January 29, 2012

Regulatory Policy Division
Bureau of Industry and Security, Room 2099B
U.S. Department of Commerce
Washington D.C. 20230

Subject: RIN 0694-XA37
Retrospective Regulatory Review Under E.O. 13563
License Conditions: Review, Guidelines, Publication

Thank you for providing an opportunity to submit suggestions for clarifying, streamlining or improving existing U.S. export regulations. This letter proposes the creation of a joint Government and industry led effort charged with conducting a comprehensive review of a key but historically overlooked aspect of the export license process – i.e. the license conditions imposed by BIS which pave the way for individual approvals. The goal would be to publish in Part 750: Application Processing, Issuance and Denial of the Export Administration Regulations (EAR) a standard set of license conditions along with general guidelines on how and when particular conditions are to be imposed. I believe that the result of this effort, when published, would improve the license process by adding transparency, clarity and potentially more uniformity and consistency to what has been to this time a rather opaque process.

In my twenty plus years of export control/compliance experience both inside and outside the Government, I have been both the sender and receiver of license conditions. Many were devised during the Cold War and may not have kept pace with present day challenges. On numerous occasions I witnessed the imposition of conflicting, overlapping, unnecessary, and sometimes unenforceable conditions. I've seen inimical, nonsensical, and/or otherwise annoyance type conditions along with those that legitimately safeguard our nation. I've witnessed the imposition of burdensome reporting requirements and suffered through many an implementation feeling that the time and expense of pulling together the data was in many instances a costly and generally wasted effort.

Some of this can't be helped and there may be good reason or benefit behind it, but the overall process suffers from a lack of transparency. Exporters aren't typically informed of the conditions until the end of a 30-45 day licensing process. And with deadlines approaching they are faced with a stark choice – accept the entire set of conditions as an almost fait accompli (no matter how onerous or potentially misplaced one or more may be) or seek redress and face delays of unknown duration which could negatively impact the manufacturer, the exporter and/or their customer's bottom line.

For me the solution appears simple: Publish a standard set of license conditions along with general guidelines on their imposition. However, prior to publication review the current list with an eye towards retiring those that are ineffective, unenforceable, or otherwise no longer applicable; revise those that remain appropriate with updates and/or edits to simplify or streamline their focus and/or application; and/or create new conditions to address modern challenges (if/as necessary).

Adoption of this course of action will add transparency to an important aspect of the licensing process, renew and/or refresh the terms by which transactions can be safeguarded, and help expedite and streamline the license issuance process. I urge BIS to consider this proposal on its merits for the benefit of the entire U.S. exporting community and its customers. I will be happy to discuss this proposal, provide additional information or answer specific questions. Thank you again for your interest and for this opportunity to be heard.

Regards,

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