the President delegated to the Secretary of State.⁶ State’s International Traffic in Arms Regulations (ITAR) implement this authority and identify the specific types of items subject to control in the USML.⁷ The USML is comprised of 21 categories of items, each with multiple sub-categories, encompassing defense items such as firearms, missiles, and aircraft.⁸ Firearms, artillery, and ammunition represent the first three categories of the USML (see table 1).⁹ Additional information on the 21 categories of the USML is presented in appendix II. Within State, the Directorate of Defense Trade Controls (DDTC) is responsible for implementing controls on the commercial export of these items.

Table 1: The U.S. Munitions List (USML) Categories I, II, and III

USML Category	Category title	Examples of items controlled
I	Firearms, Close Assault Weapons, and Combat Shotguns	Small arms up to .50 caliber, including non-automatic, semi-automatic, and fully automatic firearms. Silencers, mufflers, sound and flash suppressors, military-grade riflescopes, parts and components, and technical data and defense services related to the above items.
II	Guns and Armament	Larger guns over .50 caliber, whether towed, airborne, self-propelled, or fixed, including, but not limited to, howitzers, mortars, cannons, recoilless rifles, and grenade launchers. Related engines, tooling, test, and evaluation equipment, components, parts, accessories, and technical data and defense services for the above items.
III	Ammunition/Ordnance	Ammunition/ordnance for the articles in Categories I and II of this section. Handling equipment, tooling equipment, components, parts, accessories, attachments, and technical data and defense services for the above items.

Source: GAO analysis of 22 C.F.R. § 121.1. | GAO-19-307

Note: We refer to U.S. Munitions List Categories I, II, and III as “firearms, artillery, and ammunition.” The Export Control Reform Act of 2018 (ECRA) provides the statutory authority for Commerce to control the export of less sensitive military items, dual-use items, and basic commercial items.¹⁰ Commerce’s Export

⁶See 22 U.S.C. § 2778 and Exec. Order 13,637 (Mar. 8, 2013).

⁷22 C.F.R. Parts 120–130 contain the International Traffic in Arms Regulations.

⁸22 C.F.R. § 121.1, *The United States Munitions List*.

⁹Throughout this report we refer to USML Categories I-III as “firearms, artillery, and ammunition.”

¹⁰The Export Control Reform Act of 2018 was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and replaced the lapsed Export Administration Act of 1979 (EAA), as amended, as the principal legal authority for the Export Administration Regulations. See Pub. L. No. 115-232, Title XVII, Subtitle B, Aug. 13, 2018, classified at 50 U.S.C. § 4801 et seq.

Administration Regulations (EAR), which contain the CCL, implement this authority.¹¹ The CCL classifies less sensitive military items, dual-use items, and basic commercial items in 10 categories, such as Nuclear & Miscellaneous, Electronics, and Telecommunications, and in 5 product groups. Appendix II shows the 10 categories and five groups of the CCL. Commerce’s Bureau of Industry and Security (BIS) is responsible for implementing these export controls (see table 2 for a summary of the legal and regulatory frameworks for State’s and Commerce’s export controls).

Table 2: State Department and Commerce Department Export Control Systems’ Legal and Regulatory Frameworks

Agency/office	Mission	Legal authority	Implementing regulations	Control list
State Department’s Directorate of Defense Trade Controls	Regulates and enforces controls on the export of defense articles and services	Arms Export Control Act, as amended	International Traffic in Arms Regulations	United States Munitions List
Commerce Department’s Bureau of Industry and Security	Regulates and enforces controls on the export of dual-use items	Export Control Reform Act of 2018 ^a	Export Administration Regulations	Commerce Control List

Source: GAO. | GAO-19-307

^aThe Export Control Reform Act of 2018 was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and replaced the lapsed Export Administration Act of 1979 (EAA), as amended, as the principal legal authority for the Export Administration Regulations. See Pub. L. No. 115-232, Title XVII, Subtitle B, Aug. 13, 2018, classified at 50 U.S.C. § 4801 et seq.

Proposed Transfer of Certain Firearms from State to Commerce Jurisdiction

In May 2018, State and Commerce published proposed rules in the Federal Register to request public comments on the proposed transfer of certain items in USML Categories I, II, and III (firearms, artillery, and ammunition) to the CCL.¹² According to State and Commerce’s proposed rules, the purpose of the transfer is to limit the items that State controls to those that provide the United States with a critical military or intelligence

¹¹See 15 C.F.R. Part 774.

¹²For the State Department’s proposed rule, see *International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III*, 83 Fed. Reg. 24,198 (May 24, 2018). For the Commerce Department’s proposed rule, see *Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control under the United States Munitions List (USML)*, 83 Fed. Reg. 24,166 (May 24, 2018).

advantage or, in the case of weapons, are inherently for military end use. According to the proposed rules, items that do not meet these criteria would be removed from State's export control jurisdiction and moved to Commerce's jurisdiction. The proposed rules state that some, but not all, of the firearms, artillery, and ammunition currently controlled for export by State would transfer to Commerce control. The items proposed for transfer to the CCL include non-automatic and semi-automatic firearms up to .50 caliber, and non-automatic shotguns with a barrel length less than 18 inches; as well as parts, components, accessories, attachments, and ammunition for these firearms and shotguns, among other items.¹³ According to the proposed rules, if finalized, State would continue to control fully-automatic firearms, shotguns, and modern artillery; silencers, components, parts, and accessories specially designed for automatic firearms and shotguns; and specific types of ammunition, including ammunition for automatic firearms.¹⁴ The proposed rules would also make a variety of conforming changes to the USML and CCL to accommodate the transferred items.¹⁵

The proposed transfer of firearms, artillery, and ammunition is part of an ongoing effort to reform the export control lists by reviewing the USML categories and transferring certain items considered less sensitive to the CCL.¹⁶ Since the export control reform initiative was first announced in 2010 with the objective of modernizing the export control system, State and Commerce have finalized various rulemakings that transferred certain items from USML Categories IV through XXI to Commerce's

¹³Under the proposed rules, parts and components that are common to both semi-automatic and fully-automatic firearms would transfer to Commerce, while those that are used only in fully-automatic firearms would remain with State.

¹⁴As defined in 22 C.F.R. § 121.1, a firearm is a weapon not over .50 caliber (12.7 mm), which is designed to expel a projectile by the action of an explosive or which may be readily converted to do so. State's proposed rule would incorporate a definition of a fully automatic firearm or shotgun, which is any firearm or shotgun which shoots, is designed to shoot, or can readily be restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. See 83 Fed. Reg. 24,198 at 24,202 (May 24, 2018).

¹⁵For example, if finalized, the proposed rules would renumber and eliminate certain CCL numbers to align with the transferred items.

¹⁶State's proposed rule notes that all references to the USML are to the list of AECA defense articles that are controlled for purposes of export or temporary import pursuant to the ITAR, and not to the list of AECA defense articles on the United States Munitions Import List that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives for purposes of permanent import under its regulations at 27 C.F.R. § 447.

control.¹⁷ Firearms, artillery, and ammunition are the last three USML categories proposed to undergo regulatory changes under export control reform.¹⁸

In accordance with the AECA, the President must notify Congress of items proposed for removal from the USML and describe the nature of any controls to be imposed on the items, and may not remove the items until 30 days after providing such notice.¹⁹ State and Commerce published the proposed rules in the Federal Register on May 24, 2018, opening a 45-day public comment period that ended on July 9, 2018. After reviewing public comments, State and Commerce submitted final rules to the Office of Management and Budget for regulatory review on November 7, 2018. The required 30-day congressional notification period pursuant to the AECA began on February 4, 2019, according to a State official.

State Reviewed about 69,000 Export License Applications Valued at up to \$45.4 Billion for Firearms, Artillery, and Ammunition in Fiscal Years 2013-2017

State reviewed 68,690 export license applications for firearms, artillery, and ammunition with a potential value of up to \$45.4 billion during fiscal years 2013 to 2017.²⁰ The number of export license applications for firearms, artillery, and ammunition remained relatively constant from fiscal years 2013 to 2017, averaging 13,738 annually, even as the total number

¹⁷Commerce labeled these transferred items as the “600 series” of the CCL.

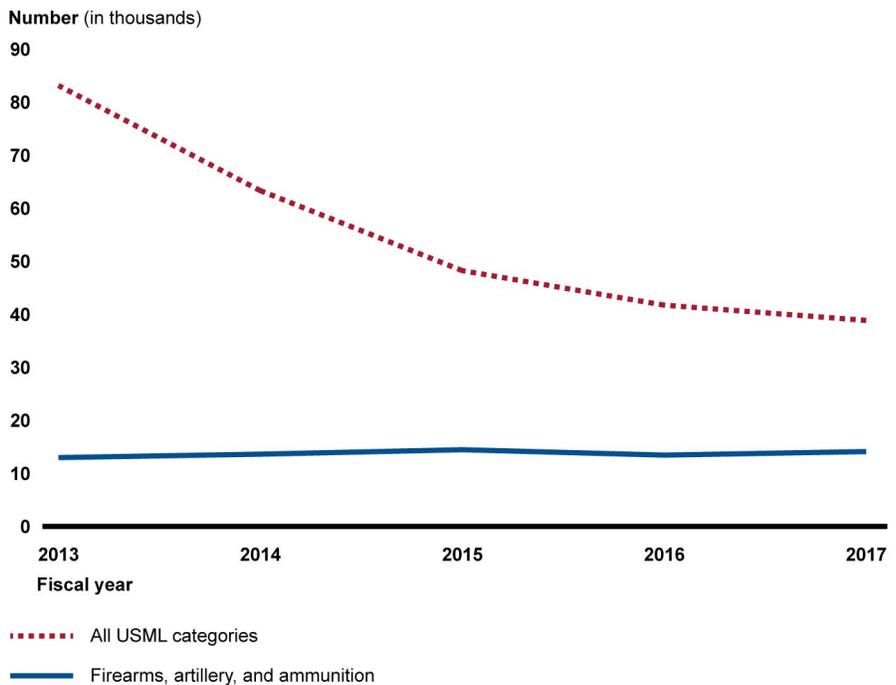
¹⁸GAO reported in 2012 on the potential impacts of these reforms on export control compliance and enforcement. See GAO, *Export Controls: U.S. Agencies Need to Assess Control List Reform’s Impact on Compliance Activities*, [GAO-12-613](#) (Washington, D.C.: April 23, 2012); and GAO, *Export Controls: Proposed Reforms Create Opportunities to Address Enforcement Challenges*, [GAO-12-246](#) (Washington, D.C.: Mar. 27, 2012).

¹⁹22 U.S.C. § 2778(f)(1).

²⁰\$45.4 billion reflects the total value of export license applications for firearms, artillery, and ammunition reviewed by State over fiscal years 2013 to 2017 and does not reflect the actual export value for this time period. According to State officials, State does not approve all applications and, of those it does approve, exporters may use the export license over multiple years and may not fully utilize the potential value of the export license.

of licenses reviewed by State declined as the export control reform process transferred items from State to Commerce control (see fig. 1). Firearms, artillery, and ammunition increased from about 16 percent of all license applications reviewed by State in fiscal year 2013 to about 36 percent in 2017.

Figure 1: Volume of Export License Applications Reviewed by the Department of State for All U.S. Munitions List (USML) Categories and for Firearms, Artillery, and Ammunition (Categories I-III) Only, Fiscal Years 2013-2017



Source: GAO analysis of State Department data. | GAO-19-307

Note: All USML categories reflect the total number of export license applications publicly reported by the Department of State, and include certain license types that were not applicable to GAO's analysis of the number of export license applications for firearms, artillery, and ammunition.

State processes export license applications for permanent exports, temporary exports and imports, and certain types of agreements.²¹ During

²¹An example of a temporary export is the export of a U.S. defense article to a foreign country for a trade show or for marketing purposes, which is then returned to the United States. An example of a temporary import is the import of a U.S. defense article to be repaired by a U.S. company and then returned to the foreign owner. Examples of agreements include licenses to manufacture U.S. firearms overseas or to provide certain types of technical assistance to foreign militaries in the use of firearms.

fiscal years 2013 to 2017, about 91 percent of export license applications for firearms, artillery, and ammunition were for permanent exports, about 8 percent for temporary exports and imports, and about 2 percent for agreements.²²

State can take various actions on the export license applications it receives, including approving the license, approving with conditions, returning without action,²³ and denying the license. For fiscal years 2013-2017, State approved 87 percent of the number of export license applications for firearms, artillery, and ammunition, returned without action 12 percent, and denied 1 percent.²⁴ State can approve an application but place conditions on the export license, such as limiting the validity period or prohibiting certain types of intermediaries in the export transaction. State can also return without action export license applications that are missing information or that it is otherwise unable to review, and can deny, revoke, suspend, or amend a license for foreign policy or national security reasons.²⁵

About Two-Thirds of Category I-III Export License Applications Were for Firearms in Fiscal Years 2013-2017

About two-thirds of the export license applications for firearms, artillery, and ammunition that State reviewed during fiscal years 2013-2017 were for firearms and related items controlled under Category I of the USML

²²These percentages include both original applications and amendments to each type of export license, and may not sum to 100 percent due to rounding. ITAR requires amendments for administrative changes or corrections for typographical errors. During fiscal years 2013 to 2017, about 6 percent of the export license applications for firearms, artillery, and ammunition were amendments.

²³According to State, “return without action” is a denial without prejudice, typically due to missing information or documentation, or because State does not have confidence in some aspect of the transaction.

²⁴In terms of license value, State approved about \$25.4 billion, or approximately 56 percent, of the \$45.4 billion in export license applications for firearms, artillery, and ammunition over fiscal years 2013 to 2017.

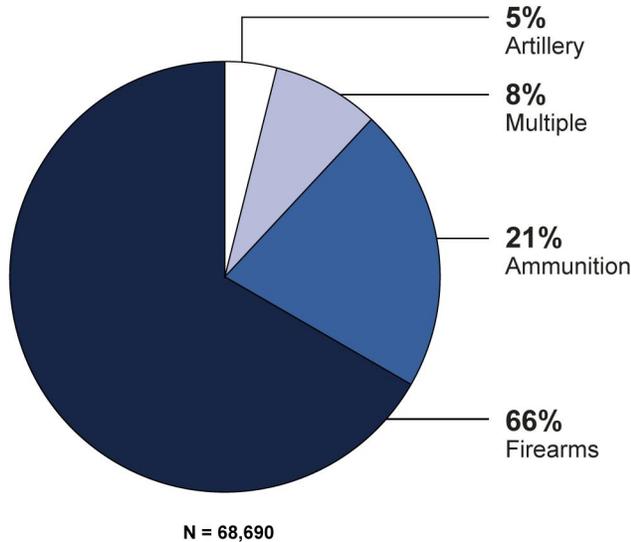
²⁵Per 22 C.F.R. § 126.7, additional grounds for denying a license to applicants include violations of regulations or export agreements, ineligibility to contract with the U.S. government, being the subject of a complaint or having been convicted of violating certain criminal statutes, debarment or suspension from a U.S. government agency, failure to include information expressly required on a license application, and being subject to sanctions under other relevant U.S. laws.

(see fig. 2). Of the applications for these items, about 57 percent involved non-automatic or semi-automatic firearms—most of which are proposed to transfer to the CCL under Commerce control—and about 4 percent involved fully-automatic firearms—which would remain on the USML under State control.²⁶ The remainder of export license applications for Category I items included other types of firearms such as combat shotguns, firearm attachments such as silencers and riflescopes, firearm parts and components, and technical data and defense services related to these items. The proposed rules state that some of these items would transfer to Commerce control while others would remain under State control.²⁷

²⁶Non-automatic and semi-automatic firearms are controlled in USML Sub-Category I(a) and fully-automatic firearms are controlled in USML Sub-Category I(b). Our analysis of State's export license applications data excludes amendments to export license applications as they are not associated with a USML Sub-Category in State's licensing data since an amendment cannot change the type of item specified for export in the original application. Of the 57 percent of Category I export license applications that involved non-automatic or semi-automatic firearms and the 4 percent that involved fully-automatic firearms, about 1 percent involved both types of firearms.

²⁷Due to limitations with the level of detail included in the licensing data we analyzed, we were unable to estimate the exact number of export license applications for firearms, artillery, and ammunition that will transfer from State to Commerce control if the proposed rules are finalized.

Figure 2: Percentage of Export License Applications for Firearms, Artillery, and Ammunition (U.S. Munitions List Categories I-III), Fiscal Years 2013-2017



Source: GAO analysis of State Department data. | GAO-19-307

Note: The category “Multiple” includes export license applications for items controlled in more than one category of United States Munitions List Categories I, II, and III.

As shown in figure 2, export license applications for Category II artillery were about 5 percent of all Category I-III license applications from fiscal years 2013 through 2017. According to State, under the proposed rules, modern artillery, their ammunition, and certain related parts and components would remain under State’s control.²⁸ Category III ammunition represented about 21 percent of the Category I-III export license applications. As stated in the State and Commerce proposed rules, USML Category III would be revised to specifically list the ammunition that it controls, which would include ammunition that has only or primarily military applications. Generally, ammunition used in the non-automatic and semi-automatic firearms that are proposed to transfer to Commerce control would also transfer.²⁹ About 8 percent of the export license applications involved items controlled in more than one category of USML Categories I, II, and III, which are shown as “Multiple” in figure 2.

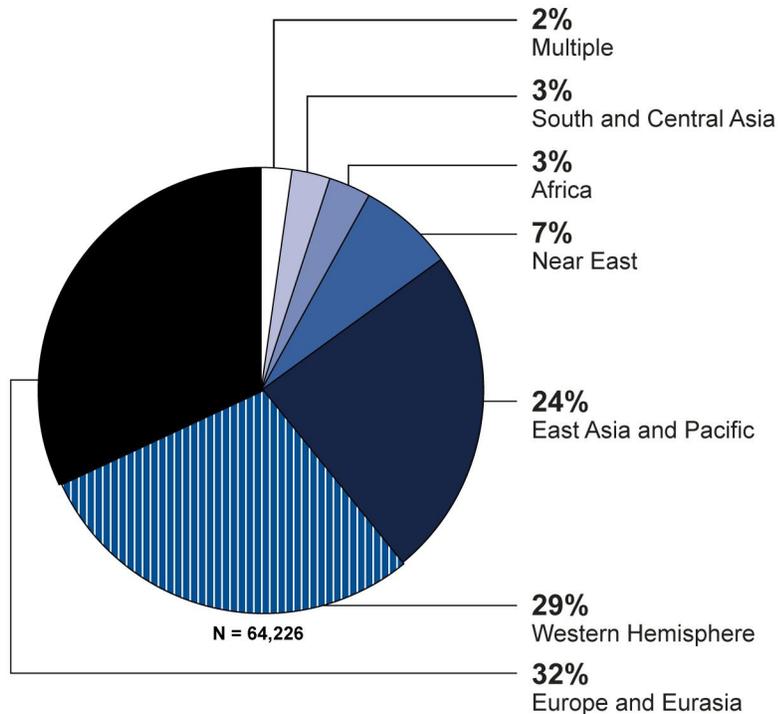
²⁸Under the proposed rules, artillery manufactured between 1890 and 1919 and military flame throwers with an effective range less than 20 meters, both of which are currently controlled under USML Category II, would transfer to Commerce.

²⁹According to State, ammunition otherwise controlled by Commerce would be State controlled when it is belted or linked.

Volume of Category I-III Export License Applications Varied by Geographic Region of End-User in Fiscal Years 2013-2017

In fiscal years 2013 to 2017, 32 percent of license applications for the export of firearms, artillery, and ammunition were intended for end-users in countries in Europe and Eurasia, 29 percent to the Western Hemisphere, 24 percent to East Asia and the Pacific, 7 percent to the Near East, 3 percent to Africa, 3 percent to South and Central Asia, and 2 percent to multiple countries (see fig. 3). Export license applications for firearms, artillery, and ammunition during fiscal years 2013 to 2017 included applications for end-users spanning 189 countries and territories, yet the top 20 countries represented about 70 percent of the total number of applications (see fig. 4).

Figure 3: Firearms, Artillery, and Ammunition Export License Applications by Geographic Region, Fiscal Years 2013-2017

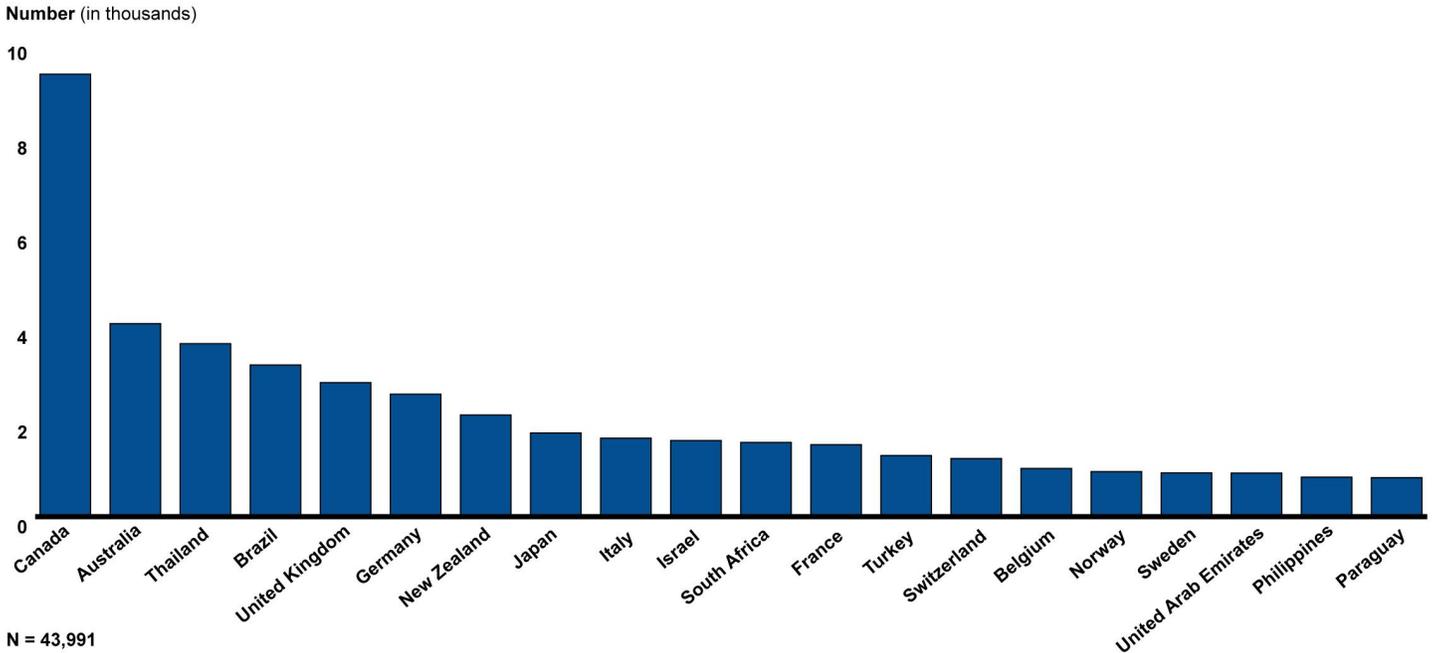


Source: GAO analysis of State Department data. | GAO-19-307

Note: This analysis excludes amendments to export license applications. Amendments are not associated with a destination country in State's licensing data since an amendment cannot change the destination country or countries specified in the original application. The category "Multiple"

includes export license applications for end-users in multiple countries, which may be located in one or more geographic regions.

Figure 4: Top 20 Countries of Export License Applications for Firearms, Artillery, and Ammunition, Fiscal Years 2013 to 2017



Source: GAO analysis of State Department data. | GAO-19-307

Note: This analysis excludes amendments to license applications as amendments are not associated with a destination country. It also excludes license applications where the destination country includes more than one country.

State and Commerce Export Controls Have Several Different Requirements, Including for Registration, Licensing, End-Use Monitoring, and Congressional Notification

State’s and Commerce’s export controls are guided by different laws, regulations, or policies that have several different requirements for registration, licensing, end-use monitoring, congressional notification, public reporting, and enforcement. The AECA requires manufacturers, exporters, and brokers of items on the USML to register with State whereas there is no registration requirement in the law for manufacturers, exporters, and brokers of items on the CCL under Commerce’s jurisdiction. Differences also exist in how State and Commerce screen export license applications and in their license requirements. For

example, State and Commerce rely on different internal watch lists to screen applicants. In addition, according to Commerce, certain exports that currently require a State license would not require a Commerce license once transferred to Commerce's jurisdiction. State and Commerce also conduct end-use monitoring of selected controlled exports differently. For example, State relies primarily on embassy staff to conduct end-use checks and Commerce relies primarily on several export control officers based overseas for this responsibility. In addition, congressional notification and public reporting requirements that under current law apply to firearms on the USML would not be applicable if they are transferred to the CCL. Finally, there are some differences in enforcement of export control laws, such as different maximum fines for civil violations, depending on whether the item is controlled by the ITAR under State's jurisdiction or controlled by the EAR under Commerce's jurisdiction.

The Law Requires Registration for Items on the USML but Not for Items on the CCL

The AECA requires manufacturers, exporters, and brokers of defense articles or services listed on the USML to register annually with State's Directorate of Defense Trade Controls (DDTC) whereas there is no requirement in the law for registration for manufacturers, exporters, and brokers of items on the CCL.³⁰ State reported having 13,083 registrants across all 21 USML categories in fiscal year 2017. Registration, which requires a fee payment of at least \$2,250 per year,³¹ is generally a precondition for obtaining a State export license, unless State grants an exception to a manufacturer or exporter, or a broker is eligible for an exemption. According to a State document, registration provides important information on the identity and location of defense companies and conveys management responsibility for compliance with export control laws. Those registering must disclose any foreign ownership or affiliations and certify that they have not been indicted, otherwise charged

³⁰22 U.S.C. § 2778(b)(1)(A). See also State regulations 22 C.F.R. Part 122 regarding the registration requirement for manufacturers and exporters and 22 C.F.R. Part 129 regarding the registration requirement for brokers. Brokering activities are defined in 22 C.F.R. § 129.2 as "any action on behalf of another to facilitate the manufacture, export, permanent import, transfer, re-export, or retransfer of a U.S. or foreign defense article or defense service, regardless of its origin."

³¹The fee increases depending on the number of licenses registrants have submitted to State.

with, or convicted of export control violations and other crimes.³² Manufacturers and exporters whose entire product line transfers to the CCL would no longer have to register, according to Commerce's proposed rule, while those that manufacture or export any items that remain on the USML, would continue to register with DDTC.³³

Differences Exist in State and Commerce Applicant Screening Processes and License Requirements

Both Agencies Review Export License Applications Using an Interagency Process

State's and Commerce's processes for reviewing export license applications involve opportunities for other Departments to review applications. While DDTC has primary responsibility for reviewing State's commercial export license applications, other bureaus within State, as well as DOD, also review certain applications, depending on the defense article, defense service, or the destination country. Commerce export license applications also involve an interagency review that includes State, DOD, and the Department of Energy, depending on the item to be exported.³⁴ Both departments have a process for resolving disagreements among the reviewing bureaus or agencies on the disposition of the

³²See 22 C.F.R. § 120.27 for a list of the applicable criminal statutes.

³³According to State officials, State will continue to require brokers to register with DDTC for certain items moving to Commerce, including non-automatic and semi-automatic firearms. All items on the United States Munitions Import List are defense articles under the AECA, and the permanent import control of these items has been delegated to the Attorney General. See 22 U.S.C. 2778(a)(1); Exec. Order 13,637 (2013); 27 C.F.R. § 447.21.

³⁴According to State and Commerce officials, the Department of Energy is not involved in reviewing State's license applications for firearms, artillery, and ammunition and would not be part of initial reviews of Commerce license applications for such items if the proposed transfer is finalized. However, Energy would be part of Commerce's interagency review process when departments involved in the initial application reviews disagree.

application.³⁵ According to State officials, as part of the interagency review process for Commerce licenses, State has generally reviewed applications for items that have previously moved from the USML to the CCL and would continue to do so for items that would transfer to the CCL under the proposed rules.³⁶

Moreover, DOD officials told us that DOD intends to review Commerce export license applications for these items during the interagency review process, if the proposed transfer is implemented. This would represent a change from DOD's current practice to generally not review State's firearms license applications. DOD officials told us that if the proposed rules are finalized, they believed it is prudent to begin reviewing Commerce license applications for items that would transfer under the proposed rules, at least initially.

State and Commerce Use Different Watch Lists to Screen Parties to the Export Transaction

State and Commerce each maintain their own internal watch lists to screen all parties identified on license applications. A watch list match would trigger further review of the license and ultimately can result in a denial of the license in some cases. State and Commerce also use watch lists as a means of targeting transactions for possible end-use checks to verify legitimacy of end-users of controlled exports. Both departments' watch lists include any derogatory information they collect internally from their past screening and end-use monitoring of licenses. For example, if information is identified raising questions about the legitimacy of a party to a license during the application review, that information would be used to update the watch list to inform future license application reviews.

³⁵For example, Executive Order 12981 established an interagency review process for reaching a decision on Commerce license applications in which reviewing departments disagree. An Operating Committee with representatives of the Departments of Commerce, State, Defense, and Energy and non-voting representatives of the Joint Chiefs of Staff and the Nonproliferation Center of the Central Intelligence Agency reviews all such license applications. A dissenting department can escalate a license decision to an Advisory Committee on Export Policy at the Assistant Secretary level, followed by an Export Administration Review Board at the Secretary level and, ultimately, to the President for a final decision to approve or deny the license. Exec. Order 12,981 (1995).

³⁶The Bureau of International Security and Nonproliferation would have lead responsibility at State for reviewing Commerce licenses for items the proposed rules identify for transfer from the USML to the CCL, as it currently does for items previously transferred from the USML to the CCL, according to State officials.

State's and Commerce's watch lists also include information from automated databases maintained by other U.S. agencies as well as information from law enforcement agencies and the intelligence community.³⁷ State's watch list contains over 200,000 entries, including sensitive details related to ongoing and previous law enforcement activities, according to State officials.

According to Commerce officials, because State has been responsible for export controls of firearms, artillery, and ammunition, its internal watch list is also more likely than Commerce's to include derogatory information collected from past screening and end-use monitoring related to exports of these items. However, Commerce does not have access to State's watch list, according to State and Commerce officials. These officials noted that a Commerce licensing officer can ask State to screen an applicant with State's watch list on a case-by-case basis, although such checks are not done routinely.

State and Commerce officials told us that, in anticipation of the transfer of firearms, artillery, and ammunition to Commerce's responsibility, the two departments are engaged in ongoing discussions to potentially share State's watch list with Commerce.³⁸ According to State officials, these discussions involve determining which specific watch list information Commerce would need and State is able to share, depending on the source of the information. State and Commerce also have to resolve the sharing and updating of information using different information technology infrastructures, according to department officials. As of February 2019, the departments had not reached agreement or established a documented process to achieve the goal of sharing watch list information before implementation of the proposed transfer would occur, according to State and Commerce officials.

³⁷State and Commerce also rely on the "Consolidated Screening List," a publicly available file that consolidates other screening lists including: State's "Debarred List," which identifies parties denied export privileges; State's "Nonproliferation Sanctions List," which identifies parties that have been sanctioned under various statutes; multiple Department of the Treasury lists related to sanctions; and Commerce's "Parties of Concern" lists. Parties of Concern lists include: Commerce's "Denied Persons List," which identifies parties denied export privileges; Commerce's "Unverified List," which identifies end-users who Commerce has been unable to verify in prior transactions; and Commerce's "Entity List," which identifies foreign parties that are prohibited from receiving some or all controlled items unless the exporter first receives a license.

³⁸Discussions also involve the possibility of sharing information from Commerce's watch list with State, according to State officials.

Information sharing is supported by a policy statement included in the ECRA. The statement says that among other factors, the “export control system must ensure that it is transparent, predictable, and timely, has the flexibility to be adapted to address new threats in the future, and allows seamless access to and sharing of export control information among all relevant United States national security and foreign policy agencies.”³⁹ Without access to State’s watch list, if the proposed rules are finalized, Commerce may lack critical information needed to effectively screen license applicants for firearms and related exports and target possible cases for end-use monitoring to ensure that these exports are used as intended and by legitimate end-users.

Both Agencies Screen License Applications for Human Rights Concerns but Statutory Prohibition Applies Differently

Both State and Commerce screen license applications for human rights concerns, but the federal law that prohibits exports to the governments of certain foreign countries on human rights grounds applies differently to items under State’s jurisdiction than under Commerce’s. Under Section 502B of the Foreign Assistance Act of 1961, as amended, in general, “no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.”⁴⁰ For this provision, “security assistance” is defined in part as any license in effect with respect to the export to or for the armed forces, police, intelligence, or other internal security forces of a foreign country of (1) any defense articles or defense services licensed for export under section 38 of the AECA, or (2) items listed under the 600 series of the CCL.⁴¹ Licenses under Commerce’s jurisdiction generally may not be issued for items defined as “crime control and detection instruments and equipment” to a country, the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.⁴² For items under Commerce’s jurisdiction, the

³⁹50 U.S.C. § 4811(8).

⁴⁰22 U.S.C. § 2304(a)(2).

⁴¹22 U.S.C. § 2304(d)(2)(C).

⁴²22 U.S.C. § 2304(a)(2). In addition, the United States Conventional Arms Transfer Policy, updated in a Presidential Memorandum on April 19, 2018, also provides a basis for screening applications based on human rights. The policy states that it will “continue to meet the requirements of all applicable statutes, including ... the Foreign Assistance Act.” The policy also includes human rights among the considerations to be accounted for in arms transfer decisions.

Commerce proposed rule specifies that concern for human rights is a regulatory reason for denying a license for firearms and ammunition under Commerce's Export Administration Regulations (EAR).⁴³

Within State, the Bureau of Democracy, Human Rights and Labor (DRL) is primarily responsible for screening export license applications to ensure that exports do not involve parties with human rights concerns. According to DRL officials, the bureau reviews applications for exports to specific countries where human rights concerns exist and prioritizes applications for firearms exports because they are often associated with human rights abuses committed by government police and military units. The officials noted, however, that State rarely denies an export license based solely on human rights concerns. If firearms are transferred to Commerce's responsibility, DRL will continue to have the primary role in screening license applications for human rights as part of the Commerce-led interagency review process, according to DRL officials. For Commerce license applications, however, State's position would be weighed together with the positions of Commerce, DOD, and Energy, according to Commerce officials.⁴⁴ By contrast, for State export license applications, State alone makes the final determination, according to State officials.

State Has Different Requirements than Commerce for End-Users to Certify They Will Not Re-Export Certain Licensed Exports

State and Commerce have different end-user certification requirements. State's export control regulations require that for certain items, applicants provide a written certification from end-users that they will not re-export, resell, or otherwise dispose of the commodity outside of the country listed on the license.⁴⁵ This requirement generally applies to all items on the USML that are designated as Significant Military Equipment, including

⁴³This proposed rule states that it would apply the regional stability licensing policy set forth in 15 C.F.R. § 742.6(b)(1)(i) to the items, including firearms and ammunition, controlled for regional stability reasons. The regulation states that licenses will be reviewed on a case-by-case basis to determine whether the transaction is contrary to the national security or foreign policy interests of the United States, including the foreign policy interest of promoting the observance of human rights throughout the world.

⁴⁴These officials further explained that Commerce's interagency review process would then apply if there is disagreement among the departments' positions. While Energy would not be involved in the initial review of firearms licenses, it is one of the agencies involved in the interagency review.

⁴⁵22 C.F.R. § 123.10.

firearms, and ammunition.⁴⁶ In contrast, Commerce generally does not require end-user certification for items on the CCL but does require it when it has not verified the legitimacy of end-users and may also impose this requirement on a case-by-case basis.⁴⁷ Written end-user certification provides additional assurance and accountability that end-users will comply with the terms and conditions of the license, according to State officials. It also is a deterrent and provides documentary evidence that can be later used in court, if necessary, according to an official from Immigration and Customs Enforcement (ICE).

The Law Requires Disclosure of Political Contributions, Fees and Commissions for Items on the USML but Not for Items on the CCL

The AECA states that the Secretary of State shall require reporting on political contributions, gifts, commissions, and fees paid or offered, or agreed to be paid by any person in connection with a commercial sale of an item listed on the USML to or for the armed forces of a foreign country or an international organization.⁴⁸ State's export control regulations also require license applicants to disclose certain payment of political contributions, fees, and commissions for certain sales of defense articles and defense services.⁴⁹ This requirement applies to exports of \$500,000

⁴⁶In most instances, State has waived this requirement for applications with a quantity of less than 50 of certain types of firearms and less than 100,000 rounds of ammunition.

⁴⁷See 15 C.F.R. § 748.11. In addition, pursuant to 15 C.F.R. § 750.7(d), for all Commerce licenses, it is the licensee's responsibility to communicate in writing the specific license conditions to the parties to whom those conditions apply, and this is an export control record that must be retained under the EAR as specified in 15 C.F.R. § 762.2(b)(27). Commerce licenses also include the following standard condition to help keep licensed transactions within their authorized scope: "Unless limited by a condition set forth below, the export, reexport or transfer (in-country) authorized by this license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. The applicant is responsible for informing the other parties identified on the license, such as ultimate consignees and end-users, of the license's scope and of the specific conditions applicable to them. BIS has granted this license in reliance on representations the applicant made in the license application, letters of explanation, and other documents submitted."

⁴⁸22 U.S.C. § 2779(a)(2).

⁴⁹These regulations (22 C.F.R. Part 130) implement Section 39(a) of the AECA (22 U.S.C. § 2779), which requires the U.S. Secretary of State to report on political contributions, gifts, commissions, and fees paid, offered, or agreed to be paid by any person in connection with a sale of defense articles or defense services to or for the armed forces of a foreign country or international organization in order to solicit, promote, or otherwise to secure the conclusion of such sale.

or more. Applicants must report political contributions in an aggregate amount of \$5,000 or more and paid fees or commissions in an aggregate amount of \$100,000 or more. Applicants must provide a letter to DDTC containing specific information about the sale, including the amounts of political contributions, fees, or commissions paid, and the name and nationality of each recipient. The disclosures are intended to ensure that purchases made by foreign governments of U.S. defense articles are based on merit without improper influence. Failure of applicants to comply with these disclosure requirements can result in additional oversight measures and civil penalties.⁵⁰ According to an ICE official, this disclosure information may provide valuable information in criminal or civil matters. There is no requirement in the law for these disclosures for items listed on the CCL and Commerce licenses do not require these disclosures. Therefore, this information would no longer be collected as part of the licensing process for firearms, artillery, and ammunition that are proposed for transfer to the CCL, according to Commerce officials.

According to Commerce, Certain Exports That Require a State License Would Not Require a Commerce License if Transferred to the CCL

Consistent with export control regulations, there are several circumstances in which some exports proposed for transfer that currently require State licenses would either require fewer or no Commerce licenses if the proposed rules are finalized, according to Commerce.

Multiple end-users on one license. State requires licenses to be limited to only one end-user, while Commerce allows multiple end-users on a single license. The applicant for a State export license must provide a purchase order documenting the proposed export to a single end-user and an additional license would be required for each additional end-user. According to Commerce officials, a Commerce license can have multiple end-users associated with a particular consignee, reducing the total number of licenses for which the applicant must apply.⁵¹

⁵⁰For example, in 2011 DDTC entered into a consent agreement with BAE systems for 2,591 violations of the AECA and ITAR, including failure to report the payment of fees or commissions.

⁵¹State and Commerce export licenses are generally valid for up to 4 years.

Technical data and defense services. State requires licenses for defense services and technical data whereas Commerce's export controls do not generally apply to defense services and apply to technical data more narrowly than State. State's regulations define defense services as "the furnishing of assistance (including training) to foreign persons ... in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles." State's definition of defense services also includes military training of foreign units and forces including publications, training exercises, and military advice.⁵² State's definition of technical data includes information, such as blueprints, drawings, or instructions.⁵³ Commerce's export control regulations generally do not apply to services.⁵⁴ For example, training in the basic operation of a firearm controlled by Commerce would not be subject to export controls, according to State officials. In addition, Commerce's regulations do not control technology or software, if it is "available to the public without restrictions."⁵⁵ For example, Commerce officials told us that Commerce would not require an export license for the posting of instructions for 3D printing of firearms on the internet, if they were publicly available without restrictions.⁵⁶

Minimum level of U.S.-origin content. Items subject to State's controls require a license when they are incorporated into a foreign-made product regardless of the percentage of controlled U.S. content in that product.

⁵²See 22 C.F.R. § 120.9.

⁵³22 C.F.R. § 120.10 defines technical data and 22 C.F.R. § 120.6 includes technical data in the definition of a defense article.

⁵⁴See 15 C.F.R. § 734.3. Services are generally not included among items subject to Commerce's export controls. However, according to Commerce officials, there can be circumstances where providing a service involves the release of technology that is subject to Commerce's export controls.

⁵⁵See 15 C.F.R. § 734.7.

⁵⁶Prior to June 2018, State restricted the distribution of computer aided design ("CAD") files for the automated production of 3D printed weapons by a private company based on its authority under 22 C.F.R. § 120.6 and 22 C.F.R. § 120.10 to control the export of technical data. State's position was that posting instructions for 3D printing certain firearms "could cause serious harm to U.S. national security and foreign policy interests." However, on June 29, 2018, State reached a settlement agreement in a case with the private company to reverse this restriction with respect to those files described in the settlement agreement. On July 31, 2018, a U.S. District Court granted a temporary restraining order to keep the restriction in place on the distribution of the CAD files described in the settlement agreement for the production of 3D printed weapons.

Commerce does not require a license for items when they are incorporated into foreign-made items unless the controlled U.S.-origin content of a foreign-made product exceeds the applicable minimum percentage which, according to Commerce officials, may be 10 or 25 percent, depending on the destination. This minimum level of U.S.-origin content is referred to as “de minimis treatment.”⁵⁷ Commerce’s proposed rule states that de minimis treatment in Commerce’s regulations would apply for all foreign-made items proposed for transfer to the CCL, unless they are being exported to a country that is subject to a United States arms embargo, in which case there would be no minimum threshold for U.S.-origin content.

License exceptions. State regulations contain some country-based license exceptions, including for exports to Canada⁵⁸ and, more narrowly, to Australia and the United Kingdom⁵⁹ whereas Commerce has several different license exceptions under its regulations.⁶⁰ For example, Commerce regulations have the “Strategic Trade Authorization” (STA) exception that permits exports of certain items to countries determined to be low risk, which includes NATO partners and other close allies, of which 37 are eligible for a broader STA authorization and seven are eligible for a much narrower STA authorization.⁶¹ Commerce’s proposed rule specifies that it would revise Commerce’s regulations to make firearms and most parts, components, accessories, and attachments ineligible for the STA license exception. However, Commerce estimates that 450 to 650 license applications per year involving certain eligible items would still be authorized under STA exceptions if the proposed rules are finalized.

⁵⁷See 15 C.F.R. § 734.4.

⁵⁸See 22 C.F.R. § 126.5. State uses the term, “license exemption,” and Commerce uses the term, “license exception,” for circumstances in which a license is not required to export controlled items.

⁵⁹See 22 C.F.R. § 126.16 regarding exemptions for Australia and 22 C.F.R. § 126.17 regarding the United Kingdom.

⁶⁰15 C.F.R. Part 740 describes the different license exceptions available under Commerce’s export control regulations.

⁶¹See 15 C.F.R. § 740.20. To be eligible for this license exception, exporters must provide Commerce with a “destination control statement” notifying the foreign consignee of certain requirements; exporters must also obtain from the foreign consignee a statement acknowledging their understanding and willingness to comply with these requirements, including a prohibition against re-exporting the items without a license or re-exporting to destinations outside the STA-eligible countries.

Commerce also has a “Limited Value Shipment” exception, which is available for proposed exports of certain less sensitive firearms parts and components with a value of \$500 or less per shipment based on the actual selling price or fair market value.⁶² Commerce’s proposed rule specifies that this exception would only be available for certain parts, components, and accessories and attachments for firearms; complete firearms would be ineligible for this exception. State offers a similar exemption but only for licenses with a value of \$100 or less, based on the wholesale price.⁶³

State and Commerce Both Conduct End-Use Monitoring of Selected Controlled Exports but Differences Exist

State and Commerce Both Implement End-Use Monitoring Programs

State and Commerce both conduct end-use monitoring to verify the reliability of foreign end-users and legitimacy of proposed transactions and to provide reasonable assurance of compliance with the terms of the license and proper use of the licensed items. State recommends that end-use checks involve a site visit whenever possible, while Commerce policy requires that the end-use check include a physical verification on-site with a party to the transaction, according to Commerce officials. State and Commerce also apply their own means of risk-based targeting to select the licenses or exports that will undergo end-use monitoring, however, similarities exist involving selection criteria. For example, State and Commerce may target transactions that involve unfamiliar foreign parties, unusual shipping routes, or derogatory information from watch lists, according to the departments. The number of end-use checks conducted by State averaged about 1.3 percent of its license applications, and those conducted by Commerce averaged about 3.3 percent of its applications from fiscal years 2013-2017.

State and Commerce end-use checks may result in either “favorable” or “unfavorable” findings. Commerce may also categorize an end-use check as “unverified.” An “unfavorable” or “unverified” result occurs if the end-use check cannot verify information in the license or reveals facts that are

⁶²See 15 C.F.R. § 740.3.

⁶³See 22 C.F.R. § 123.17(a).

inconsistent with the license. For either State or Commerce, an unfavorable end-use check can lead to denying applications, revoking licenses, removing parties from licenses, updating the watch list, or making referrals to U.S. law enforcement agencies for investigation, according to a State report and Commerce officials. State closed 166 of 766, or 22 percent, of end-use monitoring cases as “unfavorable” in fiscal years 2013-2017 for firearms, artillery, and ammunition licenses.⁶⁴ State’s three most common reasons for an unfavorable finding for end-use checks for firearms, artillery, and ammunition were derogatory information on a foreign party, inability to confirm order or receipt of goods, and involvement of an unlicensed party.⁶⁵

State relies on U.S. embassy or consulate staff in the country or countries involved in the transaction to conduct its end-use checks. Commerce relies primarily on Export Control Officers (ECOs) positioned overseas to conduct end-use checks. ECOs conducted an average of about 60 percent of Commerce’s end-use checks per year from fiscal years 2013 to 2017. According to Commerce officials, Commerce had a total of nine ECO positions in Beijing, Dubai, Frankfurt, Hong Kong, Istanbul, New Delhi, and Singapore, as of October 2018 (see fig. 5). Six of these nine positions were filled as of this date.⁶⁶ The ECOs have areas of responsibility covering multiple countries within their geographic region. For the remaining 40 percent of end-use checks, Commerce relied primarily on its “Sentinel Program” in which BIS special agents based in domestic field offices, along with other responsibilities, travel to destination countries not covered by ECOs to conduct end-use checks.⁶⁷ In addition, a small percentage of Commerce’s end-use checks are

⁶⁴State noted that because of the risk-based selection process, transactions targeted for end-use checks are more likely to result in unfavorable findings than a random sampling of license applications.

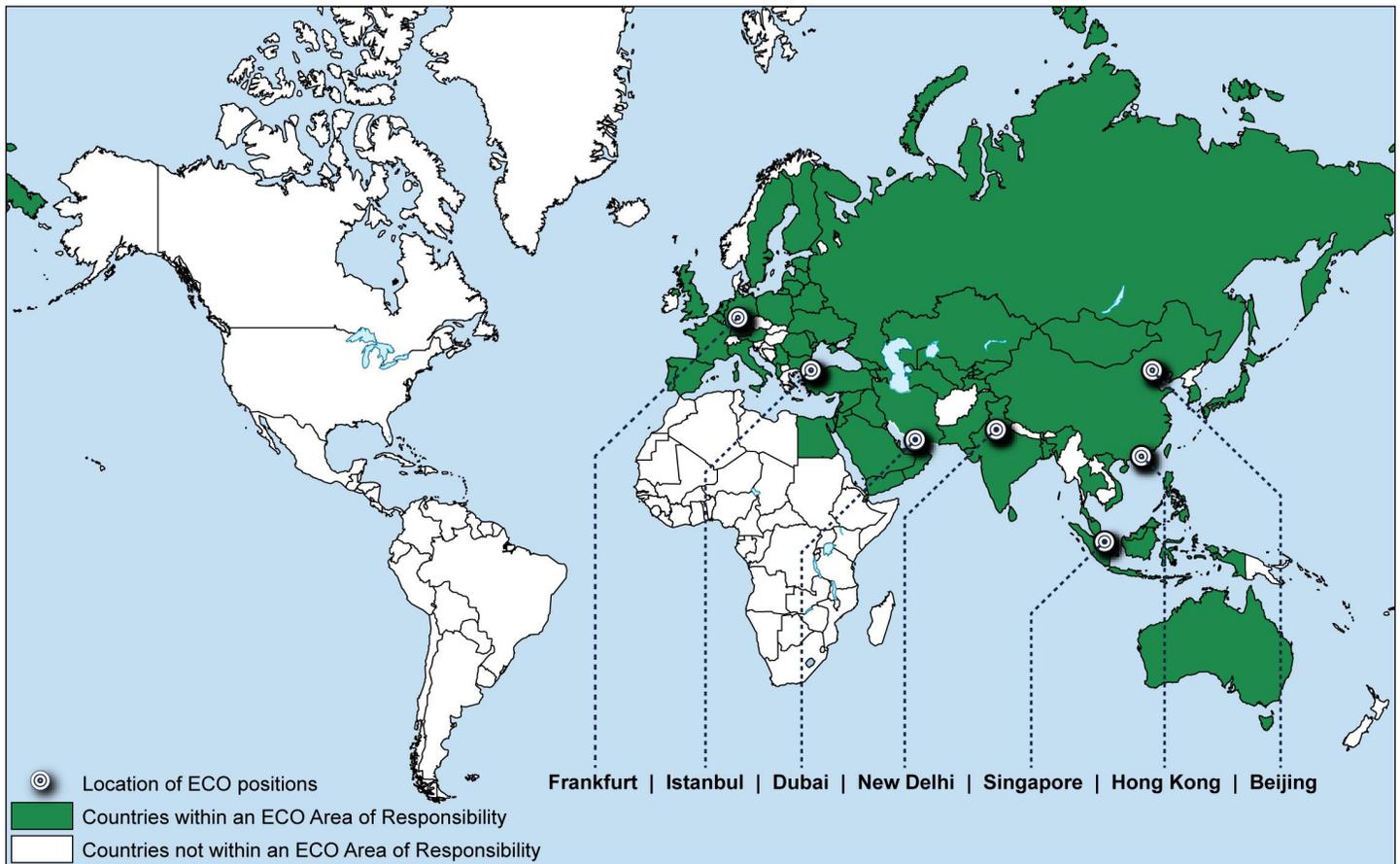
⁶⁵In the State end-use data we analyzed, State can assign multiple reasons for each unfavorable end-use check. In its public reporting, however, State assigns one primary reason for each unfavorable end-use check.

⁶⁶As of October 18, 2018, the three vacant overseas ECO positions were in Beijing (one of the two positions based there), Frankfurt (one of the two positions based there), and New Delhi.

⁶⁷According to Commerce officials, each year, the Sentinel program selects countries for visits to conduct end-use checks based on a variety of factors. Among those factors considered are the previous year’s end-use check locations, volume of licensed exports to a country, past unfavorable end-use monitoring results, and the number of open investigative cases and leads connected to entities in each country. Typically, these visits are done by two-person teams for 2 weeks.

conducted by Foreign Commercial Service officers or other personnel stationed at U.S. embassies, according to Commerce officials.

Figure 5: Locations of Commerce Department Export Control Officer Positions and Area of Responsibility



Sources: GAO analysis of Commerce Department data; Map Resources (map). | GAO-19-307

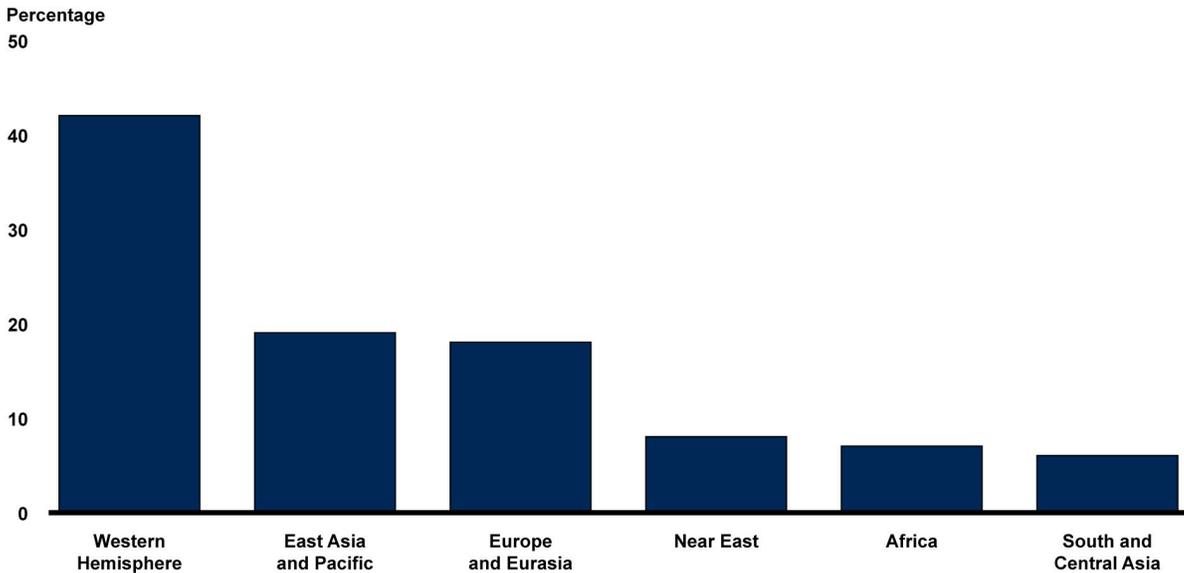
Note: As of October 18, 2018, there were 9 Export Control Officer (ECO) positions: Beijing, China (2), Dubai, United Arab Emirates; Frankfurt, Germany (2); Hong Kong; Istanbul, Turkey; New Delhi, India, and Singapore. Three of the positions were vacant: Beijing, China (1); Frankfurt, Germany (1); and New Delhi, India.

State Conducted Many of its End-Use Checks in the Western Hemisphere Where Commerce Currently Has No Export Control Officers

State conducted 766 end-use checks for firearms, artillery, and ammunition in fiscal years 2013-2017 with the largest share, over 40 percent, in the Western Hemisphere (see fig. 6). None of Commerce’s

overseas ECO positions are located in this region nor do any cover it within their areas of responsibility. According to Commerce officials, the number and locations of end-use checks for firearms, artillery, and ammunition, if these items are transferred to the CCL, will depend on how exports of these items factor into the department's existing targeting criteria. To the extent that Commerce needs to conduct end-use checks for these items in the Western Hemisphere, Commerce officials told us that they plan to cover these checks via the Sentinel Program and, where necessary, through checks by Foreign Commercial Service Officers. The officials noted that they plan to reassess their end-use monitoring efforts after items are transferred to the CCL if the proposed rules are finalized.

Figure 6: Percentage of State Department's End-use Checks on Firearms, Artillery, and Ammunition by Region, Fiscal Years 2013-2017



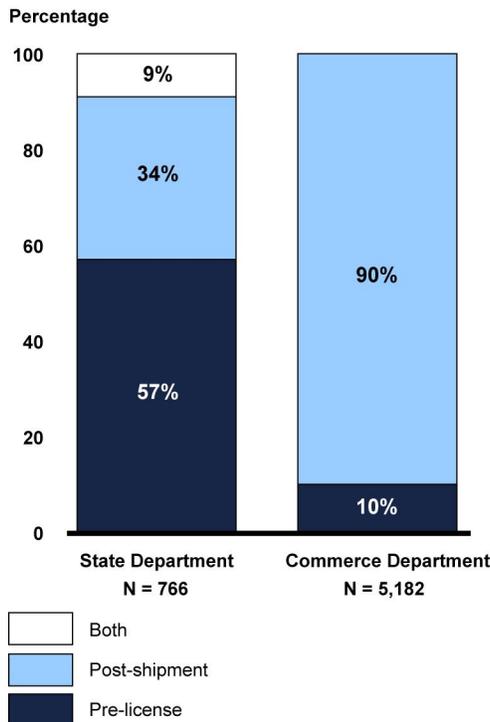
Source: GAO analysis of State Department data. | GAO-19-307

State Conducted More than Half of Its End-Use Checks before Issuing Licenses, While Commerce Conducted Most after Shipment

End-use checks include pre-license checks in support of the license application review or post-shipment verifications after the license has

been approved and items have shipped.⁶⁸ As shown in figure 7, more than 50 percent of State’s end-use checks specifically for firearms, artillery, and ammunition licenses from fiscal years 2013 to 2017 were pre-license checks. Conversely, about 90 percent of Commerce’s end-use checks for all items subject to the EAR for this period were post-shipment verifications. Commerce noted that it conducts mostly post-shipment verifications because it controls a higher share than State of items that are exported without a license.

Figure 7: Percentage of Pre-License and Post-Shipment End-Use Checks by State for U.S. Munitions List Categories I-III and by Commerce for Commerce Control List, All Items, Fiscal Years 2013-2017



Source: GAO analysis of State Department and Commerce Department data. | GAO-19-307

Note: State conducts some checks, known as post-license/pre-shipment checks, after licenses are issued but before shipments are made. We were unable to determine if any end-use checks included

⁶⁸Commerce may also conduct end-use checks for unlicensed exports of controlled items, such as those that qualified for a license exception. State conducts some checks after licenses are issued but before shipments are made, although such checks are relatively rare, according to State officials.

in the data provided by State fell into this category. Such checks are relatively rare, according to State officials.

State Is Required by Law to Notify Congress of Certain Export License Applications for Firearms, Artillery, and Ammunition While Commerce Is Not

The AECA requires State to notify Congress before State can approve certain export licenses for firearms, artillery, and ammunition. These notification requirements depend on the proposed export value and type of export, among other factors. For example, the AECA requires State to notify Congress of proposed licenses for the export of USML Category I firearms in the amount of \$1 million or more. Additionally, State must notify Congress of proposed licenses for commercial agreements that involve the overseas manufacture of certain USML items, including many firearms, artillery, and ammunition items, regardless of the proposed value.⁶⁹

During fiscal years 2013 to 2017, State identified 240 export license applications involving firearms, artillery, and ammunition that required congressional notification, totaling approximately \$2.5 billion. Additionally, State identified 41 license applications for commercial technical assistance or manufacturing license agreements involving the overseas manufacture of firearms, artillery, and ammunition that required congressional notification, totaling approximately \$5.7 billion.

According to State and Commerce officials, these congressional notification requirements would no longer apply to firearms, artillery, and ammunition that move from State's to Commerce's export control responsibility because the requirements apply specifically to USML

⁶⁹22 U.S.C. § 2776 subsections (c) and (d) specify the notification requirements for Category I firearms and commercial agreements involving overseas manufacture, respectively. 22 U.S.C. § 2776 also establishes other congressional notification requirements that depend on the proposed export value, type of USML items, and the destination country.

controlled items.⁷⁰ The proposed rule transferring firearms to Commerce's responsibility does not revise Commerce's export control regulations to add a congressional notification requirement for firearms, according to Commerce officials.

State Is Required by Law to Publicly Report More Details on Controlled Exports than Commerce

The Foreign Assistance Act, as amended, requires State to report to Congress annually on military assistance and military exports to the governments of each foreign country and international organization and specifies that the report include "a statement of the aggregate dollar value and quantity of semiautomatic assault weapons, or spare parts for such weapons."⁷¹ The Act also requires that State post all unclassified information from this report on the internet. To comply with this requirement, State posts an annual report that includes the aggregate dollar value and quantity of defense articles and services, by USML category, licensed to each foreign country and international organization, as well as data on the actual shipments occurring during the fiscal year. The report also includes an appendix that breaks out exports specifically for the USML sub-category I(a), which includes non-automatic and semi-automatic firearms, and sub category I(h), which includes firearms components, parts, accessories, and attachments.

This reporting requirement only applies to exports of items on the USML, which are licensed by State under the AECA, but does not apply to exports controlled by Commerce. This information on exports, by country, would no longer be available for firearms and other items from Categories I-III of the USML after they are transferred to the CCL if the proposed rules are finalized, according to Commerce officials.

⁷⁰22 U.S.C. § 2776(c) also applies to major defense equipment listed on the 600 series of the CCL, as required by 22 U.S.C. § 2778(f)(6). Also, 50 U.S.C. § 4813(c) requires Commerce to notify Congress at least 30 days before issuing a license to export, re-export, or transfer in-country controlled items if they are destined for a designated state sponsor of terrorism or could make a significant contribution to the military potential of the government of a country that has repeatedly provided support for acts of international terrorism or could enhance the ability of such country to support acts of international terrorism. This requirement applies to State licenses as well. This is a continuation of notification requirements previously found in Section 6(j) of the EAA.

⁷¹22 U.S.C. § 2415.

Some Differences Exist between Export Control Enforcement of Items Controlled by State and Commerce

The statutory penalties available for criminal violations of export control laws are the same regardless of whether the items are on the USML and controlled by State or on the CCL and controlled by Commerce. Criminal violations may result in fines up to \$1 million and prison terms up to 20 years, or both.⁷²

Under the AECA, civil violations of State's export controls may result in a fine of up to \$500,000⁷³ but, according to State officials, can be much higher based on inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.⁷⁴ State told us that actual civil penalties for civil violations in 2018 ranged from \$824,959 to \$1,134,602. By contrast, the ECRA set the penalty for civil violations of Commerce's export controls at up to \$300,000 or twice the value of the transaction that is the basis of the violation, whichever is of greater value.⁷⁵ According to Commerce officials, this can substantially increase the monetary penalty for civil violations.

Criminal violations of either State's or Commerce's export control laws may result in prohibiting the violator from involvement in future exports of controlled items.⁷⁶ The AECA also precludes the issuance of State licenses to persons convicted of violating certain federal laws, such as the Foreign Corrupt Practices Act.⁷⁷ Similarly, Commerce can deny the export privileges, including the ability to obtain a license, of companies and individuals for a period of 10 years from the date of conviction for violating

⁷²See 22 U.S.C. § 2778(c) regarding violations of State's export controls and U.S.C. § 4819(b) regarding violations of Commerce's export controls.

⁷³See 22 U.S.C. § 2778(e).

⁷⁴See 28 U.S.C. § 2461 note for requirements for federal agencies to adjust civil monetary penalties.

⁷⁵28 U.S.C. § 4819(c)(1).

⁷⁶See 22 U.S.C. § 2778(g) and 22 C.F.R. § 127.11 for the effect of past ITAR violations and 50 U.S.C. § 4819(e) and 15 C.F.R. § 766.25 for the effect of past EAR violations.

⁷⁷22 U.S.C. § 2778(g)(4). In addition to the statutory bar to issuance of a license, State has also stated a policy against issuing licenses to persons convicted of violating certain additional export control or national security related statutes (see 22 C.F.R. §§ 127.11 and 120.27).

certain federal laws.⁷⁸ This prohibition can be expanded to include other related parties, such as those connected with the denied person by virtue of affiliation, ownership, or control.

Agencies with responsibility for export control enforcement can vary depending on whether items are controlled by State or Commerce. According to DHS officials, ICE has jurisdiction to investigate potential export control violations and U.S. Customs and Border Protection has primary enforcement responsibility for export control violations at the border, seaports, and airports. The Federal Bureau of Investigation (FBI) can also investigate these cases involving items controlled by either State or Commerce. According to Commerce, the Office of Export Enforcement in BIS has over 100 special agents in U.S.-based field offices authorized to investigate potential violations of Commerce's export control laws. These investigative resources would be available, in addition to DHS and FBI, to address illegal firearms trafficking if the proposed transfer is implemented, according to Commerce officials.

Proposed Rules, If Finalized, Would Reduce State's and Increase Commerce's Licensing Volume, but Extent of the Resource Impact on These Agencies Is Unknown

According to State, the Proposed Transfer Would Impact Resources from State Fee Collections to an Uncertain Extent

State expects to lose revenue from registration fees if the proposed transfer of firearms, artillery, and ammunition to Commerce is implemented. State estimates in its proposed rule that the transfer would result in about 10,000 fewer license applications per year for Category I-III items—a reduction of about 26 percent from the 38,862 applications that State processed in fiscal year 2017.⁷⁹ State estimates a recurring annual registration fee revenue loss of about \$2.5 million, according to its

⁷⁸50 U.S.C. § 4819(e).

⁷⁹We could not independently assess the accuracy of State's estimated reduction in licenses resulting from the proposed transfer. For additional information, see appendix I.

proposed rule.⁸⁰ State officials told us, if the proposed rules become final, there would be additional revenue declines from an uncertain drop in the number of registrants that State cannot estimate. They explained that because many manufacturers and exporters would likely be involved in items controlled by State as well as Commerce, they would still need to register with State. Others involved only in items moving to Commerce would no longer have to register with State. For example, according to State officials, a manufacturer of both semi-automatic weapons that the proposed rules identify for transfer to the CCL and fully automatic weapons that would stay on the USML would still be required to register with State, if the proposed rules are finalized. State officials noted that the decline in the number of license applications resulting from previous transfers of items from the USML to the CCL has not produced a proportional decline in registration revenue. According to data provided by State, registration revenue has dropped less than 25 percent from about \$47 million in fiscal year 2013 to about \$36 million in fiscal year 2017, while the number of export license applications has dropped more than 50 percent from about 83,000 to almost 39,000.

With the decline in license workload that State expects would result if the proposed rules are finalized, State officials told us that four contractors currently responsible for reviewing licenses for firearms and ammunition in DDTC could be moved to other teams with vacancies in order to review licenses for other controlled items. On the other hand, State's Bureau of International Security and Nonproliferation (ISN), which has lead responsibility at State for reviewing Commerce licenses for items transferring from the USML to the CCL, expects to see an increase in its workload. An ISN official told us his bureau could potentially need an additional 2.5 full-time equivalent staff to review items transferred to the CCL as part of Commerce's interagency review process.

⁸⁰State charges a tiered registration fee, the amount of which is based on the number of license applications the registrant submitted in the prior year. The fee for registrants in the third, and highest, tier is generally \$2,750 plus \$250 times the total number of applications over ten. Commerce does not charge any fees.

Commerce Officials Believe They Have Sufficient Resources to Handle an Increase in Workload Resulting from the Proposed Transfer

Commerce estimates in its proposed rule that it would gain 6,000 additional license applications from the proposed transfer—an increase of about 18 percent above the 34,142 license applications it reviewed in fiscal year 2017.⁸¹ Commerce officials told us that the increased workload to review license applications will also create more work for some related activities. For example, Commerce expects the number of investigative leads and export enforcement investigations to include more firearms-related actions.⁸² However, Commerce officials told us they have not estimated the magnitude of these changes.

Commerce officials told us they believe they have enough resources to absorb the increase in workload.⁸³ They noted that they have flexibility to shift license review staff to meet demand created by the additional licenses, if necessary. In addition, BIS received an 18 percent increase in full-time equivalent staff positions, from 367 to 432, in fiscal year 2018. This increase was in response to workload demands created by previous transfers of items from the USML to the CCL, according to Commerce officials. Commerce officials told us that they will continue to assess workload data after the proposed transfer is implemented to determine whether they have adequate staff levels to meet increased workload demands.

⁸¹According to Commerce officials, Commerce's estimate of 6,000 additional export license applications that would result from the proposed transfer is smaller than State's estimated reduction in licenses due to differences in licensing requirements, which we describe earlier in this report. For example, Commerce does not require licenses for defense services and offers license exceptions under certain circumstances. We could not independently assess the accuracy of Commerce's estimated gain in licenses that would result if the proposed rules become final. For additional information, see appendix I.

⁸²Commerce does not plan to increase the number of end-use checks it conducts annually in response to expected increases in the number of license applications that would result from the transfer. Commerce officials told us they will continue to select high-risk transactions based on their targeting strategy and priorities. The target number of end-use checks has been 850 per year for the past several years, but increased to 1,020 beginning in fiscal year 2019 to account for the addition of ECOs in Germany and Turkey, according to Commerce officials.

⁸³In 2012, we recommended that State and Commerce assess the potential impact of export control list reforms on the resource needs of their compliance activities. Both departments implemented this recommendation. See [GAO-12-613](#).

Conclusions

If finalized, the proposed rules to transfer certain firearms, artillery, and ammunition from Categories I-III of the USML to the CCL would apply Commerce's export control system to these items instead of State's. However, critical information needed to effectively screen applicants and target licenses for end-use monitoring may be unavailable to Commerce unless State shares its watch list data. Further, because State has been responsible for export controls of firearms, artillery, and ammunition, its watch list is more likely than Commerce's to include derogatory information collected from past screening and end-use monitoring related to exports of these items, according to Commerce officials. While State and Commerce officials said that they have held discussions regarding how to share relevant information from their internal watch lists, as of February 2019, they had not reached any agreement on how to share watch lists if the proposed rules are finalized. Without such an agreement or process to share State's watch list, Commerce may lack critical information needed to ensure that items proposed for transfer are used as intended and by legitimate end-users.

Recommendations for Executive Action

We are making a total of two recommendations, including one to State and one to Commerce.

If responsibility for controlling the exports of certain firearms, artillery, and ammunition is transferred from State to Commerce, the Secretary of State should ensure that the Under Secretary of State for Arms Control and International Security Affairs develops a process for sharing State's internal watch list with Commerce to enhance oversight of these items. (Recommendation 1)

If responsibility for controlling the exports of certain firearms, artillery, and ammunition is transferred from State to Commerce, the Secretary of Commerce should ensure that the Under Secretary of Commerce for Industry and Security develops a process for receiving State's internal watch list and integrating it into Commerce's licensing review process to enhance oversight of these items. (Recommendation 2)

Agency Comments

We provided a draft of this report to State, Commerce, DOD, DHS, and DOJ for review and comment. In their written comments, reproduced in appendixes III and IV, State and Commerce agreed with our recommendations. Commerce provided some minor revisions to the recommendation, which we incorporated. DOD, DHS, and DOJ did not provide written comments. In addition, State, Commerce, and DOJ provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees and the Secretaries of State, Commerce, Defense, and Homeland Security; and the Attorney General of the United States. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8612 or gianopoulosk@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.



Kimberly Gianopoulos
Director, International Affairs and Trade

List of Requesters

The Honorable Robert Menendez
Ranking Member
Committee on Foreign Relations
United States Senate

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Richard Blumenthal
United States Senate

The Honorable Benjamin Cardin
United States Senate

The Honorable Richard Durbin
United States Senate

The Honorable Patrick Leahy
United States Senate

Appendix I: Objectives, Scope, and Methodology

Our objectives were to assess (1) the volume and value of commercial export license applications State Department (State) reviewed for firearms, artillery, and ammunition—Categories I-III of the U.S. Munitions List (USML)—in fiscal years 2013-2017, (2) how certain export controls differ between State and Commerce, and (3) what is known about the resource implications for State and Commerce due to the proposed transfer.

To assess the volume and value of export license applications for USML Category I-III firearms, artillery, and ammunition that State reviewed during fiscal years 2013 to 2017, we obtained data from the interagency export licensing database, USXPORTS. USXPORTS is the system of record for all munitions and dual-use export license applications and adjudications, and is maintained by the Defense Technology Security Administration, within the Department of Defense (DOD). The data on USXPORTS originates from private companies applying for export licenses which, in the case of munitions, State is responsible for adjudicating. The agencies use this database to review and adjudicate applications, and also to report back to the applicants. We interviewed officials from State's Directorate of Defense Trade Controls (DDTC) in State's Bureau of Political and Military Affairs to understand the data and identify any limitations on how we use them. We analyzed the data to describe the number and reported value of export license applications, the USML items in the applications, and the reported destination country, among other characteristics. We assessed these data and found them to be sufficiently reliable for the purpose of conducting these analyses, but recognized that approved applications may not necessarily result in actual exports. We also noted some minor data limitations in our report, such as the fact that amendments to export license applications are not associated with destination countries. We did not independently audit the underlying data submitted to DDTC by private companies.

To analyze how certain export controls differ between State and Commerce, we reviewed the departments' proposed rules, relevant laws and regulations, agency guidance, and annual reports related to State's and Commerce's export controls. We also interviewed officials from

Commerce's Bureau of Industry and Security; DDTTC; State's Bureau of Democracy, Human Rights and Labor; State's Bureau of International Security and Nonproliferation; Immigration and Customs Enforcement and U.S. Customs and Border Protection in the Department of Homeland Security; and the Defense Technology Security Administration. We sought to present differences between State's and Commerce's export controls that are potentially relevant for items proposed for transfer from the USML to the CCL, rather than every possible distinction between the two departments' export control systems. To describe the number of export license applications for firearms, artillery, and ammunition that required congressional notification, we reviewed the licensing data from the USXPORTS database. To describe the end-use monitoring conducted on exports of firearms, artillery, and ammunition, we extracted data from State's Defense Trade Application database and interviewed agency officials to understand the data. We analyzed the data by the number of checks per year, the proportion of pre-license checks to post-shipment checks, the countries where the checks were conducted, and the outcome of the checks. We assessed these data and found them to be sufficiently reliable for these purposes.

To assess what is known about the resource implications for State and Commerce due to the proposed transfer, we held discussions with State and Commerce officials, and reviewed annual budget documents and other agency reports. To better understand State's estimated reduction of 10,000 license applications per year and Commerce's estimated gain of 6,000 licenses that would result from the proposed transfer of items from the USML to the CCL, we reviewed State's fiscal year 2013-2017 export license data and the proposed rules. We also discussed the estimates with agency officials. Commerce officials told us that their estimate was fairly broad, based on State's estimate and their knowledge and experience of differences between the two agencies' license requirements that account for the difference between the two estimates. We were not able to independently assess the accuracy of either estimate because the license data we collected from State were not disaggregated to identify which items on license applications would be transferring to the CCL under the proposed rules and which would be staying on the USML. Each State license application can involve multiple items across multiple USML Sub-Categories. We also reviewed the number of full-time equivalent staff responsible for export control activities and State's annual revenue from registration fees paid by manufacturers, exporters, and brokers involved in items on the USML. We discussed State's registration data with agency officials and while we assessed these data as sufficiently reliable for descriptive purposes, we also determined that

these data could not be used to generate reliable estimates about the resource implications for the Department of State because there was no clear pattern in the relationship between applications, registrants, and revenue in the data provided.

We conducted this performance audit from February 2018 to March 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: The U.S. Munitions List and the Commerce Control List

Defense articles and services subject to export controls under the Department of State’s jurisdiction are listed in the 21 categories of the United States Munitions List (USML). Table 3 shows the 21 USML categories and the dates of rule changes under export control reform that transferred certain items within these categories to the Commerce Control List (CCL).

Table 3: United States Munitions List and Dates of Rule Changes under Export Control Reform

Category	Category title	Effective Date of Rule Change
I	Firearms	Proposed
II	Artillery	Proposed
III	Ammunition	Proposed
IV	Launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs, and mines	July 1, 2014
V	Explosives and energetic materials, propellants, incendiary agents, and their constituents	July 1, 2014
VI	Surface vessels of war and special naval equipment	January 6, 2014
VII	Ground vehicles	January 6, 2014
VIII	Aircraft and related articles	October 15, 2013
IX	Military training equipment	July 1, 2014
X	Personal protective equipment	July 1, 2014
XI	Military electronics	December 30, 2014
XII.	Fire control/sensors/night vision	December 31, 2016
XIII	Materials and miscellaneous articles	January 6, 2014
XIV	Toxicological agents	December 31, 2016
XV	Spacecraft and related articles	November 10, 2014
XVI	Nuclear weapons related articles	July 1, 2014
XVII	Classified articles, technical data, and defense services	October 15, 2013
XVIII	Directed energy weapons	December 31, 2016

Appendix II: The U.S. Munitions List and the Commerce Control List

Category	Category title	Effective Date of Rule Change
XIX	Gas turbine engines and associated equipment	October 15, 2013
XX	Submersible vessels and related articles	January 6, 2014
XXI	Articles, technical data, and defense services otherwise not enumerated	October 15, 2013

Source: Department of State. | GAO-19-307

Note: Transfers of items from these U.S. Munitions List categories to the Commerce Control List under export control reform involved a transition period after the effective date of the rule change.

The CCL is divided into ten broad categories and each category is further subdivided into five product groups (see table 4).

Table 4a: Commerce Control List Categories and Groups

Category	Category title
0	Nuclear & Miscellaneous
1	Materials, Chemicals, Microorganisms and Toxins
2	Materials Processing
3	Electronics
4	Computers
5 (part 1)	Telecommunications
5 (part 2)	Information Security
6	Sensors and Lasers
7	Navigation and Avionics
8	Marine
9	Aerospace and Propulsion

Source: Department of Commerce. | GAO-19-307

Table 4b: Commerce Control List Categories and Groups

Group	Group title
A	Systems, Equipment and Components
B	Test, Inspection and Production Equipment
C	Material
D	Software
E	Technology

Source: Department of Commerce. | GAO-19-307

Appendix III: Comments from the Department of State



United States Department of State

Comptroller

Washington, D.C. 20520

FEB 13 2019

Thomas Melito
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

Dear Mr. Melito:

We appreciate the opportunity to review your draft report, "EXPORT CONTROLS: State and Commerce Should Share Watch List Information If Proposed Rules to Transfer Firearms are Finalized, GAO Job Code 102600.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Christienne Carroll, Public Diplomacy Officer, Office of Congressional and Public Affairs, Bureau of Political-Military Affairs at (202) 736-4020.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey C. Mounts" with a stylized flourish at the end.

Jeffrey C. Mounts (Acting, Comptroller)

Enclosure:
As stated

cc: GAO – Kimberly Gianopoulos
PM – Marik String
OIG - Norman Brown

Department of State Comments on GAO Draft Report

**EXPORT CONTROLS: State and Commerce Should Share Watch List
Information If Proposed Rules to Transfer Firearms Are Finalized**
(GAO-19-307SU, GAO Code 102600)

Thank you for the opportunity to comment on the GAO draft report, entitled
*“Export Controls: State and Commerce Should Share Watch List Information If
Proposed Rules to Transfer Firearms Are Finalized.”*

**Recommendation 1: If responsibility for controlling the export of certain
firearms, artillery, and ammunition is transferred from State to Commerce,
the Secretary of State should ensure that the Under Secretary of Commerce
for Industry and Security develop a process for sharing State’s internal watch
list with Commerce to enhance oversight of these items.**

The Department of State agrees with this recommendation. The Department is
already engaged in the process of coordinating approval of the required
Interagency Agreement (IAA) and Interconnect Security Agreement (ISA) to allow
for electronic transfer of this information to the Department of Commerce.

Appendix IV: Comments from the Department of Commerce

Appendix IV: Comments from the Department
of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

February 14, 2019

Ms. Kimberly Gianopoulos
Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Gianopoulos:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report: "*Export Controls: State and Commerce Should Share Watch List Information If Proposed Rules to Transfer Firearms are Finalized*" (GAO-19-307SU).

The Department of Commerce concurs with GAO's recommendation, as clarified in the attached document. The document also provides recommended technical clarifications to the underlying draft report. The edit to the recommendation clarifies that the recommendation is for the Department to develop a process for receiving and integrating State's internal watch list into Commerce's licensing review process.

If you have any questions on this response, please contact Frank Bray, Senior Advisor, Bureau of Industry and Security, Department of Commerce, at (202) 482-2087.

Sincerely,

A handwritten signature in black ink that reads "Wilbur Ross".

Wilbur Ross

Enclosure

CAPITOL BOND

25% COTTON

02/14/19

Subject: Commerce technical edits on GAO report: *Export Controls: State and Commerce Should Share Watch List Information If Proposed Rules to Transfer Firearms are Finalized*

Structure for Commerce technical edits:

- Commerce has copied and pasted text from the draft report where we had technical edits for ease of reference.
- Commerce has included the draft report page number, when available, before its technical edits for ease of reference.

GAO DRAFT Recommendations to Commerce:

GAO Recommendation 2 (page 33): If responsibility for controlling the exports of certain firearms, artillery and ammunition is transferred from State to Commerce, the Secretary of Commerce should ensure that the Under Secretary of Commerce for Industry and Security develop a process for sharing State's internal watch list with Commerce to enhance oversight of these items. (Recommendation 2)

Commerce response: Commerce concurs with this Recommendation as revised below

If responsibility for controlling the exports of certain firearms, artillery and ammunition is transferred from State to Commerce, the Secretary of Commerce should ensure that the Under Secretary of Commerce for Industry and Security develop a process for **sharing receiving and integrating** State's internal watch list with Commerce's **licensing review process** to enhance oversight of these items. (Recommendation 2)

Appendix V: GAO Contacts and Staff Acknowledgments

GAO Contact

Kimberly Gianopoulos, (202) 512-8612 or gianopoulosk@gao.gov

Staff Acknowledgements

In addition to the individual named above, Drew Lindsey (Assistant Director), Howard Cott (Analyst in Charge), Ashley Alley, Martin de Alteriis, Neil Doherty, Adam Peterson, and Aldo Salerno made significant contributions to this report.

Appendix VI: Accessible Data

Data Tables

Accessible Data for Figure 1: Volume of Export License Applications Reviewed by the Department of State for All U.S. Munitions List (USML) Categories and for Firearms, Artillery, and Ammunition (Categories I-III) Only, Fiscal Years 2013-2017

Fiscal year	Firearms, artillery, and ammunition	All U.S. Munitions List categories
2013	12995	83155
2014	13636	63328
2015	14473	48242
2016	13460	41740
2017	14126	38862

Accessible Data for Figure 2: Percentage of Export License Applications for Firearms, Artillery, and Ammunition (U.S. Munitions List Categories I-III), Fiscal Years 2013-2017

Category	Percentage
Artillery	5
Ammunition	21
Multiple	8
Firearms	66

N = 68,690 applications

Accessible Data for Figure 3: Firearms, Artillery, and Ammunition Export License Applications by Geographic Region, Fiscal Years 2013-2017

Region	Percentage of applications
Europe and Eurasia	32
Western Hemisphere	29
East Asia and Pacific	24
Multiple	2
Near East	7
Africa	3

Region	Percentage of applications
South and Central Asia	3

N = 64,226 applications

Accessible Data for Figure 4: Top 20 Countries of Export License Applications for Firearms, Artillery, and Ammunition, Fiscal Years 2013 to 2017

Country	Number of Export License Applications
Canada	9350
Australia	4079
Thailand	3657
Brazil	3207
United Kingdom	2832
Germany	2588
New Zealand	2150
Japan	1770
Italy	1658
Israel	1608
South Africa	1569
France	1523
Turkey	1292
Switzerland	1228
Belgium	1019
Norway	951
Sweden	925
United Arab Emirates	922
Philippines	837
Paraguay	826
N = 43,991	

N = 43,991 applications

Accessible Data for Figure 6: Percentage of State Department’s End-use Checks on Firearms, Artillery, and Ammunition by Region, Fiscal Years 2013-2017

Region	Africa	Americas	East Asia and Pacific	Europe and Eurasia	Near East	South and Central Asia
Percentage of Blue Lantern end-use checks	7%	42%	19%	18%	8%	6%

Accessible Data for Figure 7: Percentage of Pre-License and Post-Shipment End-Use Checks by State for U.S. Munitions List Categories I-III and by Commerce for Commerce Control List, All Items, Fiscal Years 2013-2017

Category	State Department	Department of Commerce
Pre-license	57%	10%
Post-license	34%	90%
Both	9%	0%
End-use check total	N=766	N=5,182

Agency Comment Letters

Accessible Text for Appendix III: Comments from the Department of State

Page 1

Thomas Melito
 Managing Director
 International Affairs and Trade
 Government Accountability Office
 441 G Street, N.W.

Washington, D.C. 20548-0001

Dear Mr. Melito:

FEB 13 2019

We appreciate the opportunity to review your draft report, "EXPORT CONTROLS: State and Commerce Should Share Watch List Information If Proposed Rules to Transfer Firearms are Finalized, GAO Job Code 102600.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Christienne Carroll, Public Diplomacy Officer, Office of Congressional and Public Affairs, Bureau of Political-Military Affairs at (202) 736-4020.

Sincerely,

Jeffrey C. Mounts (Acting, Comptroller)

Enclosure:

As stated

cc: GAO-Kimberly Gianopoulos

PM - Marik String

OIG - Norman Brown

Page 2

Department of State Comments on GAO Draft Report

EXPORT CONTROLS: State and Commerce Should Share Watch List Information If Proposed Rules to Transfer Firearms Are Finalized (GAO-19-307SU, GAO Code 102600)

Thank you for the opportunity to comment on the GAO draft report, entitled "Export Controls: State and Commerce Should Share Watch List Information If Proposed Rules to Transfer Firearms Are Finalized."

Recommendation 1: If responsibility for controlling the export of certain firearms, artillery, and ammunition is transferred from State to Commerce, the Secretary of State should ensure that the Under Secretary of Commerce for Industry and Security develop a process for sharing

State's internal watch list with Commerce to enhance oversight of these items.

The Department of State agrees with this recommendation. The Department is already engaged in the process of coordinating approval of the required Interagency Agreement (IAA) and Interconnect Security Agreement (ISA) to allow for electronic transfer of this information to the Department of Commerce.

Accessible Text for Appendix IV: Comments from the Department of Commerce

Page 1

February 14, 2019

Ms. Kimberly Gianopoulos

Director, International Affairs and Trade

U.S. Government Accountability Office

441 G Street, NW

Washington, DC 20548

Dear Ms. Gianopoulos:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report: "Export Controls: State and Commerce Should Share Watch List Information If Proposed Rules to Transfer Firearms are Finalized" (GAO-19-307SU).

The Department of Commerce concurs with GAO's recommendation, as clarified in the attached document. The document also provides recommended technical clarifications to the underlying draft report. The edit to the recommendation clarifies that the recommendation is for the Department to develop a process for receiving and integrating State's internal watch list into Commerce's licensing review process.

If you have any questions on this response, please contact Frank Bray, Senior Advisor, Bureau of Industry and Security, Department of Commerce, at (202) 482-2087.

Sincerely,

Wilbur Ross

Enclosure

Page 2

Subject: Commerce technical edits on GAO report: Export Controls: State and Commerce Should Share Watch List Information If Proposed Rules to Transfer Firearms are Finalized

Structure for Commerce technical edits:

- Commerce has copied and pasted text from the draft report where we had technical edits for ease of reference.
- Commerce has included the draft report page number, when available, before its technical edits for ease of reference.

GAO DRAFT Recommendations to Commerce:

GAO Recommendation 2 (page 33): If responsibility for controlling the exports of certain firearms, artillery and ammunition is transferred from State to Commerce, the Secretary of Commerce should ensure that the Under Secretary of Commerce for Industry and Security develop a process for sharing State's internal watch list with Commerce to enhance oversight of these items. (Recommendation 2)

Commerce response: Commerce concurs with this Recommendation as revised below

If responsibility for controlling the exports of certain firearms, artillery and ammunition is transferred from State to Commerce, the Secretary of Commerce should ensure that the Under Secretary of Commerce for Industry and Security develop a process for sharing receiving and integrating State ' s internal watch list with Commerce's licensing review process to enhance oversight of these items. (Recommendation 2)

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