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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

STATE OF WASHINGTON, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
STATE, *et al.*,

Federal Defendants.

No. 2:20-cv-00111-RAJ

**MOTION TO INTERVENE BY  
NATIONAL SHOOTING SPORTS  
FOUNDATION, INC. AND FREDRIC'S  
ARMS & SMITHS, LLC**

NOTE ON MOTION CALENDAR:  
February 28, 2020

1 National Shooting Sports Foundation, Inc. and Fredric's Arms & Smiths, LLC ("the NSSF  
2 Parties") respectfully seek an order from this Court allowing them to intervene as of right as  
3 defendants pursuant to Fed. R. Civ. P. 24(a)(2), or, alternatively, to intervene permissively as  
4 defendants under Fed. R. Civ. P. 24(b)(1)(B). In this action, Plaintiffs State of Washington, *et al.*  
5 challenge agency rules ("Rules") promulgated by the State Department and the Department of  
6 Commerce, respectively. These Rules, first initiated during President Obama's Administration,  
7 transfer export licensing jurisdiction over certain categories of firearms and ammunition to  
8 simplify and improve regulatory enforcement. Plaintiffs' merits arguments target *only* the Rules'  
9 removal of technical data related to 3D-printed firearms ("3D Files") from the U.S. Munitions List  
10 ("Munitions List"). Am. Compl. ¶ 2. Yet Plaintiffs seek an injunction against, and vacatur of, the  
11 Rules *in their entirety*. *Id.* VI (Prayer for Relief). The Federal Defendants can be expected to  
12 defend the Rules' treatment of 3D Files. By contrast, the NSSF Parties will argue that however  
13 this Court resolves the Rules' treatment of 3D Files, there is no basis for the Court to enjoin or  
14 vacate the Rules in their entirety.

15 Counsel for Federal Defendants state their position on this motion as follows: "We do not  
16 believe the Court has jurisdiction over this action. However, to the extent the Court exercises  
17 jurisdiction, we do not oppose your intervention as of right under FRCP 24(a)(2)." Counsel for  
18 Plaintiffs state their position as follows: "The States will not oppose [this] motion to intervene,  
19 on the conditions that (1) [the NSSF Parties'] briefing is limited to the severability issue and (2)  
20 the relief [the NSSF Parties] request would not alter the current (pre-implementation) status quo  
21 as to software and technology related to 3D-printed guns."<sup>1</sup>

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25 <sup>1</sup> Although the NSSF Parties do not plan to address issues beyond severability or to defend  
26 the Rules' treatment of 3D Files, the NSSF Parties reserve the right to address other issues if the  
claims change or if Plaintiffs and Federal Defendants inject other issues into the litigation.

## I. BACKGROUND

NSSF is the trade association for America’s firearms and ammunition industry, and it participated actively in the administrative process leading to the Rules’ promulgation. Fredric’s Arms & Smiths, LLC (“Fredric’s Arms”), a member of NSSF, is a gunsmith shop in Washington State. *See* Declaration of Marc Stairet (“Stairet Decl.”) ¶¶ 2, 4. Plaintiffs’ challenge to the Rules threatens to jeopardize a regulatory regime that will enable more effective and less burdensome regulation of firearm exports in ways that have nothing to do with the 3D Files. If successful, Plaintiffs’ challenge would cause significant economic detriment to NSSF’s members, including Fredric’s Arms. Accordingly, the NSSF Parties are entitled to (or, alternatively, should be permitted to) intervene in this matter to protect the unique interests of NSSF and its members.

### A. Summary of the Rules

The Rules here at issue “are the product of a larger effort since 2010,” originating in the Obama Administration, “to create a simpler, more robust system that eases industry compliance, improves enforceability, and better protects America’s most sensitive technologies.” U.S. Dep’t of State, Final Rules for Oversight of Firearms Exports Fact Sheet (Jan. 23, 2020).<sup>2</sup> In 2018, the State Department and the Department of Commerce issued proposed rules to transfer licensing jurisdiction over commercial firearms and related items, including those widely available in retail outlets, from the State Department under the International Traffic in Arms Regulations to the Department of Commerce’s Export Administration Regulations. *See* International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III, 83 Fed. Reg. 24,198 (proposed May 24, 2018); 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 (proposed May 24, 2018).

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<sup>2</sup> Available at <https://www.state.gov/proposed-rules-for-oversight-of-firearms-exports-published-for-public-comment>.

1           Following a notice-and-comment period, in which NSSF submitted comments reflecting its  
2 members' significant interest in the proposed rules, the State Department and the Department of  
3 Commerce issued the Rules that Plaintiffs now challenge. *See* International Traffic in Arms  
4 Regulations: U.S. Munitions List Categories I, II, and III, 85 Fed. Reg. 3819 (Jan. 23, 2020) ("State  
5 Final Rule"); Control of Firearms, Guns, Ammunition and Related Articles the President  
6 Determines No Longer Warrant Control Under the United States Munitions List (USML), 85 Fed.  
7 Reg. 4136 (Jan. 23, 2020) ("Commerce Final Rule"). The Rules, the State Department explained,  
8 revise the Munitions List to remove items that do not "provide the United States with a critical  
9 military or intelligence advantage or, in the case of weapons, have an inherently military function."  
10 State Final Rule, 85 Fed. Reg. 3820. The removed items include many that are "widely available  
11 in retail outlets in the United States and abroad." *Id.* At the same time, the Rules' transfer of  
12 jurisdiction to the Department of Commerce "does not deregulate the export of firearms." *Id.* at  
13 3822. "All firearms and major components being transferred to the [Commerce Control List] will  
14 continue to require export authorization from the Department of Commerce," which is "capable of  
15 monitoring foreign recipients' compliance with their obligations." *Id.*

16           **B. Interests of the NSSF Parties**

17           NSSF's mission is to promote, protect, and preserve hunting and the shooting sports, to  
18 promote and protect the lawful commerce in firearms, ammunition, and related products, and to  
19 support America's traditional hunting heritage and firearms freedoms. Formed in 1961, NSSF is  
20 a Connecticut non-profit organization with a membership that includes about 10,000  
21 manufacturers, distributors, firearms retailers, shooting ranges, sportsmen's organizations, and  
22 publishers. *See* NSSF, FIREARMS AND AMMUNITION INDUSTRY ECONOMIC IMPACT REPORT 2019.<sup>3</sup>  
23 NSSF members, and the firearms and ammunition industry as a whole, provide approximately  
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25           <sup>3</sup> *Available* at [https://d3aya7xwz8momx.cloudfront.net/wp-content/uploads/2019](https://d3aya7xwz8momx.cloudfront.net/wp-content/uploads/2019/02/2019-Economic-Impact.pdf)  
26 /02/2019-Economic-Impact.pdf, at 2.

1 149,000 jobs in the United States (in addition to about 162,000 jobs in supplier and ancillary  
2 industries).<sup>4</sup> In 2018, the firearms and ammunition industry was responsible for as much as \$52  
3 billion in total U.S. economic activity.<sup>5</sup>

4 NSSF has significant economic, legal, and policy interests in the viability of the Rules. As  
5 NSSF noted in comments submitted to the agencies, most NSSF members indicated that the Rules  
6 “would significantly reduce the overall burden and cost of complying with controls on the export  
7 of commercial firearms and ammunition.” Comment Letter on Proposed Rule on International  
8 Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III (July 6, 2018).<sup>6</sup> NSSF  
9 also assists its members with export compliance. With respect to the Rules challenged here, NSSF  
10 has conducted training on compliance in conjunction with the Department of Commerce’s Bureau  
11 of Industry and Security. *See* NSSF, NSSF-BIS Export Training (Feb. 25, 2019).<sup>7</sup>

12 Fredric’s Arms, a member of NSSF, is a gunsmith shop co-owned by a married couple in  
13 Richland, Washington. Stairet Decl. ¶¶ 2, 4. Fredric’s Arms offers services such as repair,  
14 restoration, cleaning, and building of firearms. *Id.* ¶ 2. The business does not export firearms  
15 outside the United States. *Id.* ¶ 5. Nevertheless, under the current regulatory regime, Fredric’s  
16 Arms is required to register with the State Department’s Directorate of Defense Trade Controls  
17 (“DDTC”) and to pay a \$2,250 annual registration fee. *Id.* ¶ 6. This fee puts a significant burden  
18 on a small business like Fredric’s Arms, which has total annual revenues well under six figures.  
19 *Id.* ¶ 7. As a consequence of the Rules, Fredric’s Arms will no longer be required to pay the  
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21 <sup>4</sup> *Id.* at 3.

22 <sup>5</sup> *Id.*

23 <sup>6</sup> Available at [https://www.pmdtc.state.gov/sys\\_attachment.do?sys\\_id=0b4aef81d](https://www.pmdtc.state.gov/sys_attachment.do?sys_id=0b4aef81d)  
24 ba31b403b1272131f9619f1, at 108.

25 <sup>7</sup> Available at <https://www.nssf.org/event/nssf-bis-export-training>.

1 \$2,250 annual fee to register with the State Department's DDTC. *Id.* ¶ 9. Fredric's Arms has  
 2 never been involved with the 3D-printing of firearms. *Id.* ¶ 11.

3 Notably, the NSSF Parties' interests just described are fully independent of any interest in  
 4 maintaining the provisions of the Rules relating to the 3D Files. For these reasons, and for the  
 5 reasons stated below, this Court should grant the NSSF Parties' motion for leave to intervene.<sup>8</sup>

## 6 II. ARGUMENT

### 7 A. The NSSF Parties Are Entitled to Intervene as of Right Pursuant to 8 Federal Rule of Civil Procedure 24(a)

9 Federal Rule of Civil Procedure 24(a) states in relevant part:

10 Intervention of Right. On timely motion, the court must permit anyone to intervene  
 11 who:

11 . . .

12 (2) claims an interest relating to the property or transaction that is the subject of the  
 13 action, and is so situated that disposing of the action may as a practical matter  
 14 impair or impede the movant's ability to protect its interest, unless existing parties  
 15 adequately represent that interest.

14 "Rule 24(a) is construed broadly, in favor of the applicants for intervention." *In re Volkswagen*  
 15 *"Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 894 F.3d 1030, 1037 (9th Cir. 2018).

16 Under Rule 24(a)(2), "an applicant is entitled to intervention as of right upon showing that:"

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 19 <sup>8</sup> Although the NSSF Parties, as defendant-intervenors, are not required to show Article III  
 20 standing, they readily clear that threshold. Fredric's Arms is "an object of the [government] action  
 21 (or forgone action) at issue." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561–62 (1992). Further, if  
 22 Plaintiffs succeed in invalidating the Rules in their entirety, on either a temporary or permanent  
 23 basis, that would reimpose a significant economic burden on Fredric's Arms. Stairet Decl. ¶ 10.  
 24 NSSF itself also has standing. *First*, NSSF's members "would . . . have standing to sue in their own  
 25 right" because they would be personally subject to a more costly regulatory regime if Plaintiffs' suit  
 26 succeeds. *Am. Diabetes Ass'n v. U.S. Dep't of the Army*, 938 F.3d 1147, 1155 (9th Cir. 2019)  
 (quoting *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1147 (9th Cir. 2000)).  
 Fredric's Arms, a member of NSSF, provides an example. *See* Stairet Decl. ¶¶ 7–10. *Second*, the  
 interests NSSF "seek[s] to protect are germane to the organization's purposes" of acting on behalf  
 of the firearms and ammunition industry to promote hunting and the shooting sports. *Am. Diabetes*  
*Ass'n*, 938 F.3d at 1155 (quoting *Ecological Rights Found.*, 230 F.3d at 1147). *Third*, "neither the  
 claim asserted nor the relief requested requires the participation of individual members in the  
 lawsuit," *id.* (quoting *Ecological Rights Found.*, 230 F.3d at 1147), though here an individual NSSF  
 member (Fredric's Arms) is participating in the suit.

1 (1) the application for intervention is timely; (2) the applicant has a “significantly  
2 protectable” interest relating to the property or transaction that is the subject of the  
3 action; (3) the applicant is so situated that the disposition of the action may, as a  
4 practical matter, impair or impede the applicant’s ability to protect that interest; and  
5 (4) the applicant’s interest is not adequately represented by the existing parties in  
6 the lawsuit.

7 *In re Mastro*, No. 10-cv-0927-RAJ, 2010 WL 2650642, at \*2 (W.D. Wash. June 30, 2010)  
8 (quoting *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 817 (9th Cir. 2001)).  
9 The NSSF Parties satisfy each prong of this test.

10 *1. The NSSF Parties’ Motion to Intervene is Timely.*

11 “Courts weigh three factors in determining whether a motion to intervene is timely: ‘(1)  
12 the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other  
13 parties; and (3) the reason for and length of the delay.’” *EEOC v. Trans Ocean Seafoods, Inc.*,  
14 No. 15-cv-1563-RAJ, 2016 WL 10591398, at \*3 (W.D. Wash. Jan. 28, 2016) (quoting *United*  
15 *States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004)). Plaintiffs filed their complaint  
16 on January 23, 2020, and the NSSF Parties are seeking to intervene 19 days later. The intervention  
17 motion also follows Plaintiffs’ motion for a preliminary injunction by just five days. Federal  
18 Defendants have not yet filed their opposition to Plaintiffs’ motion for a preliminary injunction,  
19 and this Court has not made “any substantive rulings.” *Swinomish Indian Tribal Cmty. v. Army*  
20 *Corps of Eng’rs*, No. 2:18-cv-598-RSL, 2019 WL 469842, at \*2 (W.D. Wash. Feb. 6, 2019).

21 This litigation, then, “is in its earliest stages.” *Trans Ocean Seafoods*, 2016 WL 10591398,  
22 at \*3 (finding a motion to intervene timely when it was filed over two months after the complaint  
23 and following the defendant’s filing of an answer). Granting the NSSF Parties’ timely motion  
24 thus will not cause any delay. Further, the NSSF Parties fully agree to comply with any  
25 forthcoming scheduling orders and deadlines applicable to Federal Defendants. Hence, there is  
26 no risk of prejudice to Plaintiffs or Federal Defendants, and the NSSF Parties’ motion to intervene  
satisfies the timeliness provision of Rule 24(a)(2).

1           2. *The NSSF Parties Have Significantly Protectable Interests Relating to the Rules' Effects*  
2           *on Regulated Parties.*

3           “[T]he interest test is primarily a practical guide to disposing of lawsuits by involving as  
4 many apparently concerned persons as is compatible with efficiency and due process.” *Wilderness*  
5 *Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (en banc) (internal quotation marks  
6 omitted). An applicant for intervention demonstrates a “significantly protectable interest” when  
7 “the injunctive relief sought by the plaintiffs will have direct, immediate, and harmful effects upon  
8 [the applicant’s] legally protectable interests.” *Sw. Ctr.*, 268 F.3d at 818 (quoting *Forest*  
9 *Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1494 (9th Cir. 1995)). Here, the NSSF  
10 Parties have a direct interest in the economic vitality and legal rights of NSSF members and in the  
11 effective regulation of firearms exports.

12           *First*, an injunction against the Rules would “have direct, immediate, and harmful effects”  
13 on the legal and economic interests of NSSF members. *Southwest Ctr.*, 268 F.3d at 818. The  
14 Rules, the Department of Commerce explained, “reduc[e] the procedural burdens and costs of  
15 export compliance on the U.S. firearms industry.” Commerce Final Rule, 85 Fed. Reg. 4136. As  
16 NSSF observed in its comments, “under the Commerce system, there are no fees to apply for  
17 licenses. There are no redundant registration requirements for domestic manufacturers. There are  
18 no fees for registration. Such fees are bearable for large companies, but often not for small- and  
19 medium-sized companies.” Comment Letter, *supra*, at 109. The Rules thus protect NSSF  
20 members’ property interests; an injunction against the Rules’ enforcement would eliminate that  
21 protection, requiring NSSF members “to expend significant time and resources.” *Swinomish*,  
22 2019 WL 469842, at \*2.

23           Fredric’s Arms provides a clear example. The Rules eliminate the requirement that  
24 Fredric’s Arms, which does not even export goods outside the United States, pay a \$2,250 annual  
25 registration fee. *See* Dep’t of State, State Transition Guidance for Revisions to Categories I, II,  
26



1 and II (Jan. 23, 2020);<sup>9</sup> Dep’t of State Directorate of Def. Trade Controls, Registration FAQs  
 2 (accessed Feb. 11, 2020).<sup>10</sup> The Rules will therefore remove a significant economic burden on  
 3 Fredric’s Arms, which has total annual revenues under six figures and which has been forced to  
 4 raise its hourly rates to cover the costs of paying the \$2,250 annual registration fee. Stairet Decl.  
 5 ¶¶ 6–7, 9.

6 *Second*, NSSF “participated actively in the administrative process” that culminated in  
 7 promulgation of the Rules. *T-Mobile W., LLC v. City of Medina*, No. C14-cv-1455-RSL, 2015  
 8 WL 13234962, at \*3 (W.D. Wash. Jan. 21, 2015) (quoting *Sagebrush Rebellion, Inc. v. Watt*, 713  
 9 F.2d 525, 526–27 (9th Cir. 1983)). NSSF submitted comments to both the State Department and  
 10 the Department of Commerce that underscored the significance of the “regulatory burden  
 11 reduction.” Comment Letter, *supra*; see also Comment Letter on Proposed Rule—Control of  
 12 Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant  
 13 Control Under the United States Munitions List (USML) (July 6, 2018).<sup>11</sup> NSSF’s comments  
 14 further explained that the Rules would “lead to growth for U.S. companies, more jobs in the United  
 15 States, and related economic benefits for the cities and states where the members reside.” *Id.* at  
 16 3. With “[t]he result of” the administrative process “now at issue,” NSSF has “a significant  
 17 protectable interest in defending th[at] result.” *T-Mobile*, 2015 WL 13234962, at \*3.

18 The NSSF Parties’ significantly protectable interests in the Rules exist independently of  
 19 any decisions this Court may make concerning the 3D Files—the target of Plaintiffs’ Complaint.  
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22 <sup>9</sup> Available at [https://www.pmdtdc.state.gov/sys\\_attachment.do?sysparm\\_referring\\_url=tear\\_off&view=true&sys\\_id=11608c55db664c107ede365e7c96196e](https://www.pmdtdc.state.gov/sys_attachment.do?sysparm_referring_url=tear_off&view=true&sys_id=11608c55db664c107ede365e7c96196e).

24 <sup>10</sup> Available at [https://www.pmdtdc.state.gov/ddtc\\_public?id=ddtc\\_public\\_portal\\_faq\\_detail&sys\\_id=138b6d9cdb3d5b4044f9ff621f961905](https://www.pmdtdc.state.gov/ddtc_public?id=ddtc_public_portal_faq_detail&sys_id=138b6d9cdb3d5b4044f9ff621f961905).

26 <sup>11</sup> Available at <https://www.regulations.gov/contentStreamer?documentId=BIS-2017-0004-0375&attachmentNumber=1&contentType=pdf> at 2.

1 In other words, the NSSF Parties have a substantial interest in defending the Rules' many other  
2 provisions, including on different legal grounds from those relating to the 3D Files.

3 3. *The Disposition of this Action May, as a Practical Matter, Impede the NSSF Parties'*  
4 *Ability to Protect Their Economic and Policy Interests.*

5 "Having found that [proposed intervenors] have a significant protectable interest," the Ninth  
6 Circuit has had "little difficulty concluding that the disposition of th[e] case may, as a practical  
7 matter, affect it." *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006).  
8 Thus, "[i]f an absentee would be substantially affected in a practical sense by the determination made  
9 in an action, he should, as a general rule, be entitled to intervene." *Citizens for Balanced Use v.*  
10 *Montana Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011) (quoting FED. R. CIV. P. 24 advisory  
11 committee's note). NSSF members' economic interests, as noted, would be jeopardized if the Court  
12 granted Plaintiffs' requested relief of enjoining and vacating the Rules. For example, the Plaintiffs'  
13 lawsuit has created uncertainty about whether Fredric's Arms will need to pay the \$2,250 fee for the  
14 upcoming year. Stairet Decl. ¶ 10. If the lawsuit halted implementation of the Rules in their entirety,  
15 on either a temporary or permanent basis, that would re-impose a significant economic burden on  
16 Fredric's Arms and other small businesses. *Id.* Further, because "[a] central issue in this case is the  
17 propriety of the [administrative] result that [NSSF] supported," NSSF's "ability to protect this  
18 interest could be impaired or impeded by an adverse ruling in this case." *T-Mobile*, 2015 WL  
19 13234962, at \*3.

20 4. *The Existing Parties May Not Adequately Represent the NSSF Parties' Interests.*

21 A proposed intervenor is adequately represented only if "the interest of a present party is  
22 such that it will undoubtedly make all of a proposed intervenor's arguments;" "the present party  
23 is capable and willing to make such arguments;" and the proposed intervenor would not "offer  
24 any necessary elements to the proceeding that other parties would neglect." *Citizens for Balanced*  
25 *Use*, 647 F.3d at 898 (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). The  
26 Ninth Circuit has "stress[ed] that intervention of right does not require an absolute certainty that

1 a party's interests will be impaired or that existing parties will not adequately represent its  
2 interests." *Id.* at 900.

3 The NSSF Parties intend to argue that, however this Court resolves the question whether  
4 the agencies acted lawfully in transferring jurisdiction over the 3D Files from the State Department  
5 to the Department of Commerce, there is no basis for the Court to halt implementation of any  
6 other portion of the Rules not involving the 3D Files. Plaintiffs, while specifically directing their  
7 arguments at the transfer of jurisdiction over 3D Files, *see* Am. Compl. ¶ 2, have asked this Court  
8 to enjoin and vacate the Rules in their entirety, *see id.* VI (Prayer for Relief). Plaintiffs' request  
9 thus contravenes the NSSF Parties' interests in preserving the many Rules provisions unrelated to  
10 3D Files.

11 The Federal Defendants, as promulgators of the Rules (including provisions related to 3D  
12 Files), are situated differently than the NSSF Parties. As the Ninth Circuit has stated, "the  
13 government's representation of the public interest may not be identical" to the interest "of a  
14 particular group," even if "both entities occupy the same posture in the litigation." *Citizens for*  
15 *Balanced Use*, 647 F.3d at 899 (internal quotation marks omitted); *see Fund For Animals, Inc. v.*  
16 *Norton*, 322 F.3d 728, 736–37 (D.C. Cir. 2003) (courts "often conclude[] that governmental  
17 entities do not adequately represent the interests of aspiring intervenors"). And "[i]nadequate  
18 representation is most likely to be found when the applicant asserts a personal interest that does  
19 not belong to the general public." *Swinomish*, 2019 WL 469842, at \*3. The NSSF Parties' focus  
20 on preserving provisions of the Rules unrelated to the 3D Files stems from NSSF members'  
21 commercial and policy interests. These interests are not fully aligned with those of Federal  
22 Defendants, who are tasked with taking into account a variety of constituencies and interests, and  
23 who will defend the Rules' transfer of jurisdiction over the 3D Files.

24 The NSSF Parties' substantive legal positions, moreover, may well diverge from those of  
25 the Federal Defendants in ways that will prejudice the NSSF Parties if they are shut out of the suit.  
26 The NSSF Parties will show that the provisions of the Rules transferring jurisdiction over the 3D

1 Files are severable: if the Court rules that the transfer of jurisdiction over the files was unlawful,  
2 it should “set[] aside only the offending parts of the [R]ule[s].” *Carlson v. Postal Regulatory*  
3 *Comm’n*, 938 F.3d 337, 351 (D.C. Cir. 2019). Because the NSSF Parties lack any interest in the  
4 3D Files issue, the NSSF Parties would “offer [the] necessary element[]” of differentiation  
5 between arguments directed at transfer of jurisdiction over the 3D Files (presumably the Federal  
6 Defendants’ focus in defending against this suit) and those directed at transfer of firearms and  
7 ammunition more broadly (the NSSF Parties’ focus). *Citizens for Balanced Use*, 647 F.3d at 898  
8 (quoting *Arakaki*, 324 F.3d at 1086). Indeed, the NSSF Parties plan to address in considerable  
9 depth the remedial question of what the Court should do if it agrees with Plaintiffs’ position on  
10 the Rules’ treatment of 3D Files.

11 In sum, the NSSF Parties ask to be heard on an issue of substantial and distinctive  
12 importance to NSSF and its members, including Fredric’s Arms. This Court should grant that  
13 opportunity.

14 **B. In the Alternative, the NSSF Parties Should Be Granted Leave for**  
15 **Permissive Intervention Under Federal Rule of Civil Procedure 24(b)**

16 Federal Rule of Civil Procedure 24(b) states in relevant part:

17 Permissive Intervention.

18 (1) *In General*. On timely motion, the court may permit anyone to intervene who:

19 . . .  
20 (B) has a claim or defense that shares with the main action a common question of  
law or fact.

21 “The standard for permissive intervention is a low one.” *Club v. McLerran*, No. 11-cv-  
22 1759-RSL, 2012 WL 12846108, at \*1 (W.D. Wash. Mar. 19, 2012) (citing *Wilderness Soc’y*, 630  
23 F.3d at 1179) (“[A] liberal policy in favor of intervention serves both efficient resolution of issues  
24 and broadened access to the courts.”). As explained above, *see supra* p. 7, the NSSF Parties’  
25 motion to intervene is timely. Moreover, the validity of provisions of the Rules that Plaintiffs  
26 seek to vacate is a “common question of law.” FED. R. CIV. P. 24(b)(1)(B).

1 Additional factors that “courts consider . . . in deciding whether to permit intervention”  
2 similarly support the NSSF Parties’ intervention. *Perry v. Schwarzenegger*, 630 F.3d 898, 905  
3 (9th Cir. 2011). These factors include:

4 [T]he nature and extent of the intervenors’ interest, their standing to raise relevant  
5 legal issues, the legal position they seek to advance, and its probable relation to  
6 the merits of the case[,] whether changes have occurred in the litigation so that  
7 intervention that was once denied should be reexamined, whether the intervenors’  
8 interests are adequately represented by other parties, whether intervention will  
9 prolong or unduly delay the litigation, and whether parties seeking intervention  
10 will significantly contribute to full development of the underlying factual issues  
11 in the suit and to the just and equitable adjudication of the legal questions  
12 presented.

13 *Id.* (second alteration in original) (quoting *Spangler v. Pasadena Bd. of Educ.*, 552 F.2d 1326,  
14 1329 (9th Cir. 1977)) (footnotes omitted). As earlier noted, the NSSF Parties have “a  
15 substantial interest in the outcome of the litigation,” *McLerran*, 2012 WL 12846108, at \*2,  
16 as well as standing to raise the validity of Rules provisions unrelated to the 3D Files and the  
17 severability of the Rules. *See supra* pp. 8–10, 6 n.8. Further, the NSSF Parties’ intervention  
18 motion will not cause delay; their interests are not adequately represented by either Plaintiffs  
19 or Federal Defendants; and their participation will permit full consideration of the validity of  
20 the many Rules provisions unrelated to the 3D Files, as well as of any remedial questions.  
21 *See supra* pp. 7, 10–12. Therefore, the NSSF Parties fulfill the criteria for permissive  
22 intervention under Fed. R. Civ. P. 24(b).

### 23 **III. CONCLUSION**

24 The NSSF Parties respectfully request leave to intervene as of right pursuant to Fed. R.  
25 Civ. P. 24(a) or, in the alternative, to intervene permissively pursuant to Fed. R. Civ. P. 24(b). In  
26 addition, the NSSF Parties request leave to file their own response to the preliminary injunction  
motion on the same date that Defendants are required to file a response.

DATED this 11th day of February, 2020.

AKIN GUMP STRAUSS HAUER & FELD LLP

DAVIS WRIGHT TREMAINE LLP

/s/ Pratik A. Shah

Pratik A. Shah, D.C. Bar No. 497108  
(*pro hac vice* application forthcoming)

By: /s/ Ross Siler

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*Attorneys for Defendant-Intervenors*

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 11th, 2020, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notice of filing to all parties registered in the CM/ECF system for this matter.

DATED: February 11th, 2020

/s/ Ross Siler  
Ross Siler