

USML TO CCL TRANSITION

FORMERLY CALLED EXPORT CONTROL REFORM

U.S. FIREARM INDUSTRY GAINS LEVEL PLAYING FIELD IN GLOBAL MARKETPLACE

Before the Trump Administration finalized reforms to the export regulations covering firearms and ammunition, the out-dated regime hampered U.S. businesses in the firearm and ammunition industry, by giving foreign companies a competitive advantage.

Prior to the crucial reforms, the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) required U.S. firearm and ammunition manufacturers and distributors to obtain licenses from the State Department's Directorate of Defense Trade Controls (DDTC) in order to export sporting firearms and ammunition (Categories I, II and III on the U.S. Munitions List [USML]).ⁱ

Additionally, the export of firearms over \$1 million unnecessarily required congressional notification which delayed license approvals for months, and in some cases, for years.ⁱⁱ

The delay caused by the congressional notification process for relatively small orders meant that U.S. companies were consistently sidelined in efforts to compete with foreign companies,

- U.S. firearms and ammunition manufacturers faced a competitive disadvantage in the global marketplace due to inefficient Cold War-era export controls.
- The Obama Administration's Export Control Reform initiative was working to remove unnecessary restrictions and focus on building "higher walls around a smaller yard."
- Firearms and ammunition were scheduled to be included in the initiative, but had been deliberately left on the sidelines as nearly all other product categories have been reformed.
- Under President Trump, the State and Commerce departments took action to move forward with reforms for the commercial and sporting firearms and ammunition industry, finally transitioning export licensing to Commerce from State in March 2020.

particularly in sales to the military and law enforcement sectors of our allied nations. Increasingly, U.S. manufacturers encounter requests for proposals (RFPs) containing contract provisions that prior to the reforms, prevented them from being able to even submit a bid. For example, foreign government contracts often contain provisions with delivery dates that U.S. companies could not be assured of meeting due to congressional notification delays and delays in obtaining licenses from DDTC. These provisions make

a failure to deliver product a breach of contract resulting in the U.S. company's forfeiture of a bid bond. Foreign competitors had been able to successfully encourage these types of provisions in order to gain a significant competitive advantage over U.S. companies.

The AECA also required all federally licensed manufacturers, even small, non-exporting manufacturers to register with DDTC and pay an annual fee of \$2,250. The ECR initiative has removed this costly regulatory burden on small businesses.

EXPORT CONTROL REFORM (ECR) EFFORTS

Under the Obama Administration, an interagency task force worked to reform our export control system through the Export Control Reform (ECR) initiative. The Obama Administration's export control reforms called for removing unnecessary restrictions,

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and instead, focusing export controls on our “crown jewels” by building “higher walls around a smaller yard.”ⁱⁱⁱ

At the end of the Obama Administration the review of the controls lists was nearly complete, and there are just a few proposed rules left to publish, including those for the firearms and ammunition categories. The list review primarily involved consideration of moving the export licensing of dual-use items to the Commerce Department’s Commerce Control List (CCL) from the USML and decontrolling items that have no national security implications.

MODERNIZING EXPORT CONTROLS FOR FIREARMS AND AMMUNITION PRODUCTS CREATES JOBS

In reviewing the CCL and USML, the Obama Administration was clear that sporting firearms and ammunition (Category I, safari hunting rifles over .50 caliber from Category II and Category III, with the exception of fully automatic military firearms) should be moved to the CCL from the USML and be licensed by the Commerce Department’s Bureau of Industry and Security (BIS).

Unfortunately, the Obama Administration held off on the publication of these rules due to political pressures and failed to publish the reforms for Categories I-III as they did for all other categories. While other industries reaped the benefits of the reforms, the firearm and ammunition industry was left on the sidelines.

Under the Trump Administration, the Departments of Commerce and State successfully published the proposed rules in May 2018 and the final rules in January 2020, with an effective date of March 9, 2020.

The National Shooting Sports Foundation had led the charge for the USML to CCL transition for a decade, and applauds the reforms finalized by the Trump Administration.

PRIOR TO THE CRUCIAL REFORMS, THE ARMS EXPORT CONTROL ACT (AECA)

NSSF worked hard to put pressure on the Obama Administration to prioritize policy over politics and move Categories I-III to the CCL. In response to our work, a bipartisan group of members of Congress, representing about one-third of both chambers, wrote to the prior Administration calling for immediate action on our categories.

However, we heard conflicting messages from key officials about the outlook for action.

On March 10, 2016, the Commerce Department’s Bureau of Industry and Security (BIS) then-Assistant Secretary Kevin Wolf said there will be a final rule in the next couple of months on transferring products from Category XIV (toxins), but implied Categories I-III will remain on the sidelines: “That’s pretty much all we can really expect to get done before the election, before the usual slowdown in an election year of regulations. The rest is all up to whoever’s in charge next term.”

This contradicts statements from a February 11, 2016 House Small Business Committee hearing held on the ECR initiative, with testimony from the State Department’s then-Deputy Assistant Secretary for Defense Trade Controls (DDTC) Brian Nilsson and Assistant Secretary Wolf. They stated that the Obama administration is still expecting to publish the dual proposed rules to transfer jurisdiction for our industry’s products to BIS from DDTC before the end of 2016.

Their testimony also echoed what the State Department said in recent letters responding to the letters 22 members of Congress sent in 2015 at NSSF’s request seeking to know when our categories would move as part of the ECR: “the Department is committed to finalizing an initial review of the entire USML in 2016.”

ⁱ To export sporting shotguns and shot shells the Export Administration Regulations (EAR) require a license from the U.S. Department of Commerce Bureau of Industry Security (BIS). Larger caliber “dangerous game” firearms used for safari hunting are currently controlled under USML Category II and their respective ammunition is controlled under Category III.

ⁱⁱ The notification threshold was reduced to \$1 million from \$14 million by the Security Assistance Act of 2002. The export of shoulder-fired missiles is subject to less congressional oversight.

ⁱⁱⁱ White House, “Fact Sheet on the President’s Export Control Initiative,” April 20, 2010. <http://www.whitehouse.gov/the-press-office/fact-sheet-presidents-export-control-reform-initiative>

^{iv} ITAR § 121.1 Cat 1(h) v ITAR § 121.1 Cat 1(g)