February 1, 2012

Sent via email

Regulatory Policy Division
Bureau of Industry and Security (BIS)
Room 2099B
U.S. Department of Commerce
14th St. and Pennsylvania Ave. NW
Washington, DC 20230

Re: Retrospective Regulatory Review Under E.O. 13563

Federal Register / Vol. 76, No. 151 / Friday, August 5, 2011 / Notice of Inquiry

RIN 0694-XA37

Dear Sir or Madam:

TechAmerica would like to thank the Department of Commerce for the opportunity to comment on this retrospective review of portions of the Export Administration Regulations, Chemical Weapons Convention Regulations, Additional Protocol Regulations, and National Defense Industrial Base Regulations to determine how they might be clarified or streamlined to be more effective or less burdensome. Our comments listed below attempt to provide (1) a description of the issue; (2) cost or economic impact; (3) proposed solutions; and (4) where applicable, rules of other countries that are well designed.

In today's challenging economic environment, global companies are structuring transactions, negotiations, sourcing models and outsourcing models in global supply chains to mitigate economic and business disruption risks. Global supply chains require our member companies to maximize process standardization, consistent application of policies, procedures and processes on a global scale to ensure that their sourcing and customer supply models prevent value leakage to the company and optimize supply chain visibility and security.

Part 740 License Exceptions

740.10(b)(3)

Description: Overall, License Exception RPL is beneficial to the U.S. High Tech industry but the structure of the license exception regulation is unduly complex, overlaps to 740.9 TMP License Exception and is inconsistent and unclear in definition and coverage to make its use in a global supply chain feasible.

"Replacements for defective or unacceptable U.S.-origin equipment. (i) Subject to the following conditions, commodities or software may be exported or reexported to replace defective or otherwise unusable (e.g., erroneously supplied) items."

Proposed solution: The language in this citation would benefit from (a) greater clarity; (b) fewer carve outs by Country Group; and (c) the addition of export/re-export scenarios. Additionally, consistent Commerce interpretation and administrative guidelines in the use of this license exception is needed. Critical definitions of the conditions and nature of the goods "unacceptable" and "erroneously supplied" should be clarified and expanded to cover "short shipments" of controlled parts and components. Today Licensing Officers frequently advise that use of RPL is not available for a "short shipment" shipping error but is available for a wrong part shipping error for items that would normally ship with the higher level product or system and be licensed with the system. Based upon the global supply chain for technology products the current language (U.S.-origin) makes license exception RPL unusable. In order to make License Exception RPL usable, this US-origin requirement should either be modified or completely removed.

Economic impact: In the semiconductor manufacturing industry, many individual items are controlled based upon Reasons for Control such as NS, NP, and CB. There is the chance that an EAR 99 or AT controlled system may contain many 2B350 and 2B230 items within it. This section of license exception RPL should also include a condition that allows use of RPL when one of these items is left out of the system during manufacturing. As of now, companies have to submit an IVL application and wait 4 to 6 weeks to obtain the IVL in order to replace the system. This delay in issuing a license due to the restrictive nature of RPL can put revenue recognition for a high value system at risk without providing substantive benefit to enhanced national security for the U.S., as the part would have been authorized under the original export license exception or EAR 99.

Part 752 Special Comprehensive License

Description: The Special Comprehensive License is the most rigorous for qualification, licensing process and oversight by BIS and has the greatest administrative burden for the license holder, license consignees and end users. Until December, 2011

the license still required the submission of multiple multi-copy forms on carbon paper created on typewriters. The regulations governing the license with the highest visibility, oversight and control by the U.S. Government have not implemented regulatory changes since 1998 to align the regulations with current practices. Areas of the Special Comprehensive License program that could benefit from greater regulatory clarity, less administrative burden and greater return on resource and compliance efforts to special comprehensive license holders and consignees are:

752.2: Eligible Activities: Enhance activities authorized under SCL to include manufacturing and expand foreign sourcing coverage.

752.3: Eligible Items: Currently, certain commodities controlled for Missile Technology, Chemical/Biological Warfare, and Short Supply, as well as other non-National Security controlled items are not allowed to be approved on the SCL. Items controlled for nuclear non-proliferation can be approved on the SCL on a case by case basis. Many parts utilized in the manufacture of semiconductors are controlled under these "reasons for control" but the end use is for the manufacture of commercial semiconductors. In addition, many of the items approved for the Validated End User program for The People's Republic of China are limited or even prohibited from the SCL. These commodities should not be restricted for SCL coverage as SCL provides the greatest visibility and access to the supply chain structure and end users to the US Government, and SCLs are issued to companies with demonstrated compliance programs.

752.10 Changes to the SCL: Multiple forms to make small changes or edits, including removing an end user or small changes to the name of the consignee or end user are unduly burdensome. These changes should be reportable by the license holder without requiring modification to the license due to extended processing times and inability to get simple modifications through the review process timely. This includes simple amendments including extension of validity periods requiring full interagency review.

Cost or economic impact: The time and economic costs of the mandatory Internal Control Program subject to system review by BIS and the rigorous compliance requirements that require additional interfaces, logic and decision trees to be programmed into a global trade management system, self-audits, training and license administration diminish the benefit of the SCL license when logical commodities common in equipment are restricted from coverage on the SCL. The effort to manage the gaps and obtain licenses for non-SCL eligible items adds to the management and administrative burden of the program.

Proposed Solution: Amend the restrictions that prohibit the inclusion of these exempted ECCNs in non-maintained regulations to be covered on a case by case basis based on end

use and controls implemented by the Special Comprehensive License holder and consignees.

Other countries' solutions: Other bulk license regimes allow these same commodities on their bulk licenses with shorter processing times and less intensive interagency review with pre-qualified license holders and consignees.

Validated End User (VEU)

The VEU program should be expanded to include Taiwan (Republic of China), Singapore and other countries that have demonstrated willingness to implement a robust export control program instead of disadvantaging them with a more restrictive license environment.

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TechAmerica would like to thank the Department of Commerce for the opportunity to provide comments on the Retrospective Review.

Sincerely,

Ken Montgomery
Vice President, International Trade Regulation
TechAmerica