

United States Senate

WASHINGTON, DC 20510

August 3, 2015

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

Mr. Anthony Dearth
Acting Deputy Assistant Secretary
PM/DDTC, SA-1, 12th Floor
2401 E Street, NW
U.S. Department of State
Washington, D.C. 20037

Dear Secretary Kerry and Deputy Assistant Secretary Dearth:

We write to express our strong concerns regarding proposed changes to the International Traffic in Arms Regulations (ITAR) and the implications those changes hold for Americans' First and Second Amendment rights. We understand that there has been a long-term effort under the Export Control Reform to revise the U.S. Munitions List (USML) Categories I, II, and III and move civilian type firearms and associated parts, components, accessories, attachments, and related ammunition to the Export Administration Regulations from the ITAR. In light of the fact that this is a continuing process, we find that the proposed modifications to the ITAR, as currently structured, may severely limit the scope of what private citizens are permitted to discuss publicly and would infringe on their constitutionally guaranteed liberties.

Under the Arms Export Control Act (AECA), the President was charged with the important task of controlling the export of defense articles and services. However, this authority was not intended to usurp the rights guaranteed by the First and Second Amendments. Changes to the ITAR detailed in the Federal Register Volume 80, Number 116—defining or redefining "export," "development," "production," and "public domain," among other terms—could effectively categorize private citizens' online discussions of firearms and ammunition made available generally to the public and used for legitimate purposes as an export of technical data regarding a defense article. Despite the proposed regulations' attempted allowance for public discourse, it nevertheless requires a broad range of publicly discussed data or information to have prior authorization from either the State Department, the Department of Defense's Office of Security Review, or other agencies or government officials before being published or publicly disseminated. This represents a prior restraint of free speech and lacks the necessary constitutional protections for such speech.

In addition, certain definitions within the proposal are so broad as to capture actions essential to the exercise of a citizen's Second Amendment rights. Currently, for example, the regulations exempt from the definitions of "technical data" some firearm-related information, but leave controlled "detailed design, development, production or manufacturing information" about those firearms (see 22 C.F.R. § 125.4(b)(6)). These exemptions would be rendered all but meaningless by the current proposal's very broad new definitions of "development" and "production." Taken together, the proposal's definitions of these concepts capture virtually all information about the lifecycle and evolution of a product, as well as its engineering and mechanical properties.

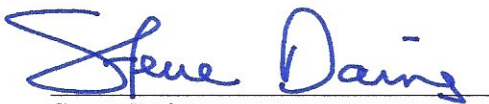
Conceivably, these new definitions could include information such as how to legally modify or assemble a generally available firearm, such as a hunting rifle or a self-defense handgun, or information on the development of new loading information for existing firearm ammunition. These types of activities are part and parcel of how many Americans exercise their Second Amendment rights.

While we agree it is crucial that the United States protect sensitive information regarding defense articles relating to our national defense and security, these proposed changes go too far—potentially limiting the discourse, and thus the practice, of upstanding sportsmen and gun owners. The lines drawn by the proposal are also so vague, and the penalties for non-compliance so high, that the proposed rule would likely chill even unregulated speech. In short, with the current structure of the ITAR including commonly owned firearms and ammunition in USML Categories I, II, and III, such as those used for hunting, sport shooting, and self-defense the changes as proposed are a clear infringement on Americans' right to freedom of speech.

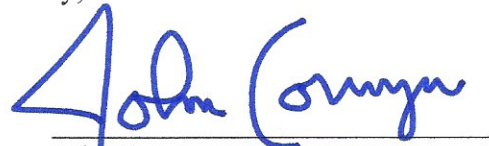
Accordingly, we urge the State Department to modify or delay these misguided changes to the ITAR in order to ensure they do not violate the First and Second Amendment or until commonly owned firearms and ammunition are not adversely impacted. It is paramount that your agency commit to upholding both the clear intent of the AECA and protecting citizens' inalienable freedoms under the Constitution.

Thank you for your prompt consideration of this request. We look forward to hearing from you.

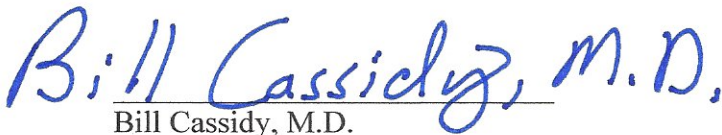
Sincerely,



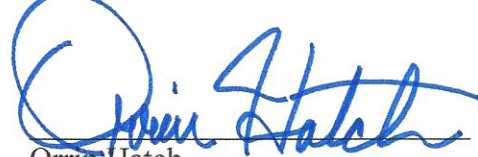
Steve Daines
United States Senator



John Cornyn
United States Senator



Bill Cassidy, M.D.
United States Senator



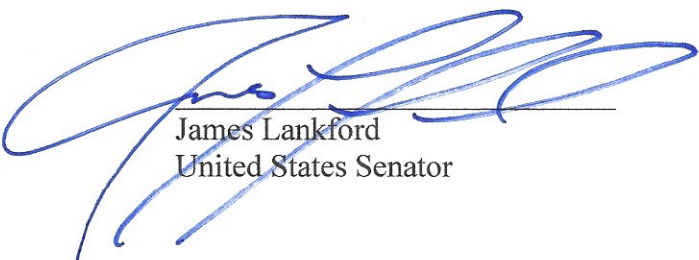
Orrin Hatch
United States Senator



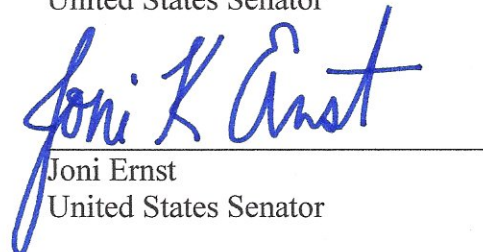
Mike Crapo
United States Senator



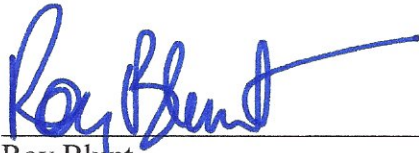
James M. Inhofe
United States Senator



James Lankford
United States Senator



Joni Ernst
United States Senator



Roy Blunt
United States Senator



Tom Cotton
United States Senator



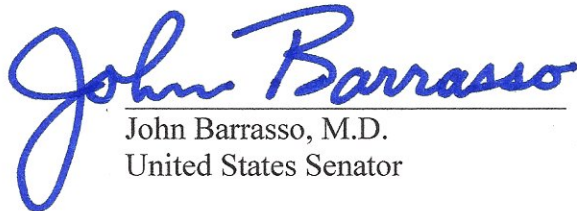
Mike Lee
United States Senator



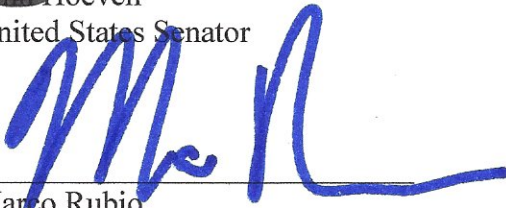
Dan Sullivan
United States Senator



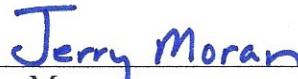
John Hoeven
United States Senator



John Barrasso, M.D.
United States Senator



Marco Rubio
United States Senator



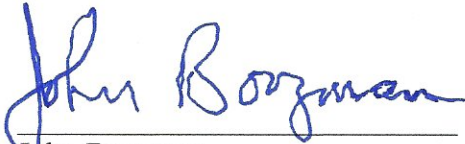
Jerry Moran
United States Senator



Johnny Isakson
United States Senator



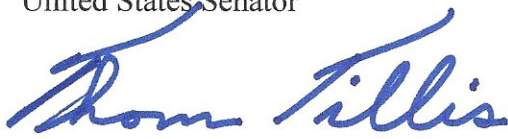
Shelley Moore Capito
United States Senator



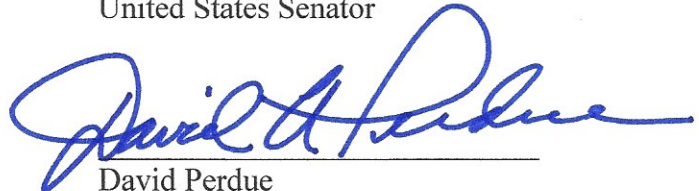
John Boozman
United States Senator



David Vitter
United States Senator



Thom Tillis
United States Senator



David Perdue
United States Senator



M. Michael Rounds
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Mike Enzi
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Ben Sasse
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John Thune
United States Senator