Congress of the United States
Washington, DC 20515

August 29, 2016

The Honorable John F. Kerry
Secretary of State
2201 C Street NW
Washington, D.C. 20520

Dear Mr. Secretary,

We believe that the July 22 "guidance", requiring manufacturers and gunsmiths to register as exporters under the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR), and pay a $2,250 annual fee, is unnecessary and will have serious and negative consequences on the hundreds of thousands of small and medium-sized gunsmiths who operate in our districts.

The vast majority of our constituents engaged in gunsmithing make little to no income from their activities and often do it as a hobby or side business. They most certainly do not export firearms. They also do not manufacture firearms in any widely understood sense of the term. Therefore, it makes no sense for them to be required to pay $2,250 and register under AECA and ITAR. For those who do this work on the side - perhaps developing a small cottage business to supplement their income - the last thing they need is an edict from the federal government imposing crippling fees and requirements which are wholly unnecessary and nonsensical.

We believe that the guidance effectively expands ITAR registration requirements and it should be rescinded immediately.

Expands ITAR Registrant Requirements

We understand that the Directorate of Defense Trade Controls (DDTC) intended the 7-22-2016 guidance to simply clarify existing policy. In fact, in the opening of the guidance you state, "traditional gunsmithing activities do not constitute manufacturing for ITAR purposes, and therefore, do not require registration."

Unfortunately, the four pages which follow that introductory sentence run completely counter to your stated intent. As conveyed by the guidance from the DDTC, virtually any activity that involves modifications to an existing firearm to improve its accuracy or operation, or to change its caliber or round capacity would be treated by DDTC as controlled "manufacturing" of the firearm. While DDTC insists this is merely the "ordinary, contemporary, common meaning of 'manufacturing,'" it is anything but. Rather, DDTC's position is similar to claiming an auto mechanic who fixes or performs custom work on cars is a car manufacturer.

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Specifically, as outlined, the activity threshold that necessitates a type 07 FFL (Federal Firearms License-manufacturing) does not match up with the activities listed on page three of the guidance. That means that firearms dealers who engage in limited gunsmithing - activities that do not require a type 07 FFL - would still need to register with DDTC as manufacturers of a defense article listed on the United States Munitions List (USML).

Gunsmiths Are Not Exporting Arms
Not only does the guidance expand registration to gunsmiths who do not "manufacture" firearms, but also it also runs counter to the intent of AECA and ITAR, which are meant to control the production and exportation of military material, not the domestic repair or maintenance of a legal, common, and Constitutionally-protected product.

The Big Picture & Best Solution: Move USML Items to Department of Commerce
Finally, this would not be an issue if the Obama Administration finished its seven-year "Export Control Reform" initiative, which has bipartisan support in Congress. The very basis of that effort is the common sense notion that products intended only for military use should be subject to the highest standards of security and oversight, while regulation of products with general commercial applications should not unnecessarily hinder American business and innovation.

As part of the initiative, the Administration has been transferring regulatory responsibility for the USML from the State Department to the Commerce Department. So far, eighteen categories have been transferred; only three remain. We understand that draft regulations exist to finish the job in this export reform initiative.

We urge you to publish the proposed rules to move the remaining three categories of USML to Commerce, which would make the problems raised in the 7-22-2016 guidance null and void. On what date will the Administration finish the job and publish proposed rules in the Federal Register?

Our constituents need clarity and this guidance does not accomplish that end. The situation must be rectified and we ask for your immediate attention.

Sincerely

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Patrick T. McHenry (NC-10)

Bob Goodlatte (VA-06)

Michael McCaul (TX-10)

Steve Chabot (OH-01)

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Matt Salmon (AZ-05)

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