



ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

July 1, 2024

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

RE: Interim Final Rule - BIS—2024—0003/RIN 0694—AJ46

Dear Acting Director Christino:

I write to express my grave concerns regarding the Interim Final Rule (Rule) on firearms and related components and ammunition exports that the Department of Commerce (DOC) released through the Bureau of Industry and Security (BIS) on April 26, 2024.¹ This Rule will significantly harm our economy and undermine the rights of Americans, while the effectiveness of the alleged benefit to national security is highly questionable. As the Attorney General for the State of Missouri, I have a responsibility to ensure that the well-being, security, and fundamental rights of American citizens are safeguarded from the harmful effects of this regulation.

By distinguishing between firearm sales to government entities and private individuals or commercial distributors, the rule implies that government entities are more deserving of firearms than civilians. This directly undermines the spirit of the Second Amendment which provides that the individual right to keep and bear arms is fundamental to the preservation of liberty. Moreover, the rule's underlying premise—that government entities are inherently more secure and less likely to misuse firearms—is profoundly flawed. There are multiple past instances when government-held firearms fell into the hands of bad actors. For example, in 2014, the U.S. Department of Defense lost track of \$1 billion worth of arms intended for Iraqi security forces², many of which ended up in the hands of ISIS terrorists.³ Additionally, in 2022, during the Biden

¹ Bureau of Industry and Security, Department of Commerce, Interim Final Rule: Revision of Firearms License Requirements (April 26, 2024). <https://public-inspection.federalregister.gov/2024-08813.pdf>

² Amnesty International: U.S. Military Admits Failures to Monitor Over \$1 Billion Worth of Arms Transfers (May, 24, 2017). <https://www.amnesty.org/en/latest/news/2017/05/us-military-admits-failures-to-monitor-over-1-billion-worth-of-arms-transfers-2/>

³ Task and Purpose: Over \$1 Billion In U.S. Military Equipment Lost In Iraq Could Fall Into ISIS Hands (May 26, 2017). <https://taskandpurpose.com/news/army-lost-1-billion-arms-iraq/>

Administration’s disastrous withdrawal from Afghanistan (in which 13 American soldiers and marines were killed), the United States left over \$7 billion worth of military equipment behind to be promptly confiscated by the Taliban.⁴ Both of these instances occurred under the watch of government entities, not private individuals that the BIS claims “have a higher risk of diversion.”

The firearms industry plays a crucial role in the American economy, providing jobs to hundreds of thousands of citizens and contributing billions in economic activity. This rule will result in lost sales, lower earnings, and cost Americans jobs by punishing manufactures through blocking lawful exports. The firearms and ammunition industry generates approximately \$70.5 billion in economic activity and supports over 300,000 jobs nationwide.⁵ Companies that manufacture firearms, ammunition, and components could face an immediate reduction of their export operations. With export licenses rendered invalid, these businesses lose access to international markets where a significant portion of their revenue may be generated. In this circumstance, layoffs and job cuts become inevitable, leading to increased unemployment and even reduced wages and benefits for workers who retain their jobs. Decreased productivity raises other pressing economic issues, such as expensive manufacturing equipment going underutilized.⁶ This not only would cause investment cancellations in new technology, research, and infrastructure, but it would also hinder companies’ return on investment for existing assets.

Significantly restricting the export of firearms can lead to a reduction in the industrial capacity of firearms and ammunition manufacturers as international markets dry up. A smaller industrial base and limited manufacturing capacity can in turn cause the United States to become increasingly dependent on foreign imports to meet its firearms needs, which poses risks to national security and economic sovereignty.

BIS claims that the economic impact of the rules is analyzed under a cost benefit analysis and states that the agency chose regulatory approaches that maximize net benefits.⁷ When an agency relies on a cost benefit analysis, a serious flaw can render the rule unreasonable.⁸ Here the serious flaw is that BIS only suggests that it selects regulatory approaches that maximize net benefits. In *Owner–Operator Indep. Drivers Ass’n v. Fed. Motor Carrier Safety Admin.*, the court vacated regulatory provisions because the cost-benefit analysis supporting them was based on an unexplained methodology.⁹ Here, BIS does not give a methodology. Not having a methodology or calculations on how the rule will impact the economy is a serious flaw, requiring the termination of this rule.

⁴ CNN: U.S. Left Behind \$7 Billion of Military Equipment In Afghanistan After 2021 Withdrawal, Pentagon Report Says (April 28, 2022). <https://www.cnn.com/2022/04/27/politics/afghan-weapons-left-behind/index.html>

⁵ Firearm and Ammunition Industry: Economic Impact Report (2022). <chrome-extension://efaidnbnmnnibpcajpeglcdefindmkaj/https://www.nssf.org/wp-content/uploads/2022/03/2022-Firearm-Ammunition-Industry-Economic-Impact.pdf>

⁶ The Federal Reserve Bank of Dallas: Capital, the Economy, and Monetary Policy. <https://www.dallasfed.org/educate/everyday/capital>

⁷ Bureau of Industry and Security, Department of Commerce, Interim Final Rule: Revision of Firearms License Requirements at p.54 (April 26, 2024). <https://public-inspection.federalregister.gov/2024-08813.pdf>

⁸ *Owner–Operator Indep. Drivers Ass’n v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 206 (D.C.Cir.2007)

⁹ *Id.*

Under 5 U.S.C.A 706(2)(A) a court can hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. A court can vacate an agency’s decision that “has relied on factors which Congress had not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”¹⁰ Additionally, an agency’s action is arbitrary and capricious if the agency has entirely failed to consider an important aspect of the problem.¹¹ BIS does not list any data for the economic impact of revoking gun manufactures’ export licenses to 36 countries. BIS has entirely failed to consider the economic impact of this rule in addition to the fact that many claims that BIS makes about increased national security are dubious.

This rule will in effect inhibit the full enjoyment and exercise of the Second Amendment. The Second Amendment prohibits government from infringing upon an individual’s right to keep and bear arms for self-defense.¹² This rule revises § 740.14 to limit the number of shotguns and firearms that an individual may export.¹³ Previously, paragraphs (e)(1)(i) and (e)(3)(i), permitted U.S. citizens to export or reexport three shotguns, three firearms, and 1,000 rounds of ammunition on any one trip.¹⁴ But with this IFR, Americans will be limited to three firearms or shotguns total on a single trip.¹⁵

Although governmental purchasers and commercial distributors constitute the vast majority of end users identified on firearms license applications for export, in some cases, an exporter or re-exporter may apply for a license to export or reexport firearms to a natural person abroad.¹⁶ Previously, passports or other national identity cards were not required with submission of applications for export to individuals unless requested by BIS for a specific license application.¹⁷ Individual U.S. citizens planning to travel to destinations which are in Country Group D:5¹⁸

¹⁰ *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43, 103 (1983).

¹¹ *Owner–Operator Indep. Drivers Ass’n v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 206 (D.C.Cir.2007).

¹² U.S. Const. Amend. 2.

¹³ Federal Register; Revision of Firearms License Requirements; Rules and Regulations, Vol. 89, No. 84, p. 346901; Tuesday, April 30, 2024.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Federal Register; Revision of Firearms License Requirements; Rules and Regulations, Vol. 89, No. 84, p. 34694; Tuesday, April 30, 2024.

¹⁷ Federal Register; Revision of Firearms License Requirements; Rules and Regulations, Vol. 89, No. 84, p. 34694; Tuesday, April 30, 2024.

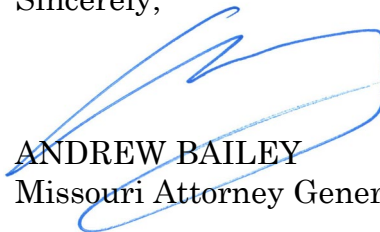
¹⁸ Those D:5 countries are Afghanistan, Belarus, Burma, Cambodia, Central African Republic, China, Democratic Republic of Congo, Cuba, Cyprus, Eritrea, Haiti, Iran, Iraq, North Korea, Lebanon, Libya, Nicaragua, Russia, Somalia, South Sudan, Sudan, Syria, Venezuela. Likewise, Caribbean countries will also require an export license for personal firearms. That includes Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Lucia, Suriname, St. Kitts and Nevis, St. Vincent and the Grenadines, and Trinidad and Tobago; associate members: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, and Turks and Caicos, as well as any other state or associate member that has acceded to membership in accordance with Article 3 or Article 231 of the Treaty of Chaguaramas for members. Federal Register; Revision of Firearms License Requirements; Rules and Regulations, Vol. 89, No. 84, p. 34691; Tuesday, April 30, 2024.

(with the exception of Zimbabwe) will require an export license to travel with personal firearms. This rule will further inhibit Second Amendment rights by making it more difficult to travel to those specific locations with the type and amount of firearms and ammunitions unelected bureaucrats personally deem unnecessary.

In addition to the issues raised above, this proposed rule does not take into account the Supreme Court's recent decision removing an unconstitutional and unfair advantage previously given to unelected federal regulators. Last week, the justices overruled their landmark 1984 decision in *Chevron v. Natural Resources Defense Council*, which gave rise to the presumption known as the *Chevron* doctrine.¹⁹ Under that doctrine, if Congress had not directly addressed the question at the center of a dispute, a court was required to uphold the agency's regulatory interpretation of the statute as long as it was reasonable. In light of *Loper Bright Enterprises v. Raimondo*, the Administrative Procedure Act now requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority.²⁰ Courts may not defer to an agency interpretation of the law simply because a statute is ambiguous. *Loper* provides further support for why the agency should reconsider this misguided interim rule.

The proposed rule goes beyond the authority granted to the President and to the unelected bureaucrats in the BIS. The rule will hurt our economy and it infringes on Second Amendment rights. As such, it should be promptly withdrawn.

Sincerely,



ANDREW BAILEY
Missouri Attorney General

¹⁹ *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 468 U.S. 1227 (1984).

²⁰ *Loper Bright Enters. v. Raimondo*, No. 22-451, 2024 U.S. LEXIS 2882.