From: "William van Amerongen" <wvaname1@irf.com>
To: PublicComments@bis.doc.gov
Date: Thu, Feb 3, 2011 11:37 AM
Subject: Comments to Rule BIS-2010-0038 - Export Control Modernization: Strategic Trade Authorization License Exception

Bureau of Industry and Security/Office of Exporter Services/Regulatory Policy Division

In response to your request for comments in the Federal Register/ Volume 75, Number 236/ Thursday, December 9, 2010, regarding Export Control Modernization: Strategic Trade Authorization License Exception, International Rectifier Corporation (IR) submits the following information and commentary:

IR is keenly interested in supporting the President's initiative to double US export sales in the next five years. As part of this initiative, IR believes that implementing this proposed STA license exception is a worthy step towards this goal.

Specifically, one of IR's significant product offerings is radiation-hardened Metal Oxide Semiconductor Field Effect Transistors (MOSFET) designed to meet a variety of customer specific requirements in a broad array of civil and military applications. These parts are minor building block components. Some of these MOSFETs are classified as EAR99 and others are ECCN 9A004 depending upon the results of a performance test required by the relevant CCATS, noted below. In CY 2009 and 2010, IR received over 550 licenses from BIS for export of the 9A004 items. Had the STA license exception been in effect during this time, we estimate that over 80% of those licensed exports could have used the STA license exception export authorization. This demonstrates that there could be significant license processing cost savings for both the companies and the US Government agencies involved in processing these license requests.

As a result of CJ 147-98C, dated May 12, 2003, and the subsequent CCATS G031072, dated August 23, 2003, these MOSFETs are classified as either EAR99 or 9A004, depending upon the results of a performance test requirement only called out in the CCATS. If the MOSFETs test at greater than or equal to 500K rads SI total dose, then they are treated as 9A004. This notice states that ECCN 9A004 items would not be authorized to use the proposed STA exception. This would preclude IR from using this STA exception as currently proposed.

Since ECCNs are a basic element of the EAR for use in determining export compliance requirements we firmly believe that published ECCNs need to be as clear and positive as possible. For IR to be able to use this STA exception, either the 9A004 ECCN needs to be authorized the ability to use STA or the 9A004 ECCN requires revision.

Specifically, 9A004 states,

"...All specially designed or modified components, parts, accessories, attachments, and associated equipment for "spacecraft" that have been determined by the Department of State through the commodity jurisdiction process to be under the licensing jurisdiction of the Department of Commerce and that are not controlled by any other ECCN on the Commerce Control list will be assigned a classification under this ECCN 9A004..."

The current ECCN wording creates a collective category of items subject to the ECCN without concomitant publication of any clear or positive use of objective criteria or directly applicable thresholds. Within this collective category, we believe it is much harder for the Commerce Department to make exceptions applicable to any single item covered by 9A004 - largely because of the disparate nature and characteristics of items covered by the ECCN.

Doubtless there is, or at least was, good reason that each of these items was classified as 9A004, but those reasons do not seem to be public knowledge and cannot therefore be readily appreciated or properly used by exporters not involved in the individual CJ process. Also, since the items are not subject to any other CCL ECCN, they would normally have been classified as EAR99, but for the unpublished decision of the Commerce Department.

From IR's perspective as an exporter, the proposed de-construction of 9A004 into those items collected for this CJ transfer process would be a more positive and practical approach. Upon deconstruction of 9A004, IR recommends that, should the Commerce Department decide that controlling radiation-hardened MOSFETs at levels greater than those for EAR99 remains appropriate for the CCL, a positive list of objective criteria or thresholds be published and used to determine ECCN applicability. Such criteria in the case of our radiation-hardened MOSFETs could be those already existing at ECCN 3A001 (a) (1) or at USML category XV (d); or others as properly determined by this ECCN review process.

With such a concurrent ECCN revision in place with the STA exception implementing language, IR would then be able to make a more informed decision as to whether or not to continue requesting licenses for its 9A004 MOSFETs exports or to use the STA exception.

Please direct any inquiries regarding this matter to the undersigned by return e-mail or by telephone @ 310-252-7020.

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Director - International Trade Compliance

Empowered Official

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